

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 24, 2021, appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2021 she sustained an injury when she picked up a package and developed pain in her neck, radiating down to her left shoulder and into her left hand/fingertips while in the performance of duty. She did not stop work.

In an undated statement attached to her claim form, appellant explained that following the employment incident on January 4, 2021, she continued to work as the pain she experienced waxed and waned until it eventually worsened to the point she could no longer work.

In a development letter dated March 5, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a February 12, 2021 report, Dr. Daryl L. O'Connor, a Board-certified orthopedic surgeon, noted the history of the January 4, 2021 employment incident. He noted examination findings of the left shoulder, which revealed abduction external rotation strength of 4+ out of 5 and positive Spurling sign, and left shoulder x-rays findings, which demonstrated no bony abnormalities and no significant degenerative change. Dr. O'Connor assessed cervical radiculopathy which he opined was directly causally related to her work. In a February 23, 2021 report, he noted physical examination findings and continued to assess cervical radiculopathy. Dr. O'Connor indicated that appellant's ongoing neck and left upper extremity symptoms were consistent with cervical radiculopathy, which he opined was causally related to the claimed work-related incident. A cervical spine magnetic resonance imaging (MRI) scan was recommended.

By decision dated April 14, 2021, OWCP denied the traumatic injury claim, finding that the evidence of record did not support that the injury or event(s) occurred as alleged. It concluded, therefore, that the requirements had not been met to establish she sustained an injury as defined by FECA.

On May 4, 2021, appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. She submitted a March 23, 2021 response to the development questionnaire, in which she described her claimed injury. Appellant asserted that on the date of injury she immediately experienced a sharp pain shooting through her neck and left arm as she turned to throw a five-pound parcel.

By decision dated August 23, 2021, an OWCP hearing representative modified the April 14, 2021 decision finding that appellant had established that the January 4, 2021 employment incident occurred, as alleged. However, the claim remained denied, as the medical evidence of record was insufficient to establish a medical condition causally related to the January 4, 2021 employment incident.

On October 26, 2021, appellant requested reconsideration and submitted additional evidence.

In an October 19, 2021 report, Dr. O'Connor noted the history of the January 4, 2021 employment incident and that he had diagnosed appellant with left upper extremity cervical radiculopathy on February 23, 2021. He indicated that a cervical MRI scan was recommended but

had not yet been obtained. Dr. O'Connor reiterated his opinion that appellant's symptoms and physical findings exhibited in February 2021 were causally related to the January 2021 employment incident. He explained that it was well established in medical literature that lifting heavy objects and turning at the cervical spine can cause radicular-type symptoms in the upper extremities. Dr. O'Connor noted that this mechanism was usually related to an exacerbation of a preexisting degenerative disc or an acute disc herniation which ultimately caused numbness and sensory deficits in the upper extremity. He indicated that appellant exhibited those exact findings during her February 2021 evaluation and that she had no symptoms affecting her neck or left upper extremity prior to the January 2021 work-related injury. Dr. O'Connor continued to recommend a cervical MRI scan.

By decision dated December 14, 2021, OWCP denied modification of the August 23, 2021 decision.

On January 19, 2022, appellant requested reconsideration.

In a December 28, 2021 report, Dr. O'Connor noted appellant's physical and neurological examination findings of the cervical spine and left upper extremity. He diagnosed a work-related left upper extremity cervical radiculopathy. Dr. O'Connor continued to recommend a cervical spine MRI scan. He also continued to opine that appellant's symptoms of cervical radiculopathy are causally related to her lifting injury in January 2021, noting that there was no evidence of pre-existing conditions. Dr. O'Connor noted that the objective medical evidence and rationale has been previously stated in the record.

By decision dated March 17, 2022, OWCP denied modification of its December 14, 2021 decision.

On June 21, 2022, appellant requested reconsideration.

