United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 20-1553**
	)	**Issued: April 15, 2021**
DEPARTMENT OF VETERANS AFFAIRS, NORTH FLORIDA/SOUTH GEORGIA VETERANS HEALTH SYSTEM, Gainesville, FL, Employer	)	

Appearances:
Wayne Johnson, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 26, 2020 appellant, through counsel, filed a timely appeal from a February 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[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.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On December 9, 2015 appellant, then a 43-year-old health technician, filed an occupational disease claim (Form CA-2) alleging that she developed constant swelling and pain in the tops of her feet and left knee, as well as pain in her lower back due to factors of her federal employment, including lifting, pushing and transporting large metal surgical-type instrument carts throughout the entire hospital using hallways and elevators. She noted that she first became aware of her condition on November 19, 2015 and realized its relation to her federal employment on December 7, 2015. Appellant did not stop work.

In a December 15, 2015 development letter, OWCP informed appellant that it had received no evidence in support of her occupational disease claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's employment activities, and comments from a knowledgeable supervisor regarding the accuracy of her statements. It afforded both parties 30 days to respond.

In a December 8, 2015 medical report, Dr. John Charnas, Board-certified in occupational medicine, evaluated appellant for back pain, left knee pain and tingling over the dorsal surface of her feet. Appellant reported no single injury and related her symptoms to pushing carts and trays while wearing steel-toed shoes. She indicated that she had no previous injuries to her back, but did have a previous injury to her left knee with intermittent flare ups. Dr. Charnas diagnosed a lumbar spine strain, a left knee strain and bilateral foot discomfort. In a medical note of even date, he provided that appellant was able to return to work without restrictions the same day.

In medical notes dated December 10 and 15, 2015, Katherine Swan, a registered nurse, recommended light-duty assignments for appellant to follow.

Appellant, in a December 18, 2015 letter, reviewed her work restrictions suggested by her physician and sought clarity on what job duties she should be performing while working.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the February 28, 2020 decision, OWCP received additional evidence. 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.*

In a December 29, 2015 medical note, Dr. Michael Macmillan, a Board-certified orthopedic surgeon, referred appellant to physical therapy for treatment of her radiculopathy, lumbosacral region.

By a December 30, 2015 letter, the employing establishment controverted appellant's claim, contending that she did not provide a rationalized medical opinion diagnosing an injury causally related to the factors of her federal employment.

In a January 14, 2016 diagnostic report, Dr. David Babin, a Board-certified diagnostic radiologist, noted that he had performed a magnetic resonance imaging (MRI) scan of appellant lumbar spine, finding moderate disc degeneration at L5-S1 with factors of combining to result in bilateral foraminal stenosis and mild L5 root impingement bilaterally.

In a January 20, 2016 medical note, Dr. Macmillan updated appellant's work restrictions, suggesting that she not lift or push anything over 20 pounds.

By decision dated March 7, 2016, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical condition was causally related to the accepted factors of her federal employment.

OWCP continued to receive evidence. In a medical report dated December 29, 2015, Dr. Macmillan evaluated appellant for low back pain and leg pain. He noted that she previously suffered a low back injury in her 20's and that she recently began a more physically demanding job. Appellant informed him that her pain would worsen with prolonged standing or walking. On evaluation, Dr. Macmillan opined that, with a history of a back injury when she was younger and now with back and leg pain, she may have spondylolisthesis. He diagnosed lumbosacral region radiculopathy and referred appellant to undergo an MRI scan and physical therapy.

In physical therapy reports dated January 7 and 20, 2016, James Rylak, a physical therapist, evaluated appellant for low back pain and reviewed the results of her MRI scan. He recommended that she continue her current plan of treatment.

Appellant submitted e-mails dated from December 3, 2015 to March 15, 2016 in which she reported experiencing pain while at work on December 7 and 8, 2015. She also reported encountering difficulty in speaking with her manager and completing the appropriate workers' compensation paperwork.

In a March 24, 2016 letter, Dr. Lateya Foxx, a Board-certified neurologist, explained that she had been treating appellant for bilateral foot paresthesia due to an injury she sustained while pushing a cart at work on December 7, 2015. Appellant reported that she had immediate difficulty due to severe pain in her lower back, knee and leg since that time. Dr. Foxx provided that she performed an electromyography (EMG) study that demonstrated unclear clinical significance in the left tibial motor nerve and that it otherwise did not support a peripheral neuropathy or lumbar radiculopathy diagnosis. She also stated that appellant experienced a previous mild back injury at age 20 and that the symptoms related to the injury had since resolved up to the point of the new injury. Dr. Foxx opined that her work-related injury was a probable contributor to the majority of her complaints and did not exclude her prior back injury as another predisposing factor.

