

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 19, 2015 appellant, then a 56-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on August 4, 2015 she was walking to her desk when an oversized parcel slid and hit her foot, causing her to fall and strike her right arm on a chair while in the performance of duty. She alleged injuries to her lower back and to her right arm, hip, leg, and foot.

In a September 2, 2015 report and return to work note, Dr. Garo Avetian, an osteopath specializing in internal medicine, indicated that appellant was evaluated for injuries sustained in a work-related incident on August 4, 2015. He recounted that appellant was walking at work when a large package slid, struck her foot, causing her to fall over. Dr. Avetian noted that appellant complained of severe pain from her low back down to her hip, leg, and foot on the right side. On examination of appellant's thoracic and lumbar areas of the spine, he observed limited range of motion and pain with flexion and extension and positive straight leg raise testing on the left with pain. Dr. Avetian diagnosed thoracic and lumbar sprains, possible lumbar radiculopathy, and right hip, right elbow, and right calf and foot sprains. He opined that appellant's injuries were a direct result of her August 4, 2015 work-related accident.

Dr. Avetian completed duty status reports (Form CA-17) dated September 2 through October 7, 2015 and an attending physician's report (Form CA-20) dated September 9, 2015. He noted a date of injury of August 4, 2015, and diagnoses of thoracic and lumbar sprains, and upper arm joint pain. Dr. Avetian checked a box marked "Yes" on the Form CA-20 indicating that the condition was caused or aggravated by the described employment activity. He further indicated that appellant could return to modified-duty work on November 30, 2015 and noted specific restrictions. In a September 30, 2015 report, Dr. Avetian described the August 4, 2015 employment incident. He provided examination findings and diagnosed thoracic sprain, lumbar sprain, possible lumbar radiculopathy, right hip sprain, right elbow sprain, and right calf and foot pain. Dr. Avetian indicated that he felt that appellant's current symptoms were a direct result of the August 4, 2015 employment incident.

In a development letter dated November 10, 2015, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the requested evidence.

On November 30, 2015 appellant responded to OWCP's development questionnaire. She described the August 4, 2015 employment incident and explained her delay in seeking medical treatment. Appellant reported that she had a previous slip and fall injury on February 21, 2015. She submitted a November 5, 2015 lumbar spine magnetic resonance imaging (MRI) scan, which revealed lumbar spondylosis, L2-3, L3-4, and L5-S1 disc desiccation with annular disc

³ Docket No. 21-1080 (issued October 18, 2022).

bulge, L3-4 central annular tear, L4-5 annular disc bulge effacing the thecal sac, and mild-to-moderate foraminal stenosis at multiple levels.

In a December 7, 2015 report, Dr. Avetian reported that upon review of the latest lumbar MRI scan results, he could state with certainty that appellant's injuries and symptoms were related to the August 4, 2015 employment incident. He explained that comparing appellant's previous MRI scan with the new one, it clearly showed foraminal stenosis at multiple levels that was not present before. Dr. Avetian reported that when the parcel slid off a cart and caused appellant to fall down, "this trauma caused her inflammation to her low back with tissues thickening, compressing the nerve roots and spinal cord and as a result spinal stenosis."

In a December 1, 2015 report, Dr. David Gigliotti, an osteopath specializing in family medicine, recounted that appellant was previously treated for a February 21, 2015 slip and fall injury at work. He explained that on August 4, 2015 appellant sustained another work-related injury.

By decision dated December 18, 2015, OWCP accepted that the August 4, 2015 incident occurred as alleged and that medical conditions had been diagnosed; however, it denied her claim finding that she had failed to establish causal relationship between the accepted August 4, 2015 employment incident and the diagnosed conditions.

On June 15, 2016 appellant requested reconsideration and submitted medical evidence.

Appellant submitted several diagnostic reports dated March 1, 2016. A right shoulder MRI scan revealed acromioclavicular degenerative joint disease and partial-thickness anterior insertional supraspinatus tear. A right knee MRI scan demonstrated meniscal tear of the medial and lateral compartments and degenerative changes. A right elbow MRI scan demonstrated probable partial thickness tear of the humeral attachment of the radial collateral ligament. A right hip MRI scan revealed T2 hyperintensity at the right gluteal/trochanteric insertion consistent with tendinitis/tendinosis or mild partial tear. A right wrist MRI scan demonstrated no abnormality or significant anatomic findings. An April 13, 2016 upper extremity electromyography and nerve conduction velocity (EMG/NCV) study demonstrated lumbar radiculopathy affecting the L4 and L5 root levels bilaterally, right tibial motor neuropathy, and bilateral prolonged H reflex, suggestive of bilateral S1 radiculopathy.

In an undated report, Dr. Bradley Bodner, an osteopath specializing in physical medicine and rehabilitation, noted a date of injury of August 4, 2015. He reported examination findings of reduced range of motion of the cervical and lumbar spines and diagnosed persistent post-traumatic cervicalgia and lumbago, lumbar radiculopathy, lumbar intervertebral disc displacement, and right elbow injury and possible ulnar nerve injury.

In a June 6, 2016 report, Dr. Gerald M. Vernon, an osteopath specializing in family medicine, described appellant's February 21, 2015 slip and fall injury and return to work on June 15, 2015. He recounted that on August 4, 2015 appellant was walking towards her desk when a large package struck her on the left side, causing her to fall down on her right side. Dr. Vernon noted that upon impact on the ground appellant injured her right shoulder, arm, elbow, wrist and right knee. He reported physical examination findings and diagnosed

reaggravation of prior lumbar spine injury, post-traumatic lumbar radiculopathy at L4 and L5, post-traumatic right tibial neuropathy, post-traumatic bilateral S1 radiculopathy, post-traumatic tendinopathy of the right gluteal/trochanteric insertion, post-traumatic partial thickness tear of the anterior insertional supraspinatus tear, post-traumatic horizontal tear of the anterior horn and tear of lateral meniscus of the right knee, post-traumatic partial thickness tear of the humeral attachment of the radial collateral ligament in the right wrist, and post-traumatic sprain/strain of the right wrist. Dr. Vernon explained that appellant's February 21, 2015 work-related incident resulted in lumbar spine injuries. He opined that on August 4, 2015 appellant suffered another work-related injury, which caused a permanent aggravation of her previous lumbar condition and "a new direct causation of her right hip, knee, shoulder, elbow, and wrist." Dr. Vernon noted that diagnostic and clinical findings were consistent with the way that the right side of appellant's body struck the floor when she fell.

By decision dated September 13, 2016, OWCP denied modification of its December 18, 2015 decision.

On August 3, 2017 appellant, through counsel, requested reconsideration and submitted medical evidence. In a July 7, 2017 addendum report, Dr. Vernon indicated that he had reviewed appellant's description of the August 4, 2015 employment incident. He reported that the description of the August 4, 2015 incident was consistent with the objective findings and injuries sustained by appellant.

By decision dated November 1, 2017, OWCP denied modification of the September 13, 2016 decision.

On October 31, 2018 appellant, through her then-counsel, requested reconsideration and submitted medical evidence.

In an October 29, 2018 addendum report, Dr. Vernon indicated that he had reviewed all of appellant's medical records and opined that her right shoulder, right hip, pelvis area, and right knee injuries were a direct result of the August 4, 2015 employment injury. He reported that "[t]his mechanism of injury is consistent with someone that has been struck on one side and has fallen to the outside and puts her arm or hand out; that is the typical type of injury that you would see when falling to the side, using your arm to stabilize the fall with the transmission of injury right up through hand, wrist, elbow, and shoulder and also injuring the right side of her pelvis and her right knee." In a December 17, 2015 report, Dr. Vernon indicated that "[t]he mechanism of injury sustained on [August 4, 2015] is consistent with her injuries and ongoing pain syndrome with the intensity and character of her pain being much worse following the second accident."

By decision dated February 28, 2019, OWCP denied modification of the November 1, 2017 decision.

On February 26, 2020 appellant, through her then-representative, requested reconsideration.

Appellant submitted an April 20, 2015 lumbar spine MRI scan, which demonstrated loss of height and signal at L2-3 and L5-S1, preserved vertebral body heights, and Schmorl's nodes seen at the inferior L1, superior L3, and opposing L3-4 endplates.

In a February 19, 2020 report, Dr. Mark A. Seldes, a Board-certified family medicine specialist, described that on August 4, 2015 a large, oversized parcel fell down and struck appellant on her left foot and ankle, causing her to fall down hard on the right side hitting her right hip, right leg, right knee, right foot, right shoulder, right arm, right hand, and lumbar spine. He noted that she had a previous slip-and-fall injury at work on February 21, 2015 and had returned to work with restrictions on June 15, 2015. Upon examination of appellant's bilateral shoulders, Dr. Seldes observed tenderness to palpation over the anterolateral and posterior aspects and positive Neer's and Hawkins tests. Examination of appellant's right elbow revealed tenderness to palpation over the lateral and medial aspects and limited range of motion. Dr. Seldes reported that examination of appellant's lumbar spine revealed tenderness to palpation lateral to the midline in the dorsal lumbar spine area and over the bilateral sacroiliac joints. He diagnosed lumbar radiculopathy, right shoulder rotator cuff tear, right trochanteric bursitis, right knee medial meniscus tear, right knee lateral meniscal tear, and right elbow radial collateral ligament tear. Dr. Seldes opined that appellant suffered a work-related injury on August 4, 2015 when she was struck by a parcel at work.

By decision dated April 1, 2020, OWCP denied modification of the February 28, 2019 decision.

On June 11, 2020 appellant, through her then-representative, requested reconsideration.

In a May 19, 2020 report, Dr. Seldes reported that "it is my opinion with clinical evaluation, diagnostic review, history and evaluation of the patient directly that it is with reasonable medical certainty that this patient suffered a work-related injury on [August 4, 2015] when she was struck by a parcel at work in her left ankle and foot and knocked down on the right side of her body."

By decision dated September 4, 2020, OWCP denied modification of the April 1, 2020 decision.

On March 24, 2021 appellant, through her then-representative, requested reconsideration.

In a December 28, 2020 report, Dr. Seldes indicated that appellant had a preexisting injury on February 21, 2015, which eventually resolved so that she could return to work. He opined that the subsequent August 4, 2015 employment injury aggravated her underlying injuries on February 21, 2015. Dr. Seldes requested that OWCP accept appellant's claim for lumbar radiculopathy, right shoulder rotator cuff tear, right trochanteric bursitis, right knee meniscal tear, right knee lateral meniscal tear, and right elbow radial collateral ligament tear.

By decision dated April 6, 2021, OWCP denied modification of the September 4, 2020 decision.

On July 1, 2021 appellant appealed to the Board and, by decision dated October 18, 2022,⁴ the Board set aside OWCP's April 6, 2021 decision. The Board found that the reports of Dr. Vernon, while not fully rationalized, required remanding the case to OWCP for further development. The Board directed OWCP to refer appellant, a statement of accepted facts (SOAF), and the medical evidence of record to a physician in the appropriate field of medicine for a rationalized opinion on whether any of the diagnosed conditions were causally related to the accepted August 4, 2015 employment incident. The Board further indicated that, following this and other further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim.

On February 27, 2023 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Lawrence Barr, an osteopath and Board-certified orthopedic surgeon, for a second opinion examination and evaluation regarding whether appellant sustained a diagnosed condition causally related to the accepted August 4, 2015 employment incident.

In a March 14, 2023 report, Dr. Barr discussed appellant's factual and medical history and reported the findings of his physical examination. He diagnosed acromioclavicular degenerative joint disease with partial rotator cuff tear of the right shoulder, degenerative disc disease of the lumbar spine, and degenerative joint disease of the right knee. Dr. Barr noted that appellant fell at work on August 4, 2015 and had multiple complaints. Appellant had reached maximum medical improvement and no further treatment appeared to be indicated. Dr. Barr advised that he had reviewed the SOAF and noted that the case had not been accepted for any diagnosis. He stated, "[w]ith regard to causation, I have questions on causal relationship. I do not have records confirming this injury *per se*. If additional records [sic], I would be happy to review them, which may alter my opinion." Dr. Barr noted that appellant had "a previous occurrence involving her low back and right knee" on February 21, 2015. He found that she was capable of sedentary duty. In a March 14, 2023 work capacity evaluation (Form OWCP-5c), Dr. Barr indicated that appellant could perform sedentary work for eight hours per day and provided various work restrictions.

By decision dated April 6, 2023, OWCP denied modification of its prior decision, finding that appellant did not meet her burden of proof to establish a medical condition causally related to the accepted August 4, 2015 employment incident. It referenced Dr. Barr's March 14, 2023 report and indicated that Dr. Barr "declines to provide a statement on causal relationship." OWCP noted, "without an opinion of causal relationship that cites to your prior treatments and distinguishes any preexisting condition based on objective evidence, it is difficult for [OWCP] to find that you suffered additional conditions due to the 08/04/2015 incident."

On June 15, 2023 appellant, through current counsel, requested reconsideration of the April 6, 2023 decision. Counsel argued that OWCP did not adequately address the development of appellant's claim, including the referral to Dr. Barr, in its April 6, 2023 decision.

