

ISSUE

The issue is whether appellant has met his burden of proof to establish lumbar conditions causally related to the accepted December 13, 2016 employment incident.

FACTUAL HISTORY

On December 15, 2016 appellant, then a 43-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on December 13, 2016 he injured his low back when he lifted and slid a heavy patient in her extra wide wheelchair into position to get her on a wheelchair ramp while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated by checking a box marked “No” that he was not injured while in the performance of duty and noted that he had a known, preexisting back condition with ongoing work restrictions.³ Appellant stopped work and received continuation of pay.

In a December 19, 2016 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

Appellant submitted a driver manifest and driver log book for the period December 9 to 13, 2013 and an e-mail dated December 14, 2016, which indicated that appellant had informed T.R., a human resource specialist for the employing establishment, that he had “tweaked” his back on December 13, 2016.

In a December 14, 2016 work status note and narrative letter, Dr. Nilda Durany, who specializes in family medicine, related appellant’s complaints of low back pain with radicular pain into both legs. She noted that appellant worked as a motor vehicle operator and described that on December 13, 2016 he felt a “pull in his lower back causing immediate pain” when he lifted and slid a patient in a wheelchair onto the wheelchair ramp. Upon examination of appellant’s lumbar spine, Dr. Durany observed decreased range of motion with pain and spasm and tenderness upon palpation. She further reported positive straight leg raise testing on the right and positive Kemp’s test bilaterally. Dr. Durany indicated that a lumbar spine magnetic resonance imaging (MRI) scan showed grade 4, L5 on S1 spondylolisthesis. She diagnosed lumbar sprain, spondylolisthesis L5, grade 4, sciatica, lumbar, sacral, and pelvic subluxation and opined that the injury appellant sustained was a direct result of him lifting his patient on December 13, 2016. Dr. Durany noted that appellant had previous low back injuries and that an October 4, 2012 lumbar x-ray examination report showed L5-S1 pars defect with minimal anterolisthesis on L5-S1 that appeared stable. She reported that the December 13, 2016 lifting injury further injured the pars and made it unstable, causing a grade 4, L5 on S1 spondylolisthesis. Dr. Durany advised that appellant was “off work”.

In an e-mail dated December 20, 2016, T.R. noted that appellant had a previous low back injury claim that was denied by OWCP. She described the December 13, 2016 incident and related

³ Appellant has two previously filed traumatic injury claims for alleged lumbar injuries sustained on February 22, 2012 under OWCP File No. xxxxxx422 and on October 4, 2015 under OWCP File No. xxxxxx708. Both claims were denied.

that appellant had contacted his doctor the following morning. T.R. reported that appellant claimed that this current back pain was at a different level than his previous back problems.

Dr. Durany also completed a duty status form report (Form CA-17) and an attending physician's report (Form CA-20) dated December 20, 2016. She described the December 13, 2016 lifting incident and indicated that appellant had preexisting grade 1, L5 spondylolisthesis. Dr. Durany diagnosed lumbar sprain and grade 4, L5 spondylolisthesis. She checked a box marked "Yes" indicating that appellant's condition was caused or aggravated by the employment activity. Dr. Durany explained "pushing, lifting, and sliding a 300-pound patient caused L5 to go from [g]rade 1 to [g]rade 4." She advised that appellant was totally disabled from work.

In a December 28, 2016 letter, T.R. indicated that the employing establishment was controverting appellant's claim on the basis of fact of injury and causal relationship. She alleged that the van operated by appellant was equipped with a powered wheelchair lift so it was not necessary for appellant to ever lift the patient or exert high levels of pushing or pulling. T.R. also noted that appellant continued to work on December 13, 2016 and did not report the incident to his supervisor.

A December 29, 2016 note by Dr. Durany indicated that appellant was seen in the office that day and was unable to return to work. She reported that appellant's lumbar spine was unstable at L5 and that he could not lift at that time.

In a January 12, 2017 Form CA-17, Dr. Durany noted a December 13, 2016 date of injury and clinical findings of lumbar sprain and grade 4, L5 spondylolisthesis. She checked a box marked "No" indicating that appellant could not work.

