

**United States Department of Labor
Employees' Compensation Appeals Board**

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| C.S., Appellant |) | |
| |) | |
| and |) | Docket No. 22-1087 |
| |) | Issued: May 1, 2023 |
| U.S. POSTAL SERVICE, BUFFALO POST |) | |
| OFFICE, Buffalo, NY, Employer |) | |
| |) | |

Appearances:

David J. Picconi, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On July 19, 2022 appellant, through her representative, filed a timely appeal from a June 13, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the June 13, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted October 20, 2020 employment incident.

FACTUAL HISTORY

On October 22, 2020 appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 20, 2020 she felt a pull in the lower right side of her back and pain in her right leg when she stepped up into a postal vehicle while in the performance of duty.⁴ She stopped work on October 20, 2020.

OWCP received a June 21, 2015 report by Dr. William Stephan, a family medicine specialist, who indicated that appellant was treated in his office for complaints of low back pain. Dr. Stephan recounted that an October 28, 2014 lumbar spine magnetic resonance imaging (MRI) scan demonstrated lateral herniations at L2-3, an annular tear at L4-5, and degenerative changes at L5-S1. He opined that appellant's job, which required carrying up to 35 pounds and lifting up to 70 pounds at a time and walking on uneven surfaces contributed to her low back pain.

In an October 20, 2020 report, Dr. Stephan indicated that appellant was treated for lower back and right leg pain that started that day when she stepped up into her truck at work. On examination of appellant's lumbar spine, he observed pain with flexion of the low back and positive straight leg raise testing. Dr. Stephan diagnosed low back pain and right-side sciatica. He checked a box marked "Yes" indicating that the incident appellant described was the competent cause of this injury.

In notes and a duty status form (Form CA-17) dated October 20 and 21, 2020, Dr. Stephan reported that appellant had L4-5 herniated disc with radiculopathy down the right leg. He recommended that she not work from October 21 through November 14, 2020.

The employing establishment completed and signed an authorization for examination and/or treatment (Form CA-16) on October 20, 2020.

In a report dated November 2, 2020, Dr. Raechel L. Percy, an osteopath Board-certified in physical medicine and rehabilitation, described that on October 20, 2020 appellant was at work when she stepped into her vehicle and felt a twinge in her back. On physical examination of appellant's back, Dr. Percy observed burning, stabbing pain, weakness, and limited movement. She assessed spinal stenosis of the lumbar region, herniated lumbar disc, and lumbago with sciatica. Dr. Percy responded "[Y]es" indicating that the incident appellant described was the competent cause of this injury.

In a Form CA-17 dated November 10, 2020, Dr. Stephan indicated that appellant was totally disabled.

⁴ Appellant has previously filed an occupational disease claim (Form CA-2) on January 20, 2015 under OWCP File No. xxxxxx718 for a claimed back condition due to factors of her federal employment. By decision dated April 20, 2015, OWCP denied her occupational disease claim.

In a November 20, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

On November 8, 2020 OWCP received appellant's response to its development letter. Appellant indicated that on October 20, 2020 she was entering her postal vehicle and stepped up onto a step rail approximately six inches wide. She explained that while stepping up she must also twist her foot to the side and reach up for the grab bar. Appellant reported that she felt a sharp pain in her lower back and a shooting pain in her right hip radiating down to her right leg. She provided a picture of the postal vehicle with the cargo door open.

Appellant submitted additional diagnostic testing. A September 25, 2020 lumbar spine MRI scan revealed right lateral disc protrusion at L3-4, far right lateral disc protrusion at L2-3 causing displacement upon the exiting right L2 nerve root, and grade 1 anterior spondylolisthesis of L4 on L5 with facet arthropathy. An October 30, 2020 lumbar spine MRI scan showed slight grade 1 anterior spondylolisthesis of L4 over L5, multi-level intervertebral disc pathology and right paracentral disc herniation at the L3-4 level, diffuse disc bulge at L1-2, and diffuse disc bulge of the annulus fibrosus at L2-3.

