

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
J.B., Appellant)	
)	
and)	Docket No. 24-0089
)	Issued: April 4, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Birmingham, AL, Employer)	
_____)	

Appearances:
Capp Taylor, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 31, 2023 appellant filed a timely appeal from an October 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted April 16, 2022 employment incident.

FACTUAL HISTORY

On April 30, 2022 appellant, then a 41-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2022 she injured her neck and arms while in the performance of duty.³ She explained that her neck locked up and her arms went numb after boxing mail for over three hours. Appellant stopped work on the claimed date of injury and returned to work on April 21, 2022.

In an April 20, 2022 medical report, Dr. Jeremiah J. Maddox, a Board-certified orthopedic surgeon, noted that he had previously performed an anterior cervical discectomy and fusion (ACDF) on appellant, and that she had chronic issues with right arm numbness. He further noted that she related a recent flare-up of significant numbness and dysesthesia in her right hand “four to five days ago.” Dr. Maddox performed a physical examination and indicated that he did not find any significant abnormalities other than chronic numbness of the right hand. He diagnosed a history of cervical spine fusion and recommended a magnetic resonance imaging (MRI) scan of the cervical spine.

An April 26, 2022 cervical MRI scan revealed arthroplasty at C4-5, surgical hardware associated with ACDF at C5-6, possible spinal narrowing at C4 and C5, and neural foraminal narrowing.

In a follow-up report dated May 4, 2022, Dr. Maddox reviewed the MRI scan and documented physical examination findings. He compared the April 26, 2022 MRI scan with a prior myelogram from 2020 and noted a new finding of C3-4 stenosis and left-sided disc herniation at C6-7, which had increased in size. Dr. Maddox diagnosed history of cervical spine fusion and recommended a cervical epidural steroid injection.

In a May 10, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No further evidence was received.

By decision dated June 13, 2022, OWCP denied appellant’s traumatic injury claim, finding that she had not submitted sufficient evidence to establish that an incident occurred on April 16, 2022, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a March 16, 2023 medical report by Dr. Maddox, who indicated that he performed revision ACDF surgery on appellant with removal

³ Appellant previously filed a traumatic injury claim for a December 12, 2019 injury to her cervical spine, which OWCP denied under OWCP File No. xxxxxx339. OWCP has not administratively combined these claims.

of hardware on August 23, 2022. Dr. Maddox noted that she was doing remarkably well with only intermittent soreness in her neck. He reviewed a statement by appellant dated January 20, 2023, in which she related that, after her July 15, 2020 surgery, she returned to work and performed a significant amount of reaching, lifting, and pulling at relatively low weights. Dr. Maddox opined that those activities “could potentially cause stress and strain on the cervical spine especially considering her underlying previous surgery.” He further noted that appellant described an incident on April 16, 2022 where she experienced a new onset of pain in her arms and neck. Dr. Maddox suspected a C3-4 herniated disc and possible loosening of the previous C4-5 arthroplasty and opined that it was “reasonable to conclude that if the patient had a significant new onset of pain, that the C3-4 disc herniation could have occurred on April 16, 2022 when she experienced a new onset of pain.” He noted that it was also possible that the hardware may have been loose prior to April 16, 2022, but that it was “reasonable to conclude” that the incident resulted in the C3-4 disc herniation, and that “her previous surgery could have increased the changes of adjacent level breakdown.”

On March 28, 2023 appellant, through counsel, requested reconsideration of OWCP’s June 13, 2022 decision. In support of the request, she submitted a January 20, 2023 statement, which indicated that she returned to work following the July 15, 2020 ACDF surgery and was able to perform her duties including working at the retail counter, assisting customers, and other employees, answering the telephones, and boxing mail until April 16, 2022. Appellant related that the physical demands of her position included standing, walking, sitting, writing, reaching for up to two hours per day, and lifting and pulling trays of mail weighing up to 20 pounds. She noted that on April 16, 2022 “while bending down and grabbing a tray I felt something pull in my neck” and that “shortly thereafter, I noticed my left and right arms were going numb and my neck was locked up.” Appellant sought treatment with Dr. Maddox, who administered epidural steroid injections and performed revision surgery on August 23, 2022.

