United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
	)	**Docket No. 24-0819**
and	)	**Issued: October 16, 2024**
	)	
U.S. POSTAL SERVICE, EDISON POST OFFICE, Edison, NJ, Employer	)	

Appearances:
Stephanie Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 8, 2024 appellant, through counsel, filed a timely appeal from a June 21, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 June 27, 2022 employment incident.

FACTUAL HISTORY

On July 1, 2022 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 2022 she experienced pain in her ribs, arm, and knee when she tripped on a latch that connected two post-cons while in the performance of duty.[3] She stopped work on the date of injury. OWCP assigned the claim File No. xxxxxx753.

On June 27, 2022 the employing establishment issued an Authorization for Examination or Treatment (Form CA-16) to the Jersey City Medical Center for examination due to injury to appellant's ribs, elbows, and knees.

Appellant submitted a June 28, 2022 hospital emergency department note indicating that she was treated for knee and rib pain. A note of even date signed by A. Morales, an advanced practice nurse, excused appellant from work through June 30, 2022.

OWCP received a July 7, 2022 letter from Dr. Mazhar Elamir, a physician Board-certified in internal medicine and pulmonary disease, who excused appellant from work through July 9, 2022 due to injuries she sustained from a workplace fall on June 27, 2022.

In a development letter dated July 18, 2022, OWCP informed appellant of the deficiencies of 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 respond.

OWCP subsequently received a July 12, 2022 note from Dr. Monica R. Mehta, a Board-certified physiatrist, who placed appellant off work through August 30, 2022.

OWCP also received magnetic resonance imaging (MRI) scans dated July 12, 2022 read by Dr. Ketang Modi, a Board-certified diagnostic radiologist. A thoracic spine MRI scan report demonstrated diffuse degenerative joint disease and multilevel disc bulging with left paracentral posterior disc herniations at T9-10 and T10-11 indenting the thecal sac on the left. A lumbar MRI scan report demonstrated mild canal stenosis at L2-3 and moderate at L3-4 and L4-5; and disc bulging at L2-3, L3-4, and L4-5 effacing the ventral thecal sac and moderately narrowing both L3-4 and L4-5 neural foramina.

OWCP received additional diagnostic reports of x-rays and an MRI scan dated July 13, 2022 read by Dr. Modi. A right knee x-ray report revealed no acute radiographic abnormality and mild osteoarthritis. A left rib x-ray report demonstrated no acute disease/pathology. A left elbow

[3] Appellant has a prior claim. OWCP accepted appellant's June 11, 2003 traumatic injury claim for contusion of the left hand and wrist under File No. xxxxxx517. The claims have been combined with OWCP File No. xxxxxx753 serving as the master file.

x-ray report provided an impression of no significant radiographic abnormality. A cervical spine x-ray report demonstrated spondylosis at C4-5 and C5-6. A cervical spine MRI scan report provided impressions of disc bulging at C3-4, C4-5, and C5-6; a small broad-based posterior disc herniation at C6-7 effacing the ventral thecal sac; and bilateral foraminal narrowing at C5-6. A left shoulder MRI scan report revealed focal full-thickness tear of supraspinatus tendon; 1.0-centimeter ganglion cyst inferior to the glenoid; and mild osteoarthritis of acromioclavicular joint.

OWCP received further diagnostic reports of MRI scans dated July 14, 2022 from Dr. Modi. A left elbow MRI scan report provided an impression of lateral epicondylitis. A right knee MRI scan report provided impressions of moderate-to-severe medial compartment osteoarthritis with diffuse degenerative tearing of medial meniscus; slightly high-riding patella with moderate marrow edema in the medial patellar facet that may be sequelae of recent impaction injury or forced lateral subluxation, correlate with history; mucoid degeneration of the anterior cruciate ligament (ACL) with ganglion cyst; and mild patellofemoral osteoarthritis.

In a July 13, 2022 narrative report, Dr. Mehta noted appellant's history of injury and diagnosed other cervical disc displacement, unspecified cervical region; radiculopathy, cervical region; unspecified sprain of left shoulder joint, subsequent encounter; other intervertebral disc displacement thoracolumbar, lumbar, and thoracic regions; sprain of ribs, subsequent encounter; and sprain of unspecified site of unspecified knee, subsequent encounter. In a daily note of even date, she addressed the treatment of appellant's thoracic spine with physical therapy.