In a letter dated December 3, 2020, Dr. Stephan explained that he had read appellant's statement regarding the October 20, 2020 employment incident and noted her lumbar spine MRI scan. He opined that her herniated disc at L3-4 occurred when she climbed up into her postal vehicle.

In an attending physician's report (Form CA-20) dated December 10, 2020, Dr. Stephan described the October 20, 2020 employment incident and reported examination findings of pain with flexion and diagnoses of low back pain, right leg sciatica, and lumbosacral radiculopathy. He checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by the employment activity.

Appellant submitted a December 10, 2020 report by Dr. Douglas B. Moreland, a Board-certified neurosurgeon. Dr. Moreland indicated that she had experienced ongoing right leg pain since October 20, 2020 when she injured herself while climbing into her mail carrier van. On examination of appellant's lumbar spine, he observed mild tenderness to palpation across the lumbar spine and right paraspinal musculature. Sensation examination revealed diminished sensation along the right L4 dermatomal. Dr. Moreland checked a box marked "Yes" indicating that the incident described was the competent medical cause of this injury.

On December 21, 2020 appellant underwent right L3-4 transpedicular discectomy by Dr. Moreland.

In a January 5, 2021 work status note, Dr. Stephan excused appellant from work from January 5 through February 17, 2021 due to injury and illness.

By decision dated January 8, 2021, OWCP accepted that the October 20, 2020 employment incident occurred as alleged and that a medical condition was diagnosed, however, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted employment incident.

On March 16, 2021 appellant requested reconsideration.

In a March 16, 2021 report, Dr. Moreland noted that he evaluated appellant for follow up of back surgery and provided examination findings. He opined that she was injured on October 20, 2020 while performing her letter carrier duties. Dr. Moreland indicated the van that appellant used had a “high step and a high reach for [appellant] which caused a twisting, turning, torquing motion of her back ... and resulted in the disc herniation.” He diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and spinal instabilities in the lumbar region. Dr. Moreland checked a box marked “Yes” indicating that the incident described was the competent medical cause of this injury.

Appellant submitted preadmission hospital records dated December 16, 2020 and hospital records dated December 21, 2020, which indicated that she was admitted with a diagnosis of intervertebral disc disorder with radiculopathy.

By decision dated March 23, 2021, OWCP denied modification of the January 8, 2021 decision.⁵

On May 5, 2021 appellant requested reconsideration.

In an April 29, 2021 report, Dr. Moreland indicated that a repeat lumbar spine MRI scan revealed essentially normal postoperative changes on the right side at the L3-4 level. He noted that he had reviewed medical records from 2014 and opined that there was no association between appellant’s complaints in 2014 and her present condition. Dr. Moreland explained that she had gone essentially six years without any symptoms while working full time. He also noted that the October 28, 2014 lumbar spine MRI scan showed no pathology at the L3-4 level and that appellant only had complaints of back pain with no radicular symptoms. Dr. Moreland concluded that her present back and radicular leg problems were “completely and solely related” to the October 20, 2020 employment incident.

In an April 29, 2021 work status note, Dr. Moreland indicated that appellant could work part-time, limited duty for four hours per day.

By decision dated August 6, 2021, OWCP denied modification of the March 23, 2021 decision.

On February 9, 2022 appellant requested reconsideration.

In a February 1, 2022 letter, Dr. Moreland indicated that he first evaluated appellant on October 20, 2020 for complaints of back pain and had diagnosed lumbar radiculopathy and sacroiliitis. Addressing the issue of causation, he explained that lumbar discs were spongy cushions that separated the bones of the spine and provided shock absorption, kept the spine stable, and allowed for movement. Dr. Moreland reported that the “biomechanical force of reaching up and pulling [appellant’s] body weight while her foot twisted and the knee in a flexed position

⁵ In its decision, OWCP noted that appellant had a previous September 2014 occupational disease claim for an alleged back injury and included medical records from 2014 and 2015.

simultaneously driving the body upward in the cumulative effect of having done this 25 times on the date of injury sparked an internal process[,] which caused this injury.”

By decision dated March 7, 2022, OWCP denied modification of the August 6, 2021 decision.

On March 25, 2022 appellant requested reconsideration.