By decision dated June 9, 2023, OWCP modified its June 13, 2022 decision to reflect that appellant had established the factual and medical components of fact of injury. However, the claim remained denied, because the medical evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted April 16, 2022 employment incident.

On August 15, 2023 appellant, through counsel, requested reconsideration of OWCP’s June 9, 2023 decision. In support of the request, she submitted an August 14, 2023 narrative report by Dr. Maddox, who noted that she pulled her neck when she bent down to grab an object on April 16, 2022. Dr. Maddox opined that it was “reasonable to conclude that the dramatic increase in the patient’s pain after the lifting incident on April 16, 2022 would be related to a C3-4 disc herniation.”

By decision dated August 31, 2023, OWCP denied modification of its June 9, 2023 decision.

On September 14, 2023 appellant, through counsel, requested reconsideration of OWCP’s August 31, 2023 decision. In support of her request, she submitted a narrative report by Dr. Maddox dated September 12, 2023, who indicated that he was asked to explain the pathophysiological process of her injury. Dr. Maddox reiterated appellant’s history of ACDF

surgery on July 15, 2020, described her subsequent work duties, and noted a specific incident on April 16, 2022, wherein she bent down and lifted an object and felt a pull in her neck, followed by numbness in her arms. He noted that this mechanism would place strain on her cervical spine, which would stretch the fibrous cartilage between the disc and vertebrae. Dr. Maddox related that the stretch of the fibrous cartilage at C3-4 caused the outer part to tear or split, which led the disc to rupture or herniate. He noted that the herniated disc was confirmed by MRI scan and consistent with appellant's subjective complaints of neck stiffness, cervical pain, and radicular symptoms in her arms. Dr. Maddox opined that the lifting incident of April 16, 2022 caused or significantly contributed to a C3-4 herniated disc and upper extremity radiculopathy.

By decision dated October 18, 2023, OWCP denied modification of its August 31, 2023 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 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

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. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ A physician's

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident 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 incident.¹¹

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.¹²

ANALYSIS

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

In his September 12, 2023 narrative report, Dr. Maddox noted appellant's prior history of a July 15, 2020 ACDF surgery, which he performed, and described her subsequent work duties and the specific incident on April 16, 2022 when she bent down and lifted an object and felt a pull in her neck followed by numbness in her arms. He opined that the April 16, 2022 employment incident caused or significantly contributed to a C3-4 herniated disc and upper extremity radiculopathy. Dr. Maddox explained that this mechanism would place strain on appellant's cervical spine, which would stretch the fibrous cartilage between the disc and vertebrae causing it to tear or split, which led the C3-4 disc to rupture or herniate. He further indicated that the herniated disc was confirmed by MRI scan and consistent with her subjective complaints.

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹³ While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁴ OWCP has an obligation to see that justice is done.¹⁵

¹⁰ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Id.*

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

¹⁴ *See M.M.*, Docket No. 22-0637 (issued November 30, 2022); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁵ *See M.M.*, *id.*; *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 8.

The Board finds that Dr. Maddox's opinion, while not fully rationalized, is sufficient to require further development of the case record by OWCP.¹⁶

The Board will, therefore, remand the case for further development of the medical evidence. On remand, OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted April 16, 2022 employment incident caused, contributed to, or aggravated the claimed conditions.¹⁷ If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Maddox.

Furthermore, for full and fair adjudication, OWCP shall administratively combine the case record in the present claim with OWCP File No. xxxxxx339 prior to referral to a second opinion physician. This will allow OWCP to consider all relevant claim files in adjudicating this claim.¹⁸ 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.

¹⁶ *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

¹⁷ *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).

¹⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000); *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2023 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 4, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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