United States Department of Labor
Employees' Compensation Appeals Board

L.S., Appellant	)	
and	)	**Docket No. 25-0343**
	)	**Issued: March 25, 2025**
U.S. POSTAL SERVICE, SHIPPENSBURG POST OFFICE, Shippensburg, PA, Employer	)	

Appearances:
Marcus Acheson McKnight, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 28, 2025 appellant, through counsel, filed a timely appeal from a September 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant sustained an injury to her back causally related to the accepted March 27, 2018 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 28, 2018 appellant, then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2018 she pulled a muscle on the left side of her middle and lower back while in the performance of duty. She stopped work on March 27, 2018.

In a development letter dated April 5, 2018, OWCP requested that appellant submit factual and medical information, including a comprehensive report from her physician addressing how a specific work incident caused or contributed to her claimed injury. It afforded her 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated May 9, 2018, OWCP found that appellant had established that the identified work factor of lifting a heavy package from the bottom of a hamper occurred as alleged. However, it denied the claim, finding that she had not established a diagnosed medical condition in connection with the accepted employment incident.

On May 23, 2018 appellant, through counsel, requested reconsideration.

In a report dated June 18, 2018, Dr. Thomas M. Larkin, a Board-certified anesthesiologist, noted that appellant was status post L4-5 laminectomy. He diagnosed lumbar radiculitis, lumbar facet arthropathy, nerve pain, thoracic back spasm, and pain in both knees.

By decision dated September 5, 2018, OWCP denied modification of its May 9, 2018 decision.

On January 23, 2019 appellant, through counsel, requested reconsideration.

By decision dated April 23, 2019, OWCP modified its prior decisions to find that appellant had established a diagnosed medical condition in connection with the accepted employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between appellant's back condition and the accepted employment incident.

On August 7, 2019 appellant requested reconsideration. She submitted progress reports from Dr. Larkin and Dr. Rehan Waheed, an osteopath, and a report from a physician assistant.

[3] Docket No. 22-0717 (issued August 9, 2022); Docket No. 24-0143 (issued April 8, 2024).

By decision dated November 4, 2019, OWCP denied modification of its April 23, 2019 decision.

In a report dated March 5, 2020, Dr. Larkin indicated that he had begun treating appellant after her December 4, 2017 laminectomy at L4-5. He related that she had returned to work on March 23, 2018 and injured her back on March 27, 2018 lifting a 45-pound package. Dr. Larkin related that he had evaluated appellant on March 28, 2018 for "severe low back pain which was worsening and radiating into the lower extremity. This pain was directly related to the injury she sustained on March 27, 2018 when she attempted to lift the 45[-]pound box at work." Dr. Larkin opined that the lifting injury on March 27, 2018 caused foraminal narrowing and damage to an exiting nerve. He asserted that since the nerve damage had failed to improve a year after the injury it was a permanent condition. Dr. Larkin found that appellant was disabled from her usual employment due to her work injury.

On March 16, 2020 appellant requested reconsideration.

By decision dated June 12, 2020, OWCP denied modification of its November 4, 2019 decision.

In a report dated March 19, 2021, Dr. Larkin related that when he examined appellant on March 27, 2018 she described the immediate onset of severe pain in her low back radiating into the lower extremity, increased paresthesia, and new pain in her thoracic spine. He advised that an examination revealed new findings of muscle spasm and a limp. Dr. Larkin found that a functional capacity evaluation (FCE) confirmed that appellant was unable to perform her usual employment and attributed her disability to "the pain emanating from L4-5 and L5-S1 which began after the work injury." He opined that lifting could increase the spine's axial load and that the work injury was "likely related to a rapid compression of the exiting nerve while lifting the package." Dr. Larkin noted that appellant experienced symptoms that such an injury would cause, including muscle spasms, gait problems, loss of motion, nerve pain, and numbness. He advised that finding on a May 20, 2020 magnetic resonance imaging (MRI) scan supported that she had sustained a new injury as it showed worsening L4-5 and L5-S1 foraminal stenosis.

On March 24, 2021 appellant, through counsel, requested reconsideration.

By decision dated June 24, 2021, OWCP denied modification of its June 12, 2020 decision.