By decision dated August 25, 2022, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted June 27, 2022 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional medical evidence. A July 7, 2022 progress note from Mireilli Saint Juste, a nurse practitioner, diagnosed bilateral knee pain.

Diagnostic reports of x-rays dated July 8, 2022 were received from Dr. Feng Tao, a Board-certified diagnostic radiologist. A bilateral knee x-ray report provided impressions of no radiographic evidence of fracture or acute bony pathology of the right and left knees; bilateral knee osteoarthritis; and right knee Pellegrini-Stieda suggestive of injury of cruciate ligaments and menisci. A left rib x-ray report provided an impression of no evidence of left rib fracture. A thoracic spine x-ray report revealed impressions of no apparent vertebral body compression deformity or discernible acute fracture, and no shallow levoscoliosis. Age-related discogenic changes shown at the lower thoracic levels with associated disc height loss and anterior endplate spurring most pronounced at T11-T12.

In a July 8, 2022 progress note, Dr. Elamir related appellant's diagnoses as bilateral knee and back pain.

In reports dated July 12, August 26 and 30, 2022, Dr. Mehta noted appellant's history of injury and provided impressions of acute lumbosacral pain, acute lumbosacral radiculopathy, probable herniated nucleus pulposus in the cervical, lumbar, and thoracic areas of the spine, left shoulder internal derangement, probable left brachial plexus neuritis, left elbow sprain, difficulties

in activities of daily living (ADL) and walking, and right knee internal derangement. She advised that appellant's diagnosed conditions were due to trauma sustained at work.

On November 1, 2022 appellant requested reconsideration of the August 25, 2022 decision and submitted additional evidence.

A residual function capacity questionnaire completed by Dr. Mehta on August 16, 2022 found that appellant could perform sedentary work with restrictions. In reports dated August 30, September 13, and October 4, 11, and 27, 2022, Dr. Mehta restated her prior work-related lumbar, cervical, and thoracic spine, left shoulder, left elbow, and right knee diagnoses.

In electromyogram/nerve conduction velocity (EMG/NCV) studies dated November 7 and 14, 2022, Dr. Dev Sinha, a Board-certified physiatrist, noted a history of the June 27, 2022 employment incident. He reported that the November 7, 2022 EMG/NCV study revealed evidence of mild left peroneal motor nerve and mild right superficial peroneal sensory nerve neuropathy affecting both lower extremities, and no evidence of lumbar radiculopathy. Dr. Sinha reported that the November 14, 2022 EMG/NCV study revealed evidence of a moderate bilateral sensorimotor median nerve neuropathy at the wrists, which was consistent with the clinical diagnosis of moderate bilateral carpal tunnel syndrome, right greater than left; and evidence of moderate bilateral ulnar sensorimotor nerve neuropathy.

By decision dated January 30, 2023, OWCP modified its August 25, 2022 decision, finding that appellant had established diagnosed medical conditions in connection with the accepted June 27, 2022 employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted employment incident.

On June 28, 2023 appellant, through her then-counsel, requested reconsideration, and submitted a June 5, 2023 report from Dr. Deepan Patel, a Board-certified orthopedic surgeon.

In the June 5, 2023 report, Dr. Patel noted appellant's history of injury and medical treatment. He diagnosed lumbar disc bulging, right knee osteoarthritis with medial meniscus tearing, cervical disc herniation, and left shoulder focal full-thickness tear of the supraspinatus tendon. Dr. Patel noted that appellant underwent a failed left shoulder arthroscopic repair due to the alleged June 27, 2022 employment injury. He further noted that although she initially did well, her tear progressed and developed into rotator cuff arthropathy resulting in left shoulder surgery performed on January 11, 2023. Dr. Patel concluded that appellant had permanent weight-lifting restrictions as a consequence of her surgery.

In a July 7, 2023 letter, OWCP requested that Dr. Patel respond to a series of questions regarding appellant's claimed employment-related injury and work capacity. Dr. Patel was afforded 20 days to respond. No response was received.