On January 13, 2017 appellant submitted his completed questionnaire, signed on January 3, 2017, and an undated statement. He recounted that on December 13, 2016 he picked up a patient from her apartment to take her to an appointment and, when he lifted and pulled the wheelchair with the patient to line up with the wheelchair ramp, he felt a pull in his lower back which caused pain. Appellant explained that he continued working, but as the day went on, the pain worsened.

OWCP received emergency department records and discharge instruction sheets dated February 22 and October 4, 2012, which related that appellant was treated for complaints of low back pain following a back strain injury. Appellant was diagnosed with low back pain. He also submitted March 5, 2015 emergency department records and discharge instructions sheet, which indicated that he received medical treatment after being involved in a motor vehicle collision. The discharge diagnosis was back strain.

In a January 20, 2017 letter, T.R. asserted that appellant had not submitted any medical narrative or other substantive medical documentation since December 28, 2016. She reported that she was enclosing pertinent medical records from appellant's previously denied claims. OWCP received appellant's timesheets ranging from November 22, 2009 to November 26, 2016, e-mails dated from November 27, 2012 to April 22, 2015 regarding appellant's previous workers' compensation claims, and a February 3, 2014 denial of accommodation request. It also received medical reports dated November 1 and 27, 2012; a November 2, 2012 Form CA-20, an October 4, 2012 lumbar spine x-ray report, and an October 11, 2012 lumbar spine MRI scan report.

By decision dated January 30, 2017, OWCP denied appellant's claim. It accepted that the December 13, 2016 incident occurred as alleged, but it denied his claim finding that appellant had failed to establish causal relationship between the accepted employment incident and his diagnosed lumbar condition.

On February 22, 2017 appellant requested reconsideration and submitted additional medical evidence, including physical therapy treatment reports dated from December 15, 2016 to February 23, 2017.

Appellant also submitted a February 13, 2017 letter by Dr. Durany that was substantially similar to her previous December 14, 2016 letter. In the "Discussion and Causation" section, Dr. Durany explained that, as appellant lifted and pulled the patient's extra wide wheelchair onto the wheelchair ramp, it caused his lumbosacral spine to twist and he felt immediate pain. She discussed the findings of a December 14, 2016 lumbar spine x-ray and a December 15, 2016 lumbar spine MRI scan. Dr. Durany reported that it was with reasonable medical certainty that the "injury that [appellant] sustained when lifting and pulling the [heavy] patient's extra wide wheelchair, twisted [appellant's] lumbosacral spine causing a lumbosacral sprain injury, aggravation and exacerbation of his preexisting L5-S1 spondylolisthesis, L2-L3 shallow central disc protrusion and annular tear and vertebral subluxation complex as demonstrated on the December 14, 2016 x-ray scans." She diagnosed lumbosacral sprain, spondylolisthesis at L5 grade 1, lumbosacral radiculopathy, other intervertebral disc displacement of the lumbar region, and lumbar, sacral, and pelvic vertebral subluxation complex. Dr. Durany concluded that appellant's diagnosed conditions were directly related to the December 14, 2016 injury at work.

By decision dated April 19, 2017, OWCP denied modification of the February 6, 2017 decision.

On February 26, 2018 appellant, through counsel, requested reconsideration. In an attached letter, counsel indicated that she was submitting a new April 25, 2017 report by Dr. Durany, which established that the December 13, 2016 employment incident caused appellant's injury.

Appellant submitted an April 25, 2017 letter by Dr. Durany who described the December 13, 2016 employment incident and reviewed appellant's medical history, including his prior motor vehicle accident and preexisting back conditions. She discussed appellant's diagnostic testing and provided examination findings similar to her previous letters. Dr. Durany diagnosed lumbosacral sprain, lumbosacral radiculopathy, intervertebral disc displacement, lumbar vertebral, sacral vertebral, and pelvic vertebral subluxation complex and opined that these conditions were directly caused by appellant's December 14, 2016 injury.

