

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

X.V., Appellant	)	
	)	
and	)	Docket No. 18-1360
	)	Issued: April 12, 2019
U.S. POSTAL SERVICE, POST OFFICE, Jayuya, PR, Employer	)	
	)	

*Appearances:*  
Bruce H. Didriksen, for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 2, 2018 appellant, through her representative, filed a timely appeal from a May 7, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a back condition causally related to the accepted May 10, 2017 employment incident.

## FACTUAL HISTORY

On May 17, 2017 appellant, then a 28-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 2017 she experienced low back pain that radiated down her left leg while in the performance of duty. In an accompanying narrative statement, she explained that she drove to her route on May 10, 2017 and, when parking her vehicle, she tried to pull the emergency brake (hand brake), but it was “too hard.” Appellant contended that the pulling caused a back injury. After this incident she walked her route to deliver mail, but limped as she did so. Appellant added that, when she returned to the employing establishment, she verbally notified R.O., the officer-in-charge, of the alleged incident. She indicated that the window clerk, R.B., noticed that she was limping. Appellant stopped work on May 11, 2017. She further explained that on May 11, 2017 she conducted a vehicle check and prepared a vehicle repair tag. Appellant indicated that she handed it to R.O., and he instructed her to deliver her route. She noted that on May 12, 2017 she could not stand and therefore had to request sick leave.

OWCP also received witness statements in support of appellant’s claim. In a May 17, 2017 statement, G.S., a customer, related that she heard appellant scream and witnessed her limping on the afternoon of May 10, 2017. In an undated statement, R.B., a coworker, indicated that he witnessed appellant limping and walking uncomfortably on the afternoon of May 10, 2017 and the morning of May 11, 2017.

OWCP received work excuse notes dated May 12 and 30, 2017, from Dr. Nilda Carreras-Coello, a family medicine specialist. In the May 12, 2017 note, Dr. Carreras-Coello diagnosed lumbago, sprain of the left spine, and deep neuropathy. She placed appellant off work until May 23, 2017. In the May 30, 2017 excuse, Dr. Carreras-Coello diagnosed lumbago, left radiculopathy, and neuropathy.<sup>3</sup> She placed appellant off work until June 16, 2017.

In a June 13, 2017 duty status report (Form CA-17), Dr. Evelyn Rivera-Ocasio, a physiatrist, noted that appellant was “pulling the emergency hand brake” and hurt her lower back and left side. She indicated that appellant had low back pain radiating to the left lower leg. Dr. Rivera-Ocasio diagnosed low back pain and radiculopathy and placed appellant off work.

By letter dated June 14, 2017, the employing establishment controverted the claim.

In a July 10, 2017 development letter, OWCP advised appellant that, when her claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. The claim was administratively approved to allow payment for limited medical expenses, but the merits of the claim had not been formally adjudicated. OWCP advised that because appellant had not returned to full-time work, her claim would be formally adjudicated. It requested that she submit factual and medical information, including a comprehensive report from her physician regarding

---

<sup>3</sup> The notes were translated from Spanish and were partially illegible to the translator.

how a specific work incident contributed to her claimed injury. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received diagnostic reports which included a May 16, 2017 lumbar spine magnetic resonance imaging (MRI) scan read by Dr. Gilberto A. Franceschini, a diagnostic radiologist, which revealed multilevel degenerative disc disease, worse at L5-S1, Schmorl's nodes thoracolumbar spine, and levoscoliosis of the lumbar spine. A June 1, 2017 electromyography (EMG) scan, read by Dr. Rivera-Ocasio, revealed left L5 radiculopathy. A June 22, 2017 lumbar MRI scan of the sacroiliac joint, read by Dr. Remy Rodriguez, a Board-certified diagnostic radiologist, revealed a significant disc herniation at L5-S1, a significant Schmorl's node at L3-4, and possible pseudo arthrosis.

In an August 2, 2017 duty status report (Form CA-17), Dr. Rivera-Ocasio repeated her description of the employment incident, her findings, and diagnoses of low back pain and radiculopathy. She concluded that appellant could not return to work.

