

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a low back condition causally related to the accepted June 26, 2019 employment incident; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 27, 2019 appellant, then a 50-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2019 she injured her lower back when her foot became entangled in computer cords and she fell backwards while in the performance of duty. She stopped work on June 27, 2019.⁴

In a June 28, 2019 medical report, Scott Mattoon, a physician assistant, noted that appellant injured her lower back when she became entangled in computer cords and fell backwards. He indicated that appellant had previously suffered the same injury, but that it had mostly resolved. Mr. Mattoon diagnosed lumbar radiculopathy and low back pain. In a medical note of even date, he found that appellant was unable to work until further notice.

In a development letter dated July 24, 2019, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a July 19, 2019 medical report, Dr. Raman Dhawan, an orthopedic surgeon, noted that appellant sustained a work-related injury after she became entangled in computer cords and landed on her back. He noted that an x-ray of the lumbar spine revealed slight scalloping of the superior portion of the vertebral body of L2 and marked paraspinal spasms. A February 2018 MRI scan showed early degenerative changes with some retrolisthesis at L2 and L3. Dr. Dhawan diagnosed lumbar radiculopathy and other intervertebral disc degeneration. He checked a box marked "Yes" to indicate that appellant's injuries were caused by the described employment incident. In a medical note of even date, Dr. Dhawan held her off work until further notice.

In an August 2, 2019 medical report, Dr. Dhawan noted that appellant was improving. He reiterated his diagnoses and again checked a box marked "Yes" to indicate that her injuries were caused by the described employment incident. In a medical note of even date, Dr. Dhawan found that appellant could return to work with restrictions.

In an undated report of work status (Form CA-3), the employing establishment informed OWCP that appellant had returned to work part-time regular duty on August 5, 2019.

⁴ The Board notes that appellant previously filed a November 14, 2018 traumatic injury claim for lower back and left hip injuries, assigned OWCP File No. xxxxxx072.

In an August 12, 2019 medical note, Dr. Dhawan released appellant to work without restrictions.

By decision dated September 5, 2019, OWCP denied appellant's claim. It accepted that the June 26, 2019 employment incident occurred as alleged and that medical conditions had been diagnosed. However, OWCP found that appellant failed to establish causal relationship between the diagnosed conditions and the accepted employment incident.

In a September 13, 2019 medical report, Dr. Dhawan noted that appellant was seen for follow up of her work injury and complained of increasing discomfort. He indicated that she had a compression of L2 based on x-ray findings. Dr. Dhawan opined that appellant had 25 percent temporary impairment.

On October 7, 2019 appellant requested reconsideration. In support thereof, she submitted a September 30, 2019 letter, wherein Dr. Dhawan noted that she was performing normal work activities at the time of the accepted June 26, 2019 employment incident when she sustained a low back injury. He opined that appellant's fall, after being tangled in the computer cords, directly caused her low back injury as her legs were not able to maintain her balance and she fell to the ground. Appellant also resubmitted the June 28, 2019 medical report by Mr. Mattoon, which had now been countersigned by Dr. Dhawan.

By letter dated October 8, 2019, OWCP noted that Dr. Dhawan had been treating appellant for lumbar radiculopathy, other intervertebral lumbar disc degeneration, and lumbar spondylosis since November 30, 2018. It requested that he explain how the accepted June 26, 2019 employment incident aggravated her preexisting lumbar conditions.

In an October 25, 2019 letter, Dr. Dhawan acknowledged that appellant had a prior back injury. He opined that, although she had recovered from her previous injury, the accepted June 26, 2019 employment incident aggravated her preexisting back conditions. Dr. Dhawan explained that even after a patient recovers from an injury, appellant more prone to re-injury.

By decision dated November 18, 2019, OWCP denied modification of the September 5, 2019 decision.

On December 10, 2019 appellant requested reconsideration and resubmitted the June 28, 2019 medical report of Dr. Dhawan.

By decision dated December 17, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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

⁵ *Supra* note 2.

limitation 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, 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. 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, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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 specific employment factors identified by the employee.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 -- ISSUE 1

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

⁶ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between case files.¹³ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.¹⁴ Appellant previously filed a traumatic injury claim on November 15, 2018 alleging a lower back injury due to a November 14, 2018 employment incident under OWCP File No. xxxxxx072, which was administratively approved for medical treatment. She subsequently filed the present claim, OWCP File No. xxxxxx756, alleging a similar injury also involving the lower back as a result of the accepted June 26, 2019 employment incident. Additionally, Dr. Dhawan opined, in his October 25, 2019 letter, that the accepted June 26, 2019 employment incident in the present claim aggravated appellant's previously diagnosed conditions of lumbar radiculopathy, other intervertebral lumbar disc degeneration, and lumbar spondylosis, which were related to the November 14, 2018 employment incident. The medical records of the two files, however, have not been combined for cross-referencing as required by OWCP procedures. As such, the Board is unable to review all of the factual and medical evidence under OWCP File No. xxxxxx072, which relates to similar conditions and the same body part that is contested in the present claim.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx072 so that it can properly determine whether appellant's diagnosed conditions were causally related to the accepted June 26, 2019 employment incident. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.¹⁵

CONCLUSION

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

¹³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000); *R.R.*, Docket No. 19-0368 (issued November 26, 2019).

¹⁴ *Id.*

¹⁵ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 17 and November 18, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 12, 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