Dr. Durany further explained that when appellant lifted and pulled the patient's wheelchair onto the ramp on December 13, 2016, it caused his lumbosacral spine to twist. She indicated that twisting or rotating the lumbar spine while lifting causes stress and can tear the ligaments that connect each of the vertebra, resulting in a sprain. Dr. Durany further reported that a rotation of the lumbar spine causes a displacement of the disc in between, which is forced out of its confined space (herniates) between the vertebra, and can then put pressure on the nerves of the spine which exit the vertebral canal through the intervertebral foramen (spaces). She related that the acute pain

that appellant feels in his lumbosacral spine was due to the following: “a sprain of the lumbosacral ligaments, (the lumbosacral ligaments attach one both to another), the annular disc tear and protrusion at L2-3 (which is the spongy material between the vertebrae which is now protruding outside of its space, and aggravation of the spondylolisthesis at L5-S1 and the L5 bilateral pars fractures (pars fractures are when the bone breaks and is caused by extension or bending in a backward position of the lumbar spine or low back).” Dr. Durany also indicated the chronic bilateral L5 pars fracture was a consequence of repetitive stress that preexisted the December 13, 2016 incident, but was aggravated by the lifting and pulling of the heavy patient in a wheelchair. She reported that this aggravation resulted in lumbar vertebral subluxation complex, sacral vertebral subluxation complex, and pelvic vertebral subluxation complex.

OWCP also received a February 7, 2018 narrative report by Dr. Durany who opined that appellant’s examination results and diagnosis were consistent with lumbar sprain and annular tear. Dr. Durany further elaborated that the lifting, pulling, and pushing on December 13, 2016 had a direct causal relationship with this diagnosis. She indicated that the bilateral L5 pars fractures and grade 1 anterolisthesis of L5-S1 was a chronic condition, which had remained unchanged, but was aggravated due to lifting and pulling a wheelchair with a heavy patient. Dr. Durany noted that the subluxation complexes were due to appellant lifting and pulling extreme weight subluxating the associated vertebrae from proper alignment.

By decision dated October 16, 2018, OWCP denied modification of the April 19, 2017 decision.

On October 8, 2019 appellant, through counsel, requested reconsideration. Counsel asserted that new medical evidence established causal relationship between appellant’s diagnoses and the claimed December 13, 2016 employment injury. She also contended that, if the medical evidence of record was unclear, OWCP should remand appellant’s claim for further development.

OWCP received a December 14, 2016 lumbar spine x-ray examination report, which showed grade 1, L5 on S1 spondylolisthesis with partial uncovering of the posterior disc annulus, secondary to chronic bilateral L5 pars fracture, the L5-S1 foramen is mildly narrowed bilaterally, and shallow central protrusion and annular tear at L2-3 without impingement.

In an undated report, Dr. Jerry Powell, who specializes in family medicine, related that appellant had been a patient in his office since December 14, 2016 and was receiving treatment for a work-related injury. He described the December 13, 2016 employment incident and opined that the excessive weight and force used to lift, rotate, and pull the extra wide wheelchair caused appellant’s injuries. Dr. Powell reported: “[appellant’s] lifting, pulling, twisting, and bending to move the wheelchair caused lumbosacral spine (ligaments and discs) to tear and be pushed beyond the biomechanical and structural limits, hence the lumbosacral sprain and the disc displacement with radiculopathy and lumbar, sacral, and pelvic subluxations. This also aggravated and worsened a preexisting grade 1, L5 spondylolisthesis.” Dr. Powell listed appellant’s specific work-related injuries as lumbosacral strain, central disc protrusion, subluxation complex noted L4-5, S1 joint on the right, sacrum, and pelvis, and lumbar radiculopathy.

Appellant submitted medical reports dated February 7, 2014 to February 23, 2016 by Dr. Warren Hoyt, a Board-certified family physician, who related that he was treating appellant

for follow-up of chronic conditions, including obstructive sleep apnea, lumbar back pain, asthma, and obesity.

By decision dated October 28, 2019, OWCP denied modification of the October 16, 2018 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA,⁵ 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.⁶ 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.⁷

In order 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.⁸ 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 and place, and in the manner alleged.⁹ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.¹⁰

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.¹¹ 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

⁴ *Supra* note 2.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁹ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

the specific employment factor(s) identified by the employee.¹² The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹³

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

ANALYSIS

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

In support of his claim, appellant submitted an undated report by Dr. Powell who described the December 13, 2016 employment incident and opined that the excessive weight and force used to lift, rotate, and pull the extra wide wheelchair caused appellant's injuries. Dr. Powell reported: "[appellant's] lifting, pulling, twisting, and bending to move the wheelchair caused lumbosacral spine (ligaments and discs) to tear and be pushed beyond the biomechanical and structural limits, hence the lumbosacral sprain and the disc displacement with radiculopathy and lumbar, sacral, and pelvic subluxations. This also aggravated and worsened a preexisting grade 1, L5 spondylolisthesis." Dr. Powell listed appellant's specific work-related injuries as lumbosacral strain, central disc protrusion, subluxation complex noted L4-5, S1 joint on the right, sacrum, and pelvis, and lumbar radiculopathy.

Appellant also submitted medical reports and letters from Dr. Durany dated December 14, 2016 to February 7, 2018. In her initial report, she accurately described that on December 13, 2016 appellant felt a "pull in his lower back" after he lifted and slid a patient in a wheelchair onto the wheelchair ramp while at work. Dr. Durany provided examination findings and noted that a lumbar spine MRI scan report revealed grade 4, L5 on S1 spondylolisthesis. She diagnosed lumbar sprain, spondylolisthesis L5, grade 4, sciatica, lumbar, sacral, and pelvic subluxation and opined that the injuries appellant sustained were a direct result of the December 13, 2016 employment injury. In an April 25, 2017 letter, Dr. Durany further explained that appellant twisted his lumbosacral spine when he lifted and pulled the patient's wheelchair onto the ramp. She indicated that twisting or rotating the lumbar spine while lifting causes stress and can tear the ligaments that connect each of the vertebra, resulting in a sprain. Dr. Durany also related that rotating the lumbar spine causes a displacement of the disc in between, which forces it out of its space (herniate) between the vertebra and can put pressure on the nerves of the spine. She further indicated the chronic bilateral L5 pars fracture was a consequence of repetitive stress that preexisted the December 13, 2016 incident, but was aggravated by the lifting and pulling of the heavy patient in

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

a wheelchair and caused the lumbar vertebral subluxation complex, sacral vertebral subluxation complex, and pelvic vertebral subluxation complex.

Both Dr. Powell and Dr. Durany described the December 13, 2016 employment incident and provided an explanation of how this type of traumatic injury would cause or contribute to appellant's diagnosed condition. Their opinions demonstrate sufficient knowledge of appellant's preexisting lumbar conditions and provide the mechanism of injury explaining how rotating and twisting his back on December 13, 2016 put stress and tore the ligaments that connect the vertebra, caused a displacement of the discs, and forced the discs out of its confined space. They also noted physical findings upon examination and provided an opinion based on an accurate background. Thus, the Board finds that, while these physicians' opinions are not sufficiently rationalized to meet appellant's burden of proof to establish his claim, they are sufficient to require further development of the record by OWCP.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

Therefore, the Board finds that the case shall be remanded to OWCP. On remand OWCP shall prepare a statement of accepted facts and refer the matter to an appropriate medical specialist. Upon referral, the physician shall conduct a physical evaluation and provide a rationalized medical opinion as to whether appellant's lumbar conditions were caused or aggravated by the December 13, 2016 employment incident. Following this, and any other 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.

¹⁵ See *D.P.*, Docket No. 19-1596 (issued April 23, 2020); *J.P.*, Docket No. 19-1206 (issued February 11, 2020).

¹⁶ See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹⁷ See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

ORDER

IT IS HEREBY ORDERED THAT the October 28, 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: July 22, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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