In a June 7, 2022 report, Dr. O'Connor diagnosed cervical radiculopathy and opined that appellant had suffered a traumatic injury to her left upper extremity and neck when she threw a package after retrieving it out of an all-purpose container (APC). He noted that appellant reported that she had been working for approximately one hour when she reached to retrieve a package out of the APC and threw it into another container when she felt a sharp pain in her neck and left shoulder area with the pain radiating down her left arm affecting her left hand and fingers. Dr. O'Connor also noted physical examination findings. He opined that she suffered a traumatic injury to her upper neck which caused her radiating pain and tingling sensation down her arm into her left hand and fingers after she lifted and threw a package. Dr. O'Connor explained that it was not uncommon for a person to injure herself while lifting or throwing packages and that those type of injuries can occur on one day or over a period of time. He also noted that, on February 12, 2021, he had recommended that appellant stop working due to her ongoing symptoms and complaints and that she remained incapacitated to work due to her work-related condition.

By decision dated August 11, 2022, OWCP denied modification of its March 17, 2022 decision.

On December 8, 2022, appellant requested reconsideration.

Appellant resubmitted duplicate copies of the February 12 and December 28, 2021 reports of Dr. O'Connor.

By decision dated December 14, 2022, OWCP denied modification of its August 11, 2022 decision.

On April 24, 2023, appellant requested reconsideration.

In a January 10, 2023 report, Dr. O'Connor opined that appellant suffered a traumatic injury to her neck on January 4, 2021 after she had lifted a box out of an APC. He reiterated his diagnosis, the history of injury and his opinion that her diagnosed conditions were caused by lifting or throwing packages at work. Dr. O'Connor explained that the mechanism of picking up the packages and tossing them can cause significant injury and irritation to the upper extremities and neck and can occur on a day or over a period.

By decision dated July 19, 2023, OWCP denied modification of its December 14, 2022 decision.

On November 21, 2023, appellant requested reconsideration.

In a November 7, 2023 report, Dr. O'Connor reiterated his previous discussion and opinion as set forth in his January 10, 2023 addendum report. He indicated that appellant had since undergone a cervical spine MRI scan which demonstrated significant disc bulging at C5-C6 and C6-C7 with severe neuroforaminal stenosis at C5-C6 bilaterally, slightly worse on the left side. Dr. O'Connor indicated that the cervical spine MRI scan findings explain appellant's symptoms of left upper extremity pain, weakness, numbness and neck pain, which he opined were causally related to the January 4, 2021 employment incident. He diagnosed C6 and C7 nerve root impingement caused by disc bulge at C5-C6 and C6-C7. Dr. O'Connor opined that the disc bulge at those two levels were causally connected and related to her January 4, 2021 work-related incident. He explained that the biomechanical mechanism of injury, a twisting mechanism when appellant lifted and tossed a heavy box at work, caused a twisting type of force on her cervical spine along with some axial compression of the cervical spine, caused by muscle contractions in the neck from the heavy package in her arms. This caused compression of her cervical spine discs at C5-C6 and C6-C7 with the compressive force on the discs causing the bulging of the discs which then compressed the bilateral nerve roots at C6 and C7, particularly on the left side. Dr. O'Connor further explained that the ongoing compression of the nerve roots at C6 and C7 caused appellant's ongoing pain, weakness and numbness in the neck and left upper extremity. He opined that appellant's diagnosed left cervical radiculopathy, left C6 and C7 nerve root irritation and compression are causally related to the January 4, 2021 employment incident. Dr. O'Connor also reiterated that she had no preexisting cervical spine symptoms.

An August 18, 2023 cervical spine MRI scan demonstrated a straightening of the normal lordosis with spondylotic changes with no evidence of acute fracture; severe neural foraminal stenoses at C5-C6 and C6-C7; and mild stenoses at C3-C4 and C4-C5.

By decision dated January 16, 2024, OWCP denied modification of its July 19, 2023 decision.

On January 7, 2025, appellant requested reconsideration.

