

ISSUE

The issue is whether appellant has met his burden of proof to establish a cervical spine condition causally related to the accepted February 7, 2014 employment incident.

FACTUAL HISTORY

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

On March 14, 2014 appellant, then a 44-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2014 he experienced pain in his left shoulder after rotating a jack handle moving a large piece of equipment while in the performance of duty. He stopped work on March 3, 2014 and returned to work on March 17, 2014.⁴

A magnetic resonance imaging (MRI) scan, obtained on February 27, 2014, revealed a large left posterolateral and foraminal disc herniation at C6-7 compressing the left C7 nerve root and ventral cord.

On March 3, 2014 Dr. Leo Spector, a Board-certified orthopedic surgeon, noted that appellant had experienced severe neck pain radiating into his left upper extremity after doing routine exercises in January 2014. He indicated that a cervical spine MRI scan showed a large C6-7 left disc herniation compressing the left C7 nerve root. Dr. Spector diagnosed a left herniated nucleus pulposus at C6-7 with left C7 radiculopathy and recommended surgery.

By decision dated February 4, 2015, OWCP denied appellant's claim for a traumatic injury finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted February 7, 2014 employment incident.

In a February 24, 2015 report, Dr. Spector indicated that he had treated appellant beginning March 3, 2014 for a herniated disc at C6-7 requiring surgery. He advised that his physician assistant had obtained a history of a prior rotator cuff surgery in March 2013 after which he resumed normal exercises. While rotating equipment at work, appellant experienced left scapular pain. Dr. Spector opined that the employment incident contributed to his disc herniation and that he had "an asymptomatic preexisting condition made symptomatic by a work-related injury."

On March 11, 2015 appellant requested reconsideration.

By decision dated April 23, 2015, OWCP denied modification of its February 4, 2015 decision finding that Dr. Spector's opinion was speculative and thus insufficient to show that appellant sustained an employment-related condition on February 7, 2014.

³ Docket No. 17-0490 (issued June 27, 2017).

⁴ Appellant received treatment from a physician assistant following his injury.

In a report dated March 16, 2016, Dr. William A. Somers, a Board-certified orthopedic surgeon, reviewed appellant's history of a left rotator cuff condition in 2002 and a left rotator cuff repair in 2013. Dr. Somers noted that he had returned to his usual employment following his rotator cuff repair with no neck, upper back, or left arm symptoms until February 2014, when he used a lever on a mechanical device and "felt a twinge in the posterolateral cervical spine region." He diagnosed a herniated nucleus pulposus at C6 with radiculopathy either caused or aggravated by the February 2014 injury, degenerative cervical disc disease aggravated by the February 2014 injury, and residual fine motor dexterity loss due to the February 2014 injury.

On March 17, 2016 appellant requested reconsideration. He argued that the opinion of Dr. Somers was sufficient to meet his burden of proof or require further development.

By decision dated December 15, 2016, OWCP denied modification of its April 23, 2015 decision finding that Dr. Somers' opinion was insufficiently rationalized to establish that appellant sustained an injury on February 7, 2014.

Appellant appealed to the Board. By decision dated June 27, 2017, the Board affirmed the December 15, 2016 decision.⁵ The Board found that the medical evidence of record was insufficient to establish that appellant had sustained a cervical condition caused or aggravated by the accepted February 7, 2014 employment incident.

In a report dated March 19, 2018, Dr. Tuan Huynh, who specializes in family medicine, evaluated appellant for continued complaints of neck pain radiating into his elbow and hand. He noted that his symptoms began on February 7, 2014 when he "injured his neck as a result of turning a lever to jack up a large piece of equipment." Dr. Huynh opined that appellant had herniated a cervical disc performing "an extremely physically stressful task" in the course of his employment. He described the mechanism of intervertebral disc degeneration, noting that it usually occurred with age and was asymptomatic. Dr. Huynh advised that a disc herniation primarily occurred with trauma. He found that appellant's disc herniation resulted from a "torsional injury due to his strenuous lifting injury as he was trying to turn the level to jack up a heavy piece of equipment." Dr. Huynh opined that his disc would have remained asymptomatic absent jacking up the equipment, and concluded that he "herniated his C6 disc in his cervical spine as a direct result of straining to turn a lever to lift a large piece of equipment." He diagnosed cervical disc disorder at C6-7 with radiculopathy.

On May 2, 2018 appellant, through counsel, requested reconsideration based on the March 19, 2018 report of Dr. Huynh.

By decision dated July 31, 2018, OWCP denied modification. It found that Dr. Huynh had not adequately distinguished appellant's preexisting condition and the diagnosed condition that he related to the accepted employment incident.

⁵ *Supra* note 3.