In an undated report received on December 9, 2021, Dr. Larkin again advised that he had evaluated appellant on March 28, 2018 for severe pain in her lower back, new thoracic pain, and severe lower back pain with radiation. He noted that an FCE had confirmed that she had damaged a spinal exit nerve at L4-5 and L5-S1. Dr. Larkin indicated that appellant had bent down into a hamper which was over 24 inches deep. He related, "The process of attempting to lift a heavy package which weighed at least 45 pounds from the parcel hamper/bin created immediate back pain and resulted in [appellant] not being able to stand or walk." Dr. Larkin diagnosed chronic pain syndrome, chronic back pain more than three months duration, and lumbar radiculopathy. He opined that the "act of lifting the heavy package caused a significant axial load on [appellant's] spine that resulted in the injury which caused rapid compression of the L4-5 and L5-S1 in her

lower back." Dr. Larkin determined that appellant was disabled from employment due to the work injury.

On December 9, 2021 appellant requested reconsideration.

By decision dated March 9, 2022, OWCP denied appellant's request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated August 9, 2022, the Board set aside OWCP's March 9, 2022 nonmerit decision.[4] The Board found that appellant had submitted a report from Dr. Larkin that constituted new and relevant evidence sufficient to warrant reopening of her case for further merit review.

By decision dated October 4, 2022, OWCP denied modification of its June 24, 2021 decision.

On December 8, 2022 appellant requested reconsideration. She submitted an undated report from Dr. Larkin, who related that he had compared her two MRI scans and found "with a high degree of medical certainty that the injury she sustained at work on March 27, 2018 resulted in further inflammation of the nerve roots at L4-5." Dr. Larkin advised that the October 9, 2017 MRI scan that preceded appellant's laminectomy showed severe L4-5 spinal stenosis due to facet arthropathy and a disc herniation and mild neuroforaminal narrowing at L4-5. He advised that the May 19, 2020 MRI scan demonstrated a worsening of her L4-5 bilateral neuroforaminal narrowing, which he attributed to inflammation from the employment injury.

By decision dated December 12, 2022, OWCP denied modification of its October 4, 2022 decision.

On March 15, 2023 appellant requested reconsideration. She submitted a copy of the previously submitted report from Dr. Larkin, which was now dated January 20, 2023.

Appellant further submitted an October 9, 2017 MRI scan of the lumbar spine, which showed moderate-to-severe spinal canal and neural foraminal stenosis at L4-5 and left more than right L5-S1 neural foraminal stenosis. A May 19, 2020 MRI scan showed no significant central L4-5 spinal stenosis compared to the prior MRI scan, mild stenosis bilaterally at the L4-5 and L3-4 neural foramina, and degenerative disc disease and bulges from L3-4 through L5-S1.

By decision dated June 9, 2023, OWCP denied modification of its December 12, 2022 decision.

Appellant appealed to the Board. By decision dated April 8, 2024, the Board set aside the June 9, 2023 decision,[5] finding that the reports from Dr. Larkin were sufficient to require further

[4] Docket No. 22-0717 (issued August 9, 2022).

[5] Docket No. 24-0143 (issued April 8, 2024).

development of the medical evidence. The case was remanded for OWCP to refer appellant for a second opinion examination.

On June 6, 2024 OWCP referred appellant, together with the case record and a statement of accepted facts, to Dr. Nicholas K. Callahan, an osteopath Board-certified in orthopedic surgery, for a second opinion examination.

In a report dated July 20, 2024, Dr. Callahan provided his review of the medical evidence. On examination he found tenderness of the right sacroiliac joint and lower lumbar and upper thoracic paraspinal musculature, nonspecific discomfort in the lower back, intact sensation of the bilateral lower extremities, a negative straight leg raise test bilaterally, and full strength. Dr. Callahan found no medical diagnosis causally related to the accepted work incident. He reviewed appellant's history of sustaining lumbar pain after lifting a heavy box and advised that it was "difficult to see a direct correlation" between this incident and the findings on MRI scans and on examination. Dr. Callahan related, "The purported areas of involvement are the lower lumbar spine, particularly stenosis around the L4 and L5 nerve roots. On my clinical examination, there are no sensory deficits corresponding with the L4, L5, or S1 nerve roots. There are no motor weakness findings. There are no objective special neurological tests supporting these. Therefore, I cannot give an opinion as to causation relative to a 'diagnosed condition.'" Dr. Callahan opined that appellant could return to her usual employment and completed a work capacity evaluation (Form OWCP-5c), finding that she had no restrictions.