On September 20, 2023 OWCP requested that Dr. Barr provide a supplemental report regarding whether appellant sustained a diagnosed condition causally related to the accepted August 4, 2015 employment incident. It advised him "that the claimed injury has been accepted

⁴ *Id.*

as factual as described in the SOAF” and asked him to further address the previously provided questions. OWCP noted, “If additional evidence is needed to provide a response to any of the questions, we are requesting identification of the specific additional evidence needed along with an explanation for why the question may not be answered without the additional evidence identified.”

In an October 21, 2023 supplemental report, Dr. Barr advised that he could not find a diagnosis related to the August 4, 2015 employment incident at the time of his examination on March 14, 2023. He noted, “I do not have records confirming a diagnosis. If additional records are received, I would be happy to review them, which may alter my opinion. As noted, [appellant] did have a previous occurrence involving her low back and right knee as well on February 21, 2015.” Dr. Barr further stated, “I could not find a diagnosis related to the 08/04/15 incident. It should be noted that [appellant] obviously was having pain in her low back and right hip, which predated this occurrence which the examinee failed to inform me about.”

In a November 11, 2023 letter, counsel argued that Dr. Barr still failed to adequately address the matter of causal relationship.

By decision dated November 24, 2023, OWCP denied modification of the April 6, 2023 decision.

On March 18, 2024 appellant, through counsel, requested reconsideration of the November 24, 2023 decision.

Appellant submitted an October 25, 2023 report of Dr. Seldes who noted that on February 21, 2015 she suffered a fall at work which caused sprains to her lumbar spine, right shoulder, right hip, right knee, right ankle/foot, and right wrist/hand. Dr. Seldes discussed diagnostic testing obtained between November 2015 and March 2016 and argued that the findings demonstrated that appellant “suffered traumatic injury on 08/04/2015, which was an aggravation of her underlying initial injury in February of 2015.” He noted, “It is my medical opinion with reasonable medical certainty she suffered a work-related injury on 08/04/2015 when she was struck by a large parcel at work. This was documented as well as the work-related diagnostic studies.”

By decision dated May 23, 2024, OWCP denied modification of the November 24, 2023 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

⁵ *J.C.*, Docket No. 24-0842 (issued October 30, 2024); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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 at the time and place, and in the manner alleged.⁸ The second component is whether the employment incident caused an injury.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue. The opinion of the physician must be based on 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.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

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

In accordance with the Board's October 18, 2022 decision, OWCP referred appellant to Dr. Barr for an examination and evaluation regarding the issue of whether she sustained an injury causally related to the accepted August 4, 2015 employment incident. In a March 14, 2023 report, Dr. Barr noted that appellant fell at work on August 4, 2015 and had multiple complaints. He advised that he had reviewed the SOAF and noted that the case had not been accepted for any diagnosis. Dr. Barr stated, "[w]ith regard to causation, I have questions on causal relationship. I do not have records confirming this injury *per se*. If additional records [sic], I would be happy to review them, which may alter my opinion." He noted that appellant had "a previous occurrence involving her low back and right knee" on February 21, 2015.

The Board notes that OWCP properly determined that Dr. Barr's March 14, 2023 report needed clarification and requested a supplemental report from Dr. Barr addressing the issue of

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 *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹¹ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

whether appellant sustained an injury causally related to the accepted August 4, 2015 employment incident. In an October 21, 2023 supplemental report, Dr. Barr advised that he did not “have records confirming a diagnosis” related to the August 4, 2015 incident. He further indicated, “If additional records are received, I would be happy to review them, which may alter my opinion. As noted, [appellant] did have a previous occurrence involving her low back and right knee as well on February 21, 2015.” The Board finds that this supplemental report of Dr. Barr is substantially similar to his March 14, 2023 report and does not resolve the deficiencies of that earlier report with respect to his opinion on causal relationship.

The Board has held that, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹³ Once OWCP starts to procure medical opinion, it must do a complete job in securing from its referral physician an opinion which adequately addresses the relevant issues.¹⁴

As Dr. Barr, the initial OWCP referral physician, was unable to adequately clarify his opinion on causal relationship, OWCP must refer appellant, along with the case record and a detailed SOAF, to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue of whether appellant sustained an injury causally related to the accepted August 4, 2015 employment incident.¹⁵ After this and such other 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.

¹² See *D.V.*, Docket No. 17-1590 (issued December 12, 2018); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

¹³ See *A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

¹⁴ *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *L.V.*, Docket No. 17-1260 (issued August 1, 2018); *Mae Z. Hackett*, 34 ECAB 1421, 1426 (1983).

¹⁵ *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this decision of the Board.

Issued: December 4, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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