In an April 19, 2016 form report, Dr. Phillip Parr, a Board-certified orthopedic surgeon, checked a box marked "Yes" to indicate that appellant was unable to perform her job functions due to her condition and attested that she would be incapacitated from work. He also proposed a treatment schedule for appellant.

On October 20, 2016 appellant, through counsel, requested reconsideration of OWCP's March 7, 2016 decision.

By decision dated January 31, 2017, OWCP denied modification of its March 7, 2016 decision.

On October 6, 2017 appellant, through counsel, requested reconsideration of OWCP's January 31, 2017 decision and submitted additional medical evidence.

In a January 25, 2017 medical report, Dr. Foxx recounted her history of treatment for appellant dating back to February 4, 2016 in relation to her complaints of burning in her feet and low back pain. She reviewed appellant's job duties, consisting of prolonged standing and walking, twisting, lifting, pushing, and pulling extremely large and heavy metal surgical instrument carts weighing between 200 to 300 pounds. Appellant performed these duties for eight hours a day for five days a week until she ultimately experienced a "pop" in her back along with pain in her back and feet. Dr. Foxx observed her diagnostic studies and diagnoses of paresthetic notalgia and lumbar spondylosis/degenerative disc disease and that appellant did not report any of her symptoms prior to November 2015. She opined that appellant's employment duties contributed to the exacerbation of her lumbar disc degeneration and resulting paresthetic notalgia. Dr. Foxx explained that repetitive motions, such as prolonged standing, walking, twisting or repetitive heavy lifting could exacerbate the condition, reasoning that the repetitive activities caused repeated pressure or forced to be exerted on the lumbar spine over an extended period of time. The repeated pressures can cause significant added stress on the lumbar spine, which can lead the already weakened and damaged discs to collapse. The collapsed discs then cause compression or impingement to the surrounding nerves. The suggested mild nerve root impingement is enough of an irritant to appellant's nerves to contribute to the paresthesias in her feet, despite her negative EMG study. Dr. Foxx also provided that, to the best of her awareness, appellant's symptoms related to her previous back injury had resolved prior to her incident at work.

In a July 31, 2017 statement, appellant provided an updated account of the employment duties believed to have contributed to her diagnosed conditions.

In an October 12, 2017 development letter, OWCP requested additional evidence from Dr. Foxx regarding her comments concerning appellant's condition. In response, Dr. Galina Bogorodskaya, a Board-certified neurologist, opined that appellant's lumbar condition was more likely than not a preexisting condition. She reasoned that the nature and extent of the exacerbation of appellant's condition was unknown and that there were no objective findings that could be attributed to her work duties. Dr. Bogorodskaya concluded that it was not possible to differentiate the exacerbation of her condition from the underlying degenerative disc disease.

By decision dated November 20, 2017, OWCP denied modification of its January 31, 2017 decision.

On November 19, 2018 appellant, through counsel, requested reconsideration of OWCP's November 20, 2017 decision and submitted additional medical evidence.