In a March 23, 2022 report, Dr. Moreland indicated that appellant was injured on October 20, 2020 as a result of the “torque and energy absorbed during the action of opening the mail carrier door and climbing in while reaching to grab the handrail.” He noted that the van that she used had a high step of 18 inches onto a 6-inch-wide side rail and a high reach of 62 inches from the ground. Dr. Moreland further explained that the “movements of stepping while reaching for the grab bar caused a twisting, turning, torquing motion of [appellant’s] back, which resulted in a disc herniation.” He reported that the disc herniation was the result of tears in the annulus fibrosis and rupture of the nucleus pulposus in the lateral portion of the L3-4 level. Dr. Moreland also indicated that appellant had prior back pain in 2014 and noted that she was diagnosed with lumbago and possibly a sacroiliac joint issue. He reported that when he evaluated her on October 20, 2020 he diagnosed intervertebral disc disorder with radiculopathy and spinal inabilities of the lumbar region. Dr. Moreland opined that appellant’s two injuries were not related. He explained that the October 28, 2014 lumbar spine MRI scan showed no pathology at the L3-4 level and she had no previous complaints of leg weakness or nerve pain.

By decision dated June 13, 2022, OWCP denied modification of the March 7, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁷ that an injury was sustained 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 upon a traumatic injury or an occupational disease.⁹

⁶ *Supra* note 2.

⁷ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.¹⁰ 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, place, and in the manner alleged. Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.¹¹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.¹² The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.¹³

ANALYSIS

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

In support of her claim, appellant submitted reports by Dr. Moreland dated December 10, 2020 through March 23, 2022. On initial evaluation, Dr. Moreland described the October 20, 2020 employment incident and provided examination findings. He reviewed appellant's lumbar spine MRI scan and noted a large far lateral disc herniation at L3-4. In a March 16, 2021 report, Dr. Moreland diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and spinal instabilities in the lumbar region. He opined that on October 20, 2020 appellant had a high step and high reach, which "caused twisting turning torquing motion of her back ... and resulted in the disc herniations." Dr. Moreland further explained in a March 23, 2022 letter that the "movements of stepping while reaching for the grab bar caused a twisting, turning, torquing motion of [appellant's] back, which resulted in a disc herniation." He reported that the disc herniation was the result of tears in the annulus fibrosis and rupture of the nucleus pulposus in the lateral portion of the L3-4 level. Dr. Moreland further opined that there was no association between appellant's back symptoms in 2014 and her current complaints and noted that the October 28, 2014 lumbar spine MRI scan showed no pathology at the L3-4 level.

The Board finds that the reports from Dr. Moreland are sufficient to require further development of the medical evidence.¹⁴ Dr. Moreland's reports provided a pathophysiological explanation as to how appellant's stepping onto the postal van and reaching up for the grab bar

¹⁰ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

¹¹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁴ *See I.S.*, Docket No. 20-0216 (issued August 15, 2022).

caused her disc herniations and lumbar radiculopathy. He provided an accurate history and opined that her current back symptoms were different from her previous back symptoms. There is no medical evidence of record contradicting Dr. Moreland's opinion on causation. The medical evidence of record from him provided a rational and logical opinion and is, therefore, sufficient to require further development of appellant's claim.¹⁵

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.¹⁶ OWCP has an obligation to see that justice is done.¹⁷

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, a statement of accepted facts and the medical evidence of record to a specialist in the appropriate field of medicine.¹⁸ The referral physician shall provide a well-rationalized opinion as to whether appellant has a diagnosed condition causally related to the accepted October 20, 2020 employment incident. If the physician opines that the diagnosed condition is not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Moreland. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁹

CONCLUSION

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

¹⁵ *C.J.*, Docket No. 22-0478 (issued August 30, 2022); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁶ *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71.

¹⁷ *S.M.*, Docket No. 19-1634 (issued August 25, 2020); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *supra* note 15 at 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁸ On return of the case record, OWCP should consider administratively combining OWCP File No. xxxxxx718 and OWCP File No. xxxxxx480 with the current claim as the master file.

¹⁹ The Board notes that a completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2022 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: May 1, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board