On October 22, 2018 Dr. Huynh indicated that he had reviewed OWCP's July 31, 2018 decision and the reports from Dr. Somers. He described intervertebral discs and the mechanisms causing disc herniations. Dr. Huynh related:

“Again, considering the specific actions conveyed by [appellant] on February 7, 2014 that included rotating a jack handle for approximately five minutes while jacking up a large piece of equipment, an understanding of the biomechanics of this injury, the resulting diagnosed conditions, the confirmatory diagnostic studies, the concurring opinion of Dr. William Somers specifically on this issue, his prior asymptomatic condition and immediate symptoms identified thereafter all lead me to the conclusion that this work activity caused his disc herniation. I made this finding to a high degree of medical certainty, I have supported my medical rationale with both diagnostic and clinical findings and have no doubt that the injury was caused by the work activities.”

Dr. Huynh indicated that he had considered appellant's prior rotator cuff injury. He concluded that his “herniation was directly caused by a torsional injury due to his strenuous lifting as he was trying to turn the lever to jack up a heavy piece of equipment.” He diagnosed cervical disc disorder with radiculopathy of the cervicothoracic region and at C6-7.

On October 24, 2018 appellant, through counsel, requested reconsideration. He noted that the March 19 and October 22, 2018 reports from Dr. Huynh were rationalized and thorough and thus sufficient to establish causation.

By decision dated January 18, 2019, OWCP denied modification of its July 31, 2018 decision.

On appeal counsel contends that OWCP failed to discuss Dr. Huynh's March 19, 2018 report and erred in finding that his opinion was not rationalized.

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,⁶ 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.⁷ These are the essential elements of each and every compensation claim,

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸ 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. 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.⁹ The second component is whether the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.¹¹ 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.¹²

ANALYSIS

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

On prior appeal, the Board reviewed the evidence before OWCP at the time it issued its December 15, 2016 decision and found that it was insufficient to establish that appellant sustained an injury causally related to the accepted February 7, 2014 employment incident. The Board's review of the previously submitted medical evidence of record is *res judicata* absent further review by OWCP under section 8128 of FECA and therefore the prior evidence need not be addressed again in this decision.¹³

Following the Board's June 27, 2017 decision, appellant, through counsel, requested reconsideration and submitted additional medical evidence. On March 19, 2018 Dr. Huynh diagnosed cervical disc disorder at C6-7 with radiculopathy. He attributed appellant's herniated disc at C6 to a torsional injury that occurred when he tried to jack up heavy equipment on February 7, 2014. Dr. Huynh noted that he had a preexisting cervical degenerative condition which he advised would have remained asymptomatic absent the accepted employment incident.

On October 22, 2018 Dr. Huynh related that he had reviewed the reports from Dr. Somers. He discussed how trauma resulted in disc herniations. Dr. Huynh discussed appellant's rotation of a jack handle for around five minutes moving a piece of equipment. He opined that the history of injury, the mechanics of his actions using the jack handle, the diagnostic studies, immediate

⁸ *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).

⁹ See *G.H.*, Docket No. 18-989 (issued January 3, 2019).

¹⁰ *Id.*

¹¹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018).

¹² *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹³ *W.C.*, Docket No. 18-1386 (issued January 22, 2019).

symptoms, and previously asymptomatic condition supported that the accepted employment incident caused his disc herniation. Dr. Huynh explained that disc degeneration commonly resulted from age as opposed to a disc herniation that usually resulted from trauma. He opined that appellant's cervical disc herniation directly resulted from a torsional injury caused by strenuous exertion turning the lever on a jack. He diagnosed cervical disc disorder with radiculopathy of the cervicothoracic region and at C6-7.

The Board finds that the medical opinion of Dr. Huynh is based upon a complete factual history and medical background, is supported by reasonable medical certainty, and provides a sufficient level of medical rationale explaining the nature of the relationship between the diagnosed conditions and the accepted employment incident.¹⁴ While his reports are insufficiently rationalized to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between his cervical disc herniation and the identified employment factor and are sufficient to require OWCP to further develop the medical evidence and the case record.¹⁵

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.¹⁶ The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.¹⁷ On remand, OWCP should refer appellant and the medical evidence of record to an appropriate specialist to obtain a rationalized opinion regarding whether he sustained a cervical condition causally related to the accepted February 7, 2014 employment incident.¹⁸ After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

¹⁴ *Id.*

¹⁵ *C.W.*, Docket No. 19-0231 (issued July 15, 2019).

¹⁶ *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹⁷ 20 C.F.R. § 10.121.

¹⁸ *M.K.*, Docket No. 17-1140 (issued October 18, 2017).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2019 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: September 25, 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