In an August 11, 2017 report, Dr. Rivera-Ocasio noted that appellant was first evaluated on December 9, 2016 when she complained of "whole back pain," which began a year and a half prior to the alleged May 10, 2017 employment incident. She indicated that appellant was diagnosed with myofascial back pain, secondary to mechanical imbalance. Dr. Rivera-Ocasio noted that scoliosis was confirmed by x-rays of the spine, taken on December 19, 2016, and that appellant enrolled in a rehabilitation program and experienced significant pain relief. She indicated that appellant was seen on March 8, 2017 with complaints of sudden onset of lower back pain, worse on the left. Dr. Rivera-Ocasio confirmed that a March 7, 2017 MRI scan revealed an L5-S1 herniated nucleus pulposus, degenerative disc, and end plates (Schmorl nodes). She next saw appellant on May 15, 2017, after the May 10, 2017 employment incident, and ordered additional testing. Dr. Rivera-Ocasio determined that appellant's bone scan revealed an "abnormal capitation on several bones, predominantly the spine." She also noted that the diagnostic testing from the upper extremities from July 14, 2017, revealed right C6 radiculopathy, and a cervical spine MRI scan from July 17, 2017 revealed a small central disc herniation at C4-5.

Dr. Rivera-Ocasio explained that appellant's condition of lower back pain secondary to the herniated disc and radiculopathy, had not improved. She indicated that appellant walked with a cane and had constant low back pain. Dr. Rivera-Ocasio opined that appellant presented with an "acute exacerbation of her low back pain caused by the employment incident."

In an August 18, 2017 report, Dr. Carreras-Coello confirmed that appellant had been her patient for the past 14 years. She diagnosed chronic lumbago of the lumbosacral spine, severe low back pain, left spine deviation, peripheral neuropathy, severe low back pain, and pain in the left tibia. Dr. Carreras-Coello explained that appellant was able to perform her work in a slow manner. She noted that she saw appellant on May 12, 2017 for complaints of severe low back pain radiating towards the left inferior extremity and a burning sensation on the third toe of the left foot. Dr. Carreras-Coello noted that appellant related that, on "May 10, 2017 while [appellant] was driving [her work vehicle], she pulled the emergency [brake] and felt a strong low back pain that prevented her from walking."

Dr. Carreras-Coello further explained that she had been treating appellant for many years and she was aware of appellant's health conditions, prior to the incident. She opined that "this incident could have been the triggering link that accelerated her condition now." Dr. Carreras-Coello advised that appellant was suffering from severe lumbago with permanent left peripheral neuropathy. She indicated that appellant was dependent on a walking stick and not able to perform her daily activities as she had before the employment injury. Dr. Carreras-Coello recommended continued rest from work, until her physiatrist concluded her treatment.

By decision dated November 3, 2017, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted May 10, 2017 work incident. OWCP explained that there was evidence of a preexisting back condition. It indicated that the treating physician must differentiate the effects of the work-related injury and the preexisting back conditions.

On February 6, 2018 appellant requested reconsideration and submitted additional medical evidence.

A December 1, 2017 computerized tomography scan of the lumbar spine, read by Dr. Pedro Farinacci, a diagnostic radiologist, revealed minimal lumbar dextroscoliosis, Schmorl's nodes, mild disc bulging at L4-5, L5-S1, and bilateral neural foraminal stenosis.

In a February 6, 2018 report, Dr. Carreras-Coello noted that she saw appellant on May 12, 2017 for an incident at work on May 10, 2017. She opined, "it is my medical opinion that, within a reasonable degree of certainty, the diagnosed condition of chronic lumbago was permanently aggravated by the incident on May 10, 2017 when [appellant] struggled to engage the hand brake in her postal vehicle while delivering mail." Dr. Carreras-Coello further opined that the diagnosed conditions were "directly caused by the incident on May 10, 2017 when [appellant] struggled to engage the hand brake in her postal vehicle while delivering mail."

Dr. Carreras-Coello explained the mechanism of injury and noted that in order to engage the brake, appellant had to pull the handle in a downward motion. She further noted that the brake handle was "very difficult to move into the set position," required that appellant "twist her body to the left and downward in order to gain sufficient leverage to complete the task." Dr. Carreras-Coello explained that this action "required the use of muscles in the lumbar spine, and put abnormal stress on the spinal column because [appellant's] lower body was stationary in the driver's seat, while her upper body was contorting beyond a normal range of motion."