By decision dated August 7, 2023, OWCP denied modification of the January 30, 2023 decision, finding that Dr. Patel's medical opinion was insufficiently rationalized to establish causal relationship between appellant's diagnosed condition and the accepted June 27, 2022 employment incident.

OWCP subsequently continued to receive medical evidence. An excuse note dated November 20, 2023 from a physician with an illegible signature requested that appellant be excused from an appointment she attended on that date.

In a December 18, 2023 excuse note, Dr. Sinha indicated that appellant was status post shoulder surgery and that she could return to light-duty work on January 22, 2024 with restrictions.

On March 27, 2024 appellant, through counsel, requested reconsideration of the August 7, 2023 decision and submitted additional medical evidence.

A March 14, 2024 report cosigned by Dr. Sinha and Dr. Patel noted that appellant had no history of neck, back, right knee, and left shoulder injuries or work restrictions prior to the accepted June 27, 2022 employment incident. The physicians indicated a history of the accepted employment incident. Dr. Sinha and Dr. Patel also indicated that a prior report mistakenly stated that appellant had a prior surgery, but her left rotator cuff repair performed on January 11, 2023 was her only left shoulder surgery. The physicians opined that the accepted employment incident caused appellant's left shoulder rotator cuff tear, right knee medial meniscus tear, lumbar disc bulge, cervical disc herniation, spondylosis, cervicalgia, and radiculopathy, which were confirmed by MRI scans performed on July 12, 13, and 14, 2022 and their physical examination findings. Dr. Sinha and Dr. Patel explained that the shoulder is a ball-and-socket joint and that rotator cuff tears occur when tendons pull away from the arm bone. The action of having appellant's arm outstretched when she fell and striking the ground, resulted in the fibers of the supraspinatus tendon becoming suddenly inflamed and weakened to the point that it finally tore. The excessive force exerted on the shoulder joint structures of her rotator cuff occurred when she fell and landed on the ground. This sudden impact to the left shoulder created a tear of the supraspinatus tendon, which was confirmed by MRI scan. The tear of the supraspinatus tendon was an acute injury as appellant's arm was in an adducted position, which displaced the acromion medially and inferiorly relative to the clavicle, straining the surrounding structures of the shoulder, and resulting in the rotator cuff tear. Dr. Sinha and Dr. Patel advised that her torn rotator cuff was not degenerative in nature as the July 14, 2022 MRI scan and their physical examination findings showed that there was no significant muscle atrophy. Significant muscle atrophy would be seen if the tendon injury had been caused by degeneration alone. Dr. Sinha and Dr. Patel also advised that appellant's right knee medial meniscal tear was not degenerative in nature. The physicians explained that her trip and fall at work resulted in the abrupt twisting of her right knee before she landed on her knees. Dr. Sinha and Dr. Patel noted that the trip and fall put sudden pressure from the abrupt forced twist on the right knee until the medial meniscal tore. The knee joint was forced to flex too far back with disproportionate pressure on the knee thereby resulting in the tear. Dr. Sinha and Dr. Patel noted that when appellant fell at work, the awkward twisting and then sudden jarring of her body from the impact with the ground caused these diagnosed conditions by producing excessive pressure in her lower spine which caused the annulus fibrous to weaken, allowing the nucleus pulposus to push through, creating a herniated disc at L2-3, L3-4, and L4-5. Appellant's abrupt body jerking from the impact with the ground resulted in a substantial torque on her back which produced a disc herniation at L2-3, L3-4, and L4-5. The bulge resulted in the space between her spinal discs narrowing and pressure being placed on the nerves and spinal cord resulting in stenosis. The lumbar stenosis and bulging discs then caused lumbar radiculopathy by the inflammation causing compression on the spinal nerve root in the lower back. The bulging discs were pushing on the spinal nerve causing low back pain and leg weakness. The physicians