In a December 13, 2024 report, Dr. O'Connor clarified that the heavy package appellant picked up on January 4, 2021 weighed about five pounds. He opined that a package weighing five pounds can lead to a neck injury and the diagnosed cervical radiculopathy, as previously discussed.

Dr. O'Connor continued to opine that appellant's symptoms were directly related to her work and the accepted January 4, 2021 employment incident.

By decision dated January 8, 2025, OWCP denied modification of its January 16, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed with the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁶ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.⁷ Second, the employee must submit evidence to establish that the employment incident caused an injury.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment incident must be based on a complete factual and medical background.¹⁰ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the accepted employment incident.¹¹

³ *Supra* note 2.

⁴ *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *E.S.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, *id.*

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, *supra* note 4.

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *S.V.*, Docket No. 22-1010 (issued February 21, 2023); *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Id.*

ANALYSIS

The Board finds that this case is not in posture for a decision.

In his November 7, 2023 reports, Dr. O'Connor noted that appellant's traumatic injury to her upper neck caused her to experience radiating irritation and tingling sensation down her arms into the left hand and fingers after she threw the package. Dr. O'Connor reported that appellant's cervical spine MRI scan demonstrated significant disc bulging at C5-C6 and C6-C7 levels with severe neuroforaminal stenosis at C5-C6 bilaterally, slightly worse on the left side, which he indicated explained appellant's symptoms of left upper extremity pain, weakness, numbness and neck pain. Dr. O'Connor diagnosed C6 and C7 nerve root impingement caused by disc bulge at C5-C6 and C6-C7 levels and opined that the disc bulge at those two levels were causally connected and related to her January 4, 2021 employment incident. He explained that the biomechanical mechanism of injury, a twisting mechanism when appellant lifted and tossed a heavy box at work, caused a twisting type of force on her cervical spine along with some axial compression of the cervical spine, caused by muscle contractions in the neck from the heavy package in her arms. This caused compression of her cervical spine discs at C5-C6 and C6-C7 with the compressive force on the discs causing the bulging of the discs which then compressed the bilateral nerve roots at C6 and C7, particularly on the left side. Dr. O'Connor further explained that the ongoing compression of the nerve roots at C6 and C7 caused appellant's ongoing pain, weakness and numbness in the neck and left upper extremity. He opined that appellant's diagnosed left cervical radiculopathy, left C6 and C7 nerve root irritation and compression are causally related to the January 4, 2021 employment incident. Dr. O'Connor also noted that appellant had no preexisting cervical spine symptoms. Thus, he concluded that appellant's left cervical radiculopathy, left C6 and C7 nerve root irritation and compression and disc bulges are causally related to the January 4, 2021 employment incident.

The Board finds that that Dr. O'Connor's opinion, while insufficient to meet appellant's burden of proof, is sufficient to require further development of the medical evidence as to whether appellant has a cervical spine condition causally related to the accepted employment incident.¹²

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹³ OWCP has an obligation to see that justice is done.¹⁴

The Board shall, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the medical record to a specialist in the appropriate field of medicine for a rationalized

¹² *Y.B.*, Docket No. 22-0121 (issued November 19, 2024); *B.S.*, Docket No. 22-1289 (issued August 20, 2024); *J.L.*, Docket No. 23-0733 (issued October 12, 2023); *C.S.*, Docket No. 22-1087 (issued May 1, 2023); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 8.

¹³ *Id.*; *see also S.G.*, Docket No. 22-0330 (issued April 4, 2023); *see M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

¹⁴ *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, *supra* note 12; *John J. Carlone*, *supra* note 8.

opinion regarding whether appellant sustained a cervical spine condition causally related to the accepted January 4, 2021 employment incident. If the second opinion physician disagrees with the opinion of Dr. O'Connor, he or she must provide a fully rationalized explanation of why the accepted January 4, 2021 employment incident was insufficient to have caused or contributed to appellant's cervical condition. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2025 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 10, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board