



his federal employment including pushing, carrying lifting, twisting, bending, lifting over his shoulders, standing, moping, dumping trash, and moving heavy objects. He noted that he first became aware of his neck and back conditions and first realized the relation to his federal employment on June 29, 2020. Appellant stopped work on July 14, 2020 and returned to limited duty with restrictions of walking no more than two hours a day, bending, twisting, and stooping for 30 minutes each, and pushing and pulling no more than 25 pounds.

On July 13 and August 17 2020 Dr. Basimah Khulusi, a Board-certified physiatrist, completed duty status reports (Form CA-17) diagnosing cervical radiculopathy/stenosis and lumbar disc displacement. She also provided work restrictions.

In a September 4, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an August 17, 2020 narrative report, Dr. Khulusi recounted appellant's 28-year employment history with the employing establishment. She described his current custodial duties including dumping heavy trash, sweeping, mopping, and cleaning offices and restrooms. Dr. Khulusi noted that these duties required continuous standing and repetitive lifting, turning, twisting, pushing, and pulling of heavy objects. She further described appellant's clerk duties, performed prior to 2017, which included frequent overhead reaching, stooping, bending, twisting, turning, gripping, and grasping. Dr. Khulusi recounted that appellant's neck and low back pain had begun in 1999 while he was working as a clerk, that after treatment with medication the pain would resolve, and he could return to full-duty work. She also noted that he had sustained low back injuries in two motor vehicle accidents in 1988 and 2005. Dr. Khulusi reviewed magnetic resonance imaging (MRI) scan and electromyogram and nerve conduction velocity (EMG/NCV) findings and diagnosed multiple cervical disc displacements and radiculopathies and multiple lumbar disc displacements. She explained that appellant's repetitive lifting, carrying, pushing, and pulling had caused repetitive spraining and straining of the structures of his neck and low back or cumulative trauma disorder, in turn causing chronic inflammation and muscle weakness. Dr. Khulusi, opined that these processes resulted in increased pressure on the intradiscal spaces and ultimately disc displacement. She concluded that disc displacement together with arthritic changes, caused by wear and tear, compromised the space for nerve roots at multiple levels in the lumbar and cervical spines resulting in cervical radiculopathies. Dr. Khulusi reviewed medical literature regarding neck/shoulder musculoskeletal and low back musculoskeletal disorders and provided work restrictions.

On September 21, 2020 appellant responded to OWCP's development questionnaire and described his job duties.

By decision dated October 14, 2020, OWCP denied appellant's occupational disease claim finding that he had not established the factual component of his claim, as he did not sufficiently respond to the development questionnaire. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On June 22, 2021 appellant requested reconsideration and provided additional factual statements and medical evidence. In a June 14, 2021 report, Dr. Khulusi attributed appellant's diagnosed back conditions to the duties of both of his positions at the employing establishment including bending, twisting, pushing, pulling, carrying above the shoulder, and carrying heavy objects as a clerk. She advised that his treatment records indicated that he had intermittent periods of low back pain caused by sprain or strain. Dr. Khulusi repeated her prior diagnoses of multiple cervical disc displacements and radiculopathies and multiple lumbar disc displacements and again opined that these conditions were caused by his job duties as a clerk and as a custodian.

In an August 5, 2021 development letter, OWCP requested that appellant provide 2017 diagnostic studies following his automobile accident. It afforded him 30 days to respond.

Dr. Khulusi completed a report on August 24, 2021 and observed that appellant had no lumbar or cervical spine x-rays in 2017.

By decision dated September 9, 2021, OWCP modified the October 14, 2020 decision to find that he had established the factual component of his claim. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition(s) and the accepted employment factors.

On October 28, 2021 appellant requested reconsideration. In an October 25, 2021 report, Dr. Khulusi attributed appellant's diagnosed cervical and lumbar spine conditions to his employment duties. She noted that his prior back conditions from 2017 had resolved and opined that his current cervical and lumbar disc displacement and cervical radiculopathy was caused by his job duties.

By decision dated January 26, 2022, OWCP denied modification of its prior decision.

On February 21, 2022 appellant requested reconsideration. Dr. Khulusi completed a February 15, 2022 report and advised that although appellant had experienced intermittent back and neck conditions that required sporadic medical treatment and, on occasion, a few days off work, he continued to work without restrictions until June 2020, when his back and neck conditions became disabling. She noted that appellant was previously diagnosed with sprains. Dr. Khulusi repeated her diagnoses of multiple cervical disc displacements and radiculopathies and multiple lumbar disc displacements and asserted that these additional conditions had not been established prior to June 2020.

By decision dated November 14, 2022, OWCP denied modification of its prior 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,<sup>2</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. 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>3</sup>

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.<sup>4</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>5</sup> 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.<sup>6</sup> 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 factors.<sup>7</sup>

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.<sup>8</sup>

### ANALYSIS

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

Appellant submitted multiple reports from Dr. Khulusi including August 17, 2020 and June 14, 2021 reports, wherein she noted in detail appellant's job duties including lifting, pushing, pulling, turning, and twisting and opined that these duties caused his multiple cervical disc

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<sup>2</sup> *T.M.*, Docket No. 20-1460 (issued December 20, 2022); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</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>4</sup> *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).

<sup>5</sup> *T.M.*, *supra* note 2; *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *T.M.*, *id.*; *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>7</sup> *Id.*; *Victor J. Woodhams*, *supra* note 4.

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

displacements and radiculopathies and multiple lumbar disc displacements. She explained the job duties had caused repetitive spraining and straining of his neck and low back which in turn caused chronic inflammation and muscle weakness resulting in increased pressure on the intradiscal spaces and disc displacement. These activities and events also resulted in arthritis which compromised the space for nerve roots resulting in cervical radiculopathies. Dr. Khulusi concluded that performing these duties directly caused appellant's diagnosed cervical and lumbar conditions.

The Board finds that, while these reports from Dr. Khulusi are not fully rationalized, they did provide a pathophysiological explanation that appellant sustained cervical and lumbar conditions due to lifting, pushing, pulling, and twisting while performing his duties as both a clerk and a custodian. Although these reports are insufficient to meet appellant's burden of proof to establish the claim, they are sufficient to require OWCP to further develop the medical evidence.<sup>9</sup>

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.<sup>10</sup> It has the obligation to see that justice is done.<sup>11</sup>

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand it shall refer appellant, a statement of accepted facts, and the medical evidence of record to a physician in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether the diagnosed cervical and lumbar spine conditions are causally related to the accepted employment activities. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why his or her opinion differs from that of Dr. Khulusi. Following this and other such 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.

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<sup>9</sup> C.A., Docket No. 22-0764 (issued November 30, 2022); M.R., Docket No. 20-0101 (issued September 14, 2021), *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 14, 2022 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 14, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board