In a November 14, 2018 narrative medical report, Dr. Robert Valentine, Board-certified in pain medicine, reviewed the history of appellant's employment duties which required prolonged standing, walking, twisting, lifting, pushing, and transporting heavy instrument carts throughout the hospital as well as the symptoms she developed in her lower back, knees and feet. He noted her previous lower back injury she sustained in her 20's and that her symptoms related to the injury had since resolved prior to the development of the current symptoms in her lower back in November 2015. Dr. Valentine also observed a 2011 on-the-job knee injury. On an examination and review of appellant's past medical records and diagnostic studies he diagnosed lumbar degenerative disc disease, lower back pain, lumbar region radiculopathy, bilateral primary osteoarthritis of the knee and a bilateral knee sprain. Dr. Valentine opined that the performance of her physically demanding job duties likely caused bilateral knee sprains and an exacerbation of her lumbar degenerative disc disease. The sudden sharp pain appellant experienced was most likely caused by the disc protrusion. Dr. Valentine explained that, in cases where a patient has preexisting degenerative disc disease, repetitive motions such as prolonged standing, walking, twisting or repetitive heavy lifting may exacerbate the condition. The lumbar spine is repeatedly stressed over a prolonged period, which results in further degeneration and loss of disc height as well as compression and impingement of the surrounding nerves. This compression leads to the development of paresthesias in the feet. Dr. Valentine provided that the repetitive stress placed on appellant's spine exacerbated her degenerative disc disease, resulting in the development of discogenic pain and disc protrusions. She reported a previous lower back injury decades ago, but stated that her symptoms had since resolved prior to her November 2015 symptoms.[4] Dr. Valentine provided that most people appellant's age have some degenerative changes in the lumbar spine and that these changes are known to be present without symptoms. Thus, the presence of preexisting degenerative disc disease is a normal finding and cannot be assumed to be the cause of her pain unless the person making the assumption is able to explain why the vast majority of people with degenerative disc changes do not have pain. Making this assumption, Dr. Valentine opined that the clinical picture was most consistent with an exacerbation of appellant's condition due to an overuse through the repetitive activities involved in appellant's employment duties. He also noted that the repetitive activities could put added stress on the knees and that the added stress could cause muscles and tendons to overstretch or to be torn, causing soft tissue and leading to a sprain. Dr. Valentine opined that this is what most likely occurred with appellant while performing her repetitive job duties.

By decision dated February 7, 2019, OWCP denied modification of its November 20, 2017 decision.

OWCP continued to receive evidence. In a December 4, 2019 diagnostic report, Dr. Chintan Desai, a Board-certified radiologist, performed an MRI scan of appellant's lumbar spine, finding bilateral facet hypertrophy and disc bulging at L4-5 and L5-S1. In a separate diagnostic report of even date, he performed an MRI scan of her left knee, finding tricompartmental osteoarthritic changes, grade 2 chondromalacia in the lateral facet of the patella,

[4] Appellant previously filed a traumatic injury claim on November 15, 2005 for a November 12, 2005 lower back injury under OWCP File No. xxxxxx300. On January 20, 2006 OWCP accepted her claim for a sprain/strain unspecified and a lumbosacral sprain/strain. It has not administratively combined these claims.

a lateral patellar retinaculum sprain, a horizontal tear in the posterior horn of the medial meniscus and tendinosis/tendinitis involving the quadriceps and patellar tendons. In another December 4, 2019 diagnostic report, Dr. Desai performed an MRI scan of appellant's right knee, observing tricompartmental osteoarthritic changes, grade 4 chondromalacia in the lateral facet of the patella, a lateral patellar retinaculum sprain, joint effusion and subcutaneous tissue edema in the pretibial region.

On February 7, 2020 appellant, through counsel, requested reconsideration of OWCP's February 7, 2019 decision.

In medical reports dated from October 12, 2018 to June 12, 2019, Dr. Valentine diagnosed a bilateral knee sprain, lumbar region radiculopathy, low back pain, chronic pain due to trauma, pain in the left ankle and joint of foot, bilateral primary osteoarthritis of the knees, lumbar region other intervertebral disc degeneration, lumbosacral region other spondylosis, a sprain of the unspecified collateral ligament of the unspecified knee and lumbar region other intervertebral disc displacement. He opined that it was likely that appellant's heavier work contributed to her condition.

In a January 6, 2020 narrative medical report, Dr. Conrad Tamea, a Board-certified orthopedic surgeon, detailed the history of appellant's employment duties and her related symptoms of pain in her lower back and knees. On examination and review of her previous medical history he diagnosed lumbar disc disease with radiculopathy, lumbosacral disc stenosis, bilateral knee derangement, tears in the medial meniscus of the left and right knee, depression secondary to chronic pain and tricompartmental osteoarthritis of the left and right knee. Dr. Tamea opined that appellant had a preexisting condition of bilateral osteoarthritis of the knees that was enhanced by repetitive overuse incurred while performing her work duties. He also reasoned that her repetitive duties involving pushing a cart were the cause of her tears in the medial and lateral meniscus, quadriceps tendinitis and patellar tendinitis. Dr. Tamea continued that overcoming the inertia of a heavy cart repeatedly resulted in her facet arthropathy and disc herniation. He concluded by finding that appellant's transfer from a sedentary position to a full-duty job position is what started the aggravation of her conditions over time.

