

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

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D.S., Appellant )

and )

U.S. POSTAL SERVICE, ALBANY POST )  
OFFICE, Albany, NY, Employer )  
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**Docket No. 24-0664**  
**Issued: September 30, 2024**

*Appearances:*  
*Paul Kalker, Esq., for the appellant<sup>1</sup>*  
*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 5, 2024 appellant, through counsel, filed a timely appeal from a May 8, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the May 8, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the caserecord that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a low back condition causally related to the accepted May 2, 2023 employment incident.

## FACTUAL HISTORY

On June 13, 2023 appellant, then a 40-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2023 he injured his back when he felt a pull/pop in his lower back as he lifted a heavy package from the bottom of a bin while in the performance of duty. He stopped work May 4, 2023. Appellant returned to full-time work with no restrictions on May 8, 2023. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty, but noted that appellant did not include the time of injury.

In a July 20, 2023 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 60 days to respond.

In a July 7, 2023 work excuse note, Dr. Brian K. Barlow, a Board-certified orthopedic surgeon, reported that appellant was seen in the emergency department on July 7, 2023. He advised that he could return to work on July 14, 2023.

In a follow-up letter dated August 29, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the July 20, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP thereafter received a July 7, 2023 emergency room report, wherein Dr. Barlow noted that appellant presented with left low back pain radiating to leg associated with some numbness in great toe. Dr. Barlow indicated that the onset was two months prior at work as a mail carrier with a straining event and worsening pain despite being on light duty. He opined that appellant's history was highly suggestive of sciatica. Dr. Barlow indicated a work note was provided as "it sounded like his job duties were aggravating his symptoms."

In an August 11, 2023 report, Dr. Douglas DeLong, a Board-certified internist, reported that two and half months ago, appellant felt a popping sensation in his back when lifting as a mail carrier. He diagnosed sciatica due to displacement of lumbar intervertebral disc based on positive straight leg rise test with tenderness over the lumbar spine.

By decision dated October 2, 2023, OWCP denied appellant's claim finding that he had not established that the May 2, 2023 employment incident occurred, as alleged. It noted that he neither provided a detailed factual statement as to the cause of his claimed injury nor a response to the development questionnaire. Consequently, OWCP found that he had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive medical evidence including appellant's September 25, 2023 lumbar spine magnetic resonance imaging (MRI) scan, which demonstrated multilevel disc disease

most pronounced at L5-S1 where there was a left paracentral disc extrusion (herniation) effacing the left lateral recess.

In an August 11, 2023 report, Dr. Reagan noted that appellant had a history of a May 2, 2023 work-related injury when he lifted a package at work and heard a pop in his back. Since that time, appellant had left foot weakness and numbness. In an October 13, 2023 report, Dr. Regan noted MRI scan and examination findings and diagnosed lumbar radiculopathy at L5-S1. He opined that appellant was not able to work due to his lumbar disc herniation. In an addendum report also dated October 13, 2023, Dr. Regan diagnosed left L5-S1 disc prolapse with unclear motor status.

In an October 19, 2023 report, Dr. DeLong diagnosed sciatica due to displacement of lumbar intervertebral disc.

OWCP also received an October 25, 2023 report from John Snurkowski, a physician assistant, who assessed a left L5-S1 herniated disc.

In November 27, 2023 and January 25, 2024 reports, Dr. Regan diagnosed lumbar radiculopathy at L5-S1 and chronic left-sided low back pain with left-sided sciatica.

In a January 30, 2024 initial report, Dr. Steven S. Moalemi, a Board-certified physiatrist, provided a list of appellant's job duties, noted appellant's history of injury and his medical course of treatment. He also described his examination findings, which included left calf atrophy, plantarflexion weakness, and decreased sensation in lateral foreleg. Dr. Moalemi diagnosed intervertebral disc disorders with radiculopathy, noting that intervertebral disc disorders include degenerative disc disease, disc herniation, disc bulge and disc degeneration. Regarding causation, he explained that appellant's lumbar region pain radiating down the leg was from a herniated disc impinging on a nerve. Dr. Moalemi opined that the condition developed as the discs were in a vulnerable position when appellant flexed, rotated, and picked up the heavy package. He indicated that traumatic injuries, such as the one appellant suffered, caused the L5-S1 disc herniation when appellant flexed and rotated while trying to pick up a heavy package which, in turn, led to lumbar radiculopathy. Dr. Moalemi explained that lumbar radiculopathy was caused by pressure on the nerve roots, which in turn caused the affected nerve root to become inflamed. He further opined that appellant was temporarily totally disabled from work due to the weakness and reduced range of motion of the spine and leg.

In a January 30, 2024 attending physician's report (Form CA-20), Dr. Moalemi noted the history of appellant's work injury and provided examination findings, which included left plantar flexion weakness, left calf atrophy, and positive straight leg rise. He diagnosed lumbosacral disc disorder with radiculopathy. Dr. Moalemi checked a box marked "Yes" to the question that he believed that the diagnosed condition was caused or aggravated by the employment activity. In his January 30, 2024 Form CA-20 and in a January 30, 2024 work capacity evaluation (Form OWCP-5c) he opined that appellant was totally disabled as of August 17, 2023. In an April 29, 2024 progress report, Dr. Moalemi continued to diagnose intervertebral disc disorders with radiculopathy, lumbar region and opined that appellant was totