

rolled back. When she sat down on the edge of the chair, it flipped up and she fell and hurt her back. Appellant stopped work on October 5, 2009.

OWCP received reports dated September 15 to October 14, 2009 from Dr. James R. Brixey, a Board-certified family practitioner and osteopath, who diagnosed degenerative disc disease, sciatica, musculoskeletal pain and low back pain. Dr. Brixey excused appellant from work for 15 days. In an October 20, 2009 form report, he advised that she fell from a chair and hurt her lower back. Dr. Brixey checked the box “yes” in response to whether he believed that the condition was caused or aggravated by an employment activity and filled in diagnosis “unknown.” He recommended a magnetic resonance imaging (MRI) scan. Dr. Brixey continued to treat appellant and placed her off work.

By letter dated November 24, 2009, OWCP informed appellant of the evidence needed to support her claim and requested that she submit such additional evidence within 30 days.²

A December 4, 2009 lumbar MRI scan, read by Dr. Kelly Cole, a Board-certified diagnostic radiologist, revealed a left paracentral disc protrusion at L5-S1 contacting the anterior thecal sac and the exiting nerve root causing mild-to-moderate central canal narrowing.

Dr. Brixey continued to treat appellant and place her off work. In a December 17, 2009 treatment note, he diagnosed degenerative disc disease at L5-S1, disc bulge at L3-4 with facet hypertrophy, facet hypertrophy at L4-5 and degenerative disc protrusion.

By decision dated December 29, 2009, OWCP denied the claim finding that the evidence did not establish an injury as alleged. It noted that Dr. Brixey did not provide a definitive diagnosis which could be connected to the incident at work.

In a January 26, 2010 letter, appellant provided additional evidence. She noted that she had not worked since the date of her injury and continued to experience pain. OWCP received a September 29, 2009 incident report, which noted that on September 7, 2009 appellant sustained injuries to her back when she stood up and her chair rolled back.

In a January 26, 2010 attending physician’s report, Dr. Brixey noted that appellant started to sit down and her chair rolled, causing her to land on her buttocks. He advised that she was totally disabled since September 7, 2009. Dr. Brixey checked the box “no” to the question of whether there was any history or evidence of concurrent or preexisting injury or disease or physical impairment. He checked the box “yes” in response to whether he believed that the condition found was caused or aggravated by the employment activity. Dr. Brixey diagnosed a protruding intervertebral disc at L5-S1 with anterior thecal pressure and central canal narrowing.

On February 4, 2010 OWCP received an undated report from Dr. Brixey, who noted that appellant was working when an alarm sounded. Appellant stood up from her chair to cancel the alarm and, when she sat back down, it moved and she fell to the floor on her buttocks.

² On November 5, 2009 appellant filed a Form CA-7, claim for compensation, for the period from October 24 to November 20, 2009. On November 24, 2009 OWCP advised her that it could not process this matter until her claim was adjudicated. Appellant continued to submit claims for compensation, CA-7 forms.

Dr. Brixey advised that she had significant pain since the fall which had worsened. He last saw appellant on January 5, 2010. Dr. Brixey diagnosed protruding intervertebral disc at L5-S1 with anterior thecal sac pressure and central canal narrowing; disc bulge at L3-4 with facet hypertrophy, facet hypertrophy at L4-5 and degenerative disc disease lumbar spine. He recommended medication for pain control and examination by a neurosurgeon. In a March 31, 2009 report, Dr. Brixey stated that he first saw appellant on September 16, 2009 and last saw her on January 5, 2010. He listed her diagnoses and stated that she had an MRI scan on December 4, 2009. Dr. Brixey noted that appellant's treatment was comprised of symptomatic relief. He stated that her pain was severe at all times and opined that the work injury was the cause of her back condition and pain.

Appellant's representative requested a telephonic hearing, which was held on April 7, 2010. At the hearing, he asserted that appellant was in the performance of duty when she was injured. Appellant described her duties and the September 7, 2009 incident. She stated that she had no prior history of back problems other than an incident 10 years earlier that had resolved. Additionally, appellant explained that she returned to the emergency room for chronic pain after the accident.

By decision dated June 1, 2010, OWCP's hearing representative modified the December 29, 2009 decision to find that appellant fell from her chair at work on September 7, 2009; however, the medical evidence was not sufficient evidence to establish that she sustained a back condition as a result of the work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing 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 timely filed within the applicable time limitation period of FECA⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁷ The employee must also submit sufficient evidence,

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁷ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.⁹

ANALYSIS

Appellant alleged that on September 7, 2009 she stood up to arm the alarm panels. She noted that her chair rolled back and when she sat down, the chair flipped up and she fell and hurt her back while in the performance of duty. OWCP accepted that the incident occurred, as alleged.

OWCP denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that she sustained a back condition as a result of the incident at work on September 7, 2009. The Board finds that the medical evidence submitted by appellant generally supports that the incident was the cause of her condition and pain.

In support of her claim, appellant submitted reports from Dr. Brixey. On October 20, 2009 Dr. Brixey noted an accurate history of her falling from a chair on September 7, 2009 on her buttocks. He did not list a diagnosis but checked the box "yes" in response to whether he believed that the condition was caused or aggravated by an employment activity thereafter he provided additional reports supporting injury from the fall from the chair. Dr. Brixey obtained diagnostic testing on December 4, 2009 which revealed degenerative disc disease of the lumbar spine with a disc protrusion at L5-S1. He addressed these findings on December 17, 2009 and in subsequent reports of 2010. Dr. Brixey generally indicated that the accepted incident had contributed to appellant's disability due to the protruding intervertebral disc at L5-S1 with anterior thecal pressure and central canal narrowing.

Dr. Brixey diagnosed protruding intervertebral disc at L5-S1 with anterior thecal sac pressure and central canal narrowing, disc bulge at L3-4 with facet hypertrophy, facet hypertrophy at L4-5 and degenerative disc disease lumbar spine. While his reports are not sufficiently rationalized to meet appellant's burden of proof to establish her claim, they provide an accurate history of the accepted incident and reflect support that her underlying degenerative disease was aggravated by the incident at work.¹⁰

⁸ *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

⁹ *D.E.*, 58 ECAB 448 (2007).

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While the appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has the obligation to see that justice is done.¹¹

The Board will remand the case to OWCP for referral to an appropriate medical specialist to determine whether the September 7, 2009 incident aggravated appellant's preexisting lumbar degenerative disease and result in disability for work. Following this and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2010 is set aside and remanded for further development in accordance with this decision of the Board.

Issued: June 8, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *John W. Butler*, 39 ECAB 852 (1988).