In a January 28, 2020 medical report, Dr. Xinmin Tang, Board-certified in physical medicine and rehabilitation, evaluated appellant for pain in her lumbar back, knees, ankles, and both which began in November 2015 at work. He diagnosed piriformis syndrome, a lesion of the sciatic nerve in the left lower limb, lumbosacral radiculopathy, a prolapse of the lumbar intervertebral disc, sacroiliac joint pain, burning feet, numbness of the lower limb, muscle cramps and lumbar discogenic pain.

By decision dated February 28, 2020, OWCP denied modification of its February 7, 2019 decision.

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,[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]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[11]

In a case in which 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.[12]

ANALYSIS

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

In support of her claim, appellant submitted a January 25, 2017 medical report wherein Dr. Foxx opined that her employment duties contributed to the exacerbation of her lumbar disc

[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] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[11] *Id.*; *Victor J. Woodhams*, *supra* note 8.

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

degeneration and resulting paresthetic notalgia. She explained that repetitive motions, such as prolonged standing, walking, twisting, or repetitive heavy lifting could exacerbate the condition, reasoning that the repetitive activities caused repeated pressure or forced to be exerted on the lumbar spine over an extended period of time. The repeated pressures can cause significant added stress on the lumbar spine, which can lead the already weakened and damaged discs to collapse. The collapsed discs then cause compression or impingement to the surrounding nerves. The suggested mild nerve root impingement is enough of an irritant to appellant's nerves to contribute to the paresthesias in her feet, despite her negative EMG study. Dr. Foxx also provided that, to the best of her awareness, appellant's symptoms related to her previous back injury had resolved prior to her incident at work.

Additionally, appellant submitted a November 14, 2018 narrative medical report in which Dr. Valentine observed her previous back injuries, reviewed her medical history and diagnosed lumbar degenerative disc disease, lower back pain, lumbar region radiculopathy, bilateral primary osteoarthritis of the knee and a bilateral knee sprain. He opined that the performance of her physically demanding job duties likely caused bilateral knee sprains and an exacerbation of her lumbar degenerative disc disease and discussed the effects of repetitive stress on the lumbar spine as it related to appellant's employment duties.

It is well established that, proceedings under FECA are not adversarial in nature, and that while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[13] OWCP has an obligation to see that justice is done.[14]

Drs. Foxx and Valentine provided affirmative and rationalized opinions on causal relationship. They each identified employment factors, which appellant consistently claimed had precipitated her conditions, identified physical findings upon examination and treatment, and provided a rationalized opinion citing to the facts of the case. Thus, the Board finds that Drs. Foxx and Valentine's opinions are sufficient to require further development of the record.[15]

Further, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.[16] For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition of the same part of the body, doubling is required.[17] OWCP had previously accepted that appellant had sustained a sprain/strain unspecified and a lumbosacral sprain/strain under OWCP File No. xxxxxx300; however, that claim has not been administratively combined

[13] *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[14] *R.B.*, Docket No. 18-0162 (issued July 24, 2019); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

[15] *D.H.*, Docket No. 19-0633 (issued January 8, 2020); *J.J.*, Docket No. 19-0789 (issued November 22, 2019); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *A.F.*, Docket No. 15-1687 (issued June 9, 2016). *See also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *D.M.*, Docket No. 19-0340 (issued October 22, 2019).

[17] *Id.*; *D.T.*, Docket No. 19-1375 (issued March 24, 2020); *D.L.*, Docket No. 17-1588 (issued January 28, 2019).

with the present file. For a full and fair adjudication, the case must be remanded to OWCP to administratively combine OWCP File No. xxxxxx300 and the present case file.[18]

On remand, OWCP shall administratively combine the present case file with OWCP File No. xxxxxx300 and refer appellant, a statement of accepted facts, and the medical evidence of record to a physician in the appropriate field of medicine. The chosen physician shall provide a rationalized opinion addressing whether the diagnosed conditions are causally related to the accepted factors of appellant's federal employment. If the physician opines that the diagnosed conditions are not causally related, he or she must provide rationale explaining how or why the opinion differs from that of Drs. Foxx and Valentine. Following this and any other further development as may be deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2020 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: April 15, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

[18] *K.T.*, Docket No. 17-0432 (issued August 17, 2018).