

ISSUE

The issue is whether appellant sustained a back injury causally related to the accepted March 27, 2018 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 28, 2018 appellant, then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2018 she twisted and pulled a muscle on the left side of her back while in the performance of duty. She stopped work on March 27, 2018.

In a development letter dated April 5, 2018, OWCP requested that appellant submit factual and medical information, including a comprehensive report from her physician addressing how a specific work incident caused or contributed to her claimed injury. It afforded her 30 days to submit the necessary evidence.

By decision dated May 9, 2018, OWCP found that she had established that the identified work factor of lifting a heavy package from the bottom of a hamper occurred as alleged. However, it denied the claim, finding that appellant had not established a diagnosed medical condition in connection with the accepted employment factor.

On May 23, 2018 appellant, through counsel, requested reconsideration.

In a report dated June 18, 2018, Dr. Thomas M. Larkin, a Board-certified anesthesiologist, noted that appellant was status post an L4-5 laminectomy. He diagnosed lumbar radiculitis, lumbar facet arthropathy, nerve pain, thoracic back spasm, and pain in both knees.

By decision dated September 5, 2018, OWCP denied modification of its May 9, 2018 decision.

On January 23, 2019 appellant, through counsel, requested reconsideration.

By decision dated April 23, 2019, OWCP modified its prior decisions to find that appellant had established a diagnosed medical condition in connection with the accepted employment incident. The claim remained denied, however, as the medical evidence of record was insufficient to establish a back condition causally related to the accepted employment incident.

On August 7, 2019 appellant requested reconsideration. She submitted a report from a physician assistant, and progress reports from Dr. Larkin and Dr. Rehan Waheed, an osteopath.

By decision dated November 4, 2019, OWCP denied modification of its April 23, 2019 decision.

⁴ Docket No. 22-0717 (issued August 9, 2022).

In a report dated March 5, 2020, Dr. Larkin indicated that he had begun treating appellant after her December 4, 2017 laminectomy at L4-5. He noted that she had returned to work on March 23, 2018 but injured her back on March 27, 2018 lifting a 45-pound package at work. Dr. Larkin related that he had evaluated appellant on March 28, 2018 for “severe low back pain which was worsening and radiating into the lower extremity. This pain was directly related to the injury she sustained on March 27, 2018 when she attempted to lift the 45[-]pound box at work.” Dr. Larkin opined that the lifting injury on March 27, 2018 caused foraminal narrowing and damage to an existing nerve. He asserted that since the nerve damage had failed to improve in a year after the injury it was a permanent condition. Dr. Larkin found that appellant was disabled from her usual employment due to her work injury.

On March 16, 2020 appellant requested reconsideration.

By decision dated June 12, 2020, OWCP denied modification of its November 4, 2019 decision.

In a report dated March 19, 2021, Dr. Larkin related that when he examined appellant on March 27, 2018 she described the immediate onset of severe pain in her low back radiating into the lower extremity, increased paresthesia, and new pain in her thoracic spine. He advised that an examination revealed new findings of muscle spasm and a limp. Dr. Larkin found that a functional capacity evaluation (FCE) confirmed that appellant was unable to perform her usual employment and attributed her disability to “the pain emanating from L4-5 and L5-S1 which began after the work injury.” He opined that lifting could increase the spine’s axial load and that the work injury was “likely related to a rapid compression of the exiting nerve while lifting the package.” Dr. Larkin noted that appellant experienced symptoms that such an injury would cause, including muscle spasms, gait problems, loss of motion, nerve pain, and numbness. He advised that findings on a May 20, 2020 magnetic resonance imaging (MRI) scan supported that she had sustained a new injury as it showed worsening L4-5 and L5-S1 foraminal stenosis.

On March 24, 2021 appellant, through counsel, requested reconsideration.

By decision dated June 24, 2021, OWCP denied modification of its June 12, 2020 decision.

In an undated report received on December 9, 2021, Dr. Larkin again advised that he had evaluated appellant on March 28, 2018 for severe pain in her lower back, new thoracic pain, and severe lower back pain with radiation. He noted that an FCE had confirmed that she had damaged a spinal exit nerve at L4-5 and L5-S1. Dr. Larkin indicated that appellant had bent down into a hamper which was over 24 inches deep. He related, “The process of attempting to lift a heavy package which weighed at least 45-pounds from the parcel hamper/bin created immediate back pain and resulted in [appellant] not being able to stand or walk.” Dr. Larkin diagnosed chronic pain syndrome, chronic back pain more than three months duration, and lumbar radiculopathy. He opined that the “act of lifting the heavy package caused a significant axial load on [appellant’s] spine that resulted in the injury which caused rapid compression of the L4-5 and L5-S1 in her lower back.” Dr. Larkin opined that appellant was disabled from employment due to the work injury.

On December 9, 2021 appellant requested reconsideration.

By decision dated March 9, 2022, OWCP denied appellant's request for reconsideration as she had not submitted evidence or raised an argument sufficient to warrant reopening her claim for merit review under 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated August 9, 2022, the Board set aside OWCP's March 9, 2022 decision. It found that appellant had submitted a report from Dr. Larkin that constituted new and relevant evidence sufficient to warrant reopening of her case for further merit review.

By decision dated October 4, 2022, OWCP denied modification of its June 24, 2021 decision.

On December 8, 2022 appellant requested reconsideration. She submitted an undated report from Dr. Larkin, who related that he had compared her two MRI scans and found "with a high degree of medical certainty that the injury she sustained at work on March 27, 2018 resulted in further inflammation of the nerve roots at L4-5." He advised that the October 9, 2017 MRI scan that preceded appellant's laminectomy showed severe L4-5 spinal stenosis due to facet arthropathy and a disc herniation and mild neuroforaminal narrowing at L4-5. Dr. Larkin advised that the May 19, 2020 MRI scan demonstrated a worsening of her L4-5 bilateral neuroforaminal narrowing, which he attributed to inflammation from the employment injury.

By decision dated December 12, 2022, OWCP denied modification of its October 4, 2022 decision.

On March 15, 2023 appellant requested reconsideration. She provided the previously submitted report from Dr. Larkin, which was redated January 20, 2023.

Appellant further submitted an October 9, 2017 MRI scan of the lumbar spine, which showed moderate-to-severe spinal canal and neural foraminal stenosis at L4-5 and left more than right L5-S1 neural foraminal stenosis. A May 19, 2020 MRI scan showed no significant central L4-5 spinal stenosis compared to the prior MRI scan and degenerative disc disease and bulges from L3-4 through L5-S1.

By decision dated June 9, 2023, OWCP denied modification of its December 12, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 filed within the applicable time limitation of FECA,⁶ that an injury was sustained while in the performance of duty as alleged; and that any disability or medical condition for which compensation is claimed is causally related to

⁵ *Supra* note 2.

⁶ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁷ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on 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.⁹ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² The opinion of the physician must be based upon a complete factual and medical background, 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 the specific employment incident.¹³

ANALYSIS

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

In a report dated March 5, 2020, Dr. Larkin advised that he had treated appellant subsequent to a December 4, 2017 L4-5 laminectomy. He noted that she had resumed work following surgery on March 23, 2018 but injured her back on March 27, 2018 lifting a 45-pound package. Dr. Larkin opined that the lifting injury on March 27, 2018 caused foraminal narrowing and damage to an existing nerve. In an undated report, he described appellant's bending over into a hamper to lift a package. Dr. Larkin diagnosed chronic pain syndrome, chronic back pain, and lumbar radiculopathy. He opined that lifting the heavy package caused an axial load that resulted in "rapid compression of the L4-5 and L5-S1 in her lower back." On January 20, 2023 Dr. Larkin compared MRI scans obtained before and after March 27, 2018, and found that the later MRI scan showed increased bilateral neuroforaminal narrowing at L4-5 due to inflammation from the employment injury.

⁷ *N.B.*, Docket No. 23-0690 (issued December 5, 2023); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁸ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *A.B.*, Docket No. 23-0827 (issued December 27, 2023); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *T.H.*, 59 ECAB 388 (2008).

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹¹ *Id.*

¹² *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *T.H.*, 59 ECAB 388 (2008).

¹³ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

The Board finds that while Dr. Larkin's opinion is insufficient to establish the claim, it is sufficient to require further development of the medical evidence.¹⁴

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

The case shall therefore be remanded for further development. On remand, OWCP shall refer appellant, a statement of accepted facts, and the medical record to specialist in the appropriate field of medicine for a rationalized opinion as to whether appellant sustained a back condition causally related to the accepted employment incident. Following this and such other further development as 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.

¹⁴ *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).

¹⁵ *See J.H.*, Docket No. 18-1637 (issued January 29, 2020); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 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 8, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board