explained that tripping, sudden twisting, and landing of appellant on the ground caused the diagnosed conditions of cervical disc herniation, spondylosis, cervicalgia, radiculopathy, disc herniation at C6-7, and disc bulge at C3-4, C4-5, and C5-6 by producing excessive pressure in appellant's cervical spine which caused the space between her spinal discs narrowing and pressure being placed on the nerves and spinal cord resulting in stenosis. The cervical stenosis then caused myelopathy by the inflammation causing compression on the spinal nerve root in the neck. The cervical stenosis caused inflammation resulting in compression on the spinal nerve root in the cervical region. The sudden fall and landing caused microtears in the soft tissue of the cervical spine including the surrounding musculature, ligaments, and other soft tissue structures, resulting in edema and inflammation. The inflammation of these structures narrows the space with which the nerves pass through contributing to the radiculopathy and numbness and tingling experienced by appellant. Dr. Sinha and Dr. Patel explained that appellant did not sustain nontraumatic herniated disc bulges at L2-3, L3-4, and L4-5, disc herniation at C6-7, and disc bulges at C3-4, C4-5, and C5-6, because the MRI scans did not show that the disc had slowly worn out and lost the water and gel components that support a back overtime. In addition, the MRI scans did not show calcification, ossification, or gas accumulation within the displaced disc material (the jelly) which would support an argument that the bulge was degenerative in nature. This is what would have been seen if the disc bulges were from the natural progression of appellant's preexisting conditions.

By decision dated June 21, 2024, OWCP denied modification of the August 7, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 filed within the applicable time limitation of FECA,[5] 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 the employment injury.[6] 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.[7]

[4] *Supra* note 2.

[5] *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *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); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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).

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.[8] 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.[9] The second component is whether the employment incident caused an injury.[10]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[11] 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 incident identified by the employee.[12]

ANALYSIS

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

In their March 14, 2024 report, Dr. Sinha and Dr. Patel diagnosed left shoulder rotator cuff tear, right knee medial meniscus tear, lumbar disc bulge, cervical disc herniation, spondylosis, cervicalgia, and radiculopathy, and provided support for these conditions as a result of the accepted June 27, 2022 employment incident. The physicians explained how appellant's trip and fall at work on June 27, 2022 resulted in tendons pulling away from the arm bone, fibers of the supraspinatus tendon becoming suddenly inflamed and weakened, and the arm being in an adducted position causing the left shoulder rotator cuff tear. Dr. Sinha and Dr. Patel further explained how the accepted employment incident resulted in an abrupt forced twisting of the right knee before appellant landed on her knees which forced the knee joint to flex too far back with disproportionate pressure on the knee thereby causing the medial meniscal tear. The physicians also explained how the accepted employment incident resulted in awkward twisting and then sudden jarring of the body and produced excessive pressure in the lower spine which caused the annulus fibrous to weaken, allowing the nucleus pulposus to push through and a substantial torque on her back creating a herniated disc at L2-3, L3-4, and L4-5 and stenosis which then caused lumbar radiculopathy. Lastly, Dr. Sinha and Dr. Patel explained how tripping, sudden twisting, and landing on the ground produced excessive pressure in appellant's cervical spine which caused the space between her spinal discs narrowing and pressure being placed on the nerves and spinal

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

[9] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *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).

[10] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *S.S.*, *supra* note 9; *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018; *Leslie C. Moore*, 52 ECAB 132 (2000).

cord resulting in cervical disc herniation, spondylosis, cervicalgia, radiculopathy, disc herniation at C6-7, and disc bulge at C3-4, C4-5, and C5-6.

The Board finds that, while the March 14, 2024 report from Dr. Sinha and Dr. Patel is insufficiently rationalized to establish appellant's claim, it is sufficient to require further development of the medical evidence.[13]

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden 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]

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the case record to a specialist in the appropriate field of medicine for a reasoned opinion regarding whether appellant sustained a medical condition causally related to the accepted June 27, 2022 employment incident. If the second opinion physician disagrees with the opinion of Dr. Sinha and Dr. Patel, he or she must provide a fully rationalized explanation of why the accepted employment incident was insufficient to have caused or aggravated appellant's medical condition. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.[16]

CONCLUSION

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

[13] *B.S.*, Docket No. 22-1289 (issued August 20, 2024); *J.L.*, Docket No. 23-0733 (issued October 12, 2023); *C.S.*, Docket No. 22-1087 (issued May 1, 2023); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, *supra* note 10.

[14] *Id.*; *see also S.G.*, Docket No. 22-0330 (issued April 4, 2023); *see M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

[15] *See C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *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 10.

[16] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.J.*, Docket No. 24-0724 (issued July 20, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 21, 2024 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: October 16, 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