On August 6, 2024 OWCP requested that Dr. Callahan address whether the accepted March 27, 2018 employment incident resulted in foraminal narrowing causing nerve damage, chronic pain syndrome, chronic back pain, and/or lumbar radiculopathy.

In a supplemental report dated August 20, 2024, Dr. Callahan asserted that appellant's treating physician had failed to identify the nerve damaged or specify what damage had been done by the March 27, 2018 employment incident. He related that the findings on the October 9, 2017 lumbar MRI scan, performed five months prior to the incident, revealed findings consistent with degeneration unrelated to the March 27, 2018 employment incident. Dr. Callahan found that lifting and twisting to retrieve a package would not cause the findings on MRI scan. He noted that appellant had undergone a laminectomy on December 4, 2017 for preexisting conditions unrelated to the accepted employment incident. Dr. Callahan opined that the March 27, 2018 accepted employment incident did not either cause or contribute to chronic pain syndrome, chronic back pain, lumbar radiculopathy, foraminal narrowing, or damage to a nerve based on the pathology found on the prior MRI scan and examination findings that failed to "support nerve damage or the conditions noted above."

By *de novo* decision dated September 5, 2024, OWCP denied appellant's traumatic injury claim. It found that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted March 27, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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 within the applicable time limitation of FECA,[7] that an injury was sustained while in the performance of duty as alleged; and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[8] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[9]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[10] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged.[11] The second component is whether the employment incident caused an injury.[12]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[13] The opinion of the physician must be based upon a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[14]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[15] The implementing regulations

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[6] *Supra* note 2.

[7] *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *N.B.*, Docket No. 23-0690 (issued December 5, 2023); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[9] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *A.B.*, Docket No. 23-0827 (issued December 27, 2023); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *T.H.*, 59 ECAB 388 (2008).

[11] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[12] *Id*.

[13] *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, 59 ECAB 388 (2008).

[14] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

[15] 5 U.S.C. § 8123(a); *see P.S.*, Docket No. 22-0358 (issued March 31, 2023); *Y.A.*, 59 ECAB 701 (2008).

state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.[16]

ANALYSIS

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

Dr. Larkin, appellant's treating physician, indicated on March 5, 2020 that he had treated her since her December 4, 2017 lumbar laminectomy. He advised that he evaluated her on March 28, 2018 for severe low back pain radiating into the lower extremity, which he attributed to lifting at work on March 27, 2018. In subsequent reports, Dr. Larkin opined that lifting the package caused an axial load on the spine resulting in compression of an exiting nerve. He asserted that the May 20, 2020 MRI scan supported a new injury based on its findings of worsening foraminal stenosis at L4-5 and L5-S1, which he attributed to inflammation from the accepted employment incident. By contrast, Dr. Callahan, the second opinion physician, found that appellant had no diagnosed condition causally related to the accepted March 27, 2018 employment incident. He advised that the findings on MRI scans showed degenerative conditions and that examination findings failed to correspond with sensory deficits at L4, L5, or S1 or motor weakness. Dr. Callahan opined that appellant lifting a heavy package did not cause or contribute to chronic pain syndrome, chronic back pain, lumbar radiculopathy, foraminal narrowing, or damage to a nerve.

The Board finds that there is an unresolved conflict in medical opinion evidence between Drs. Larkin and Callahan regarding whether appellant sustained a back condition as a result of the accepted March 27, 2018 employment incident.[17] Therefore, pursuant to 5 U.S.C. § 8123(a), the case shall be remanded to OWCP for referral of appellant, together with the case record, a SOAF, and a series of questions to a specialist in the appropriate field of medicine for an impartial medical examination to resolve the conflict.[18] Following 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 decision.

[16] 20 C.F.R. § 10.321.

[17] *See supra* note 16; *see also* 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *P.R.*, Docket No. 18-0022 (issued April 9, 2018); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

[18] *See J.L.*, Docket No. 22-0964 (issued November 15, 2022).

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2024 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 25, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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