Dr. Carreras-Coello also explained that appellant strained her lumbar spine, by "an extension of muscles beyond normal elasticity and a deviation from the normal alignment of the spinal column." She noted that the spinal column had a network of nerves that "run through it." Dr. Carreras-Coello advised that, "[w]hen excessive stress to the spine results in a shift of the vertebrae out of alignment, there is always a chance of bone rubbing against bone and/or pinching the nerves in the spinal column, causing extreme pain and residual weakness due to damaging of the nerve(s)." She opined that this was "precisely what transpired in [appellant's] case, and what led to my diagnoses of peripheral neuropathy and radiculopathy." Dr. Carreras-Coello explained that her opinion was based on her physical examination of appellant, diagnostic test results, and her years of experience with similar injuries.

By decision dated May 7, 2018, OWCP denied modification of the November 3, 2017 decision. It found that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted May 10, 2017 employment incident. OWCP found that it remained unclear how pulling an emergency brake resulted in the diagnosed conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> 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 employee.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment,

---

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *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).

<sup>7</sup> *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>8</sup> *Id.*; see also *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

### ANALYSIS

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

In support of her claim, appellant submitted medical evidence and work excuses dating from May 12, 2017 and onward from Dr. Carreras-Coello. In her August 18, 2017 report, Dr. Carreras-Coello explained that she had treated appellant for her back conditions over the last 14 years and appellant was able to work in a “slow manner.” She opined that “this incident could have been the triggering link that accelerated [appellant’s] condition now” and diagnosed severe lumbago with permanent left peripheral neuropathy. This report by itself is of limited probative value, as it was couched in speculative terms.<sup>12</sup>

On reconsideration, Dr. Carreras-Coello provided additional details pertaining to causal relationship in her February 6, 2018 report. She explained the mechanism of injury related to how the accepted incident of pulling of the hand brake resulted in the work-related diagnoses. Dr. Carreras-Coello explained that, when appellant moved to lift the brake handle, she had to “twist her body to the left and downward in order to gain sufficient leverage to complete the task.” She explained that this action “required the use of muscles in the lumbar spine and put abnormal stress on the spinal column because [appellant’s] lower body was stationary in the driver’s seat, while her upper body was contorting beyond a normal range of motion.” Furthermore, Dr. Carreras-Coello explained that the spinal column had a network of nerves that “run through it.” She advised that “[w]henver excessive stress to the spine results in a shift of the vertebrae out of alignment, there is always a chance of bone rubbing against bone and/or pinching the nerves in the spinal column, causing extreme pain and residual weakness due to damaging of the nerve(s).” Dr. Carreras-Coello opined that this was “precisely what transpired in [appellant’s] case, and what led to my diagnoses of peripheral neuropathy and radiculopathy.”

The Board finds that, while Dr. Carreras-Coello’s reports are not completely rationalized, they are consistent in indicating that appellant sustained a back injury causally related to the insufficient to meet appellant’s burden of proof to establish her claim, they raise an uncontroverted inference between her diagnosed condition and the work-related incident and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>13</sup>

---

<sup>11</sup> *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>12</sup> The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value. *R.C.*, Docket No. 18-1695 (issued March 12, 2019); see *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

<sup>13</sup> *D.W.*, Docket No. 17-1884 (issued November 8, 2018); see *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>14</sup>

The Board will therefore remand the case for further development of the medical evidence. On remand, OWCP should prepare a statement of accepted facts and obtain a rationalized opinion from an appropriate Board-certified physician as to whether appellant's back conditions are causally related to the May 10, 2017 employment incident, either directly or through aggravation, precipitation, or acceleration.<sup>15</sup> Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's traumatic injury claim.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 7, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision.

Issued: April 12, 2019  
Washington, DC

Christopher J. Godfrey, 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

---

<sup>14</sup> *S.W.*, Docket No. 18-0119 (October 5, 2018); *William J. Cantrell*, 34 ECAB 1233 (1993).

<sup>15</sup> *P.A.*, Docket No. 09-0319 (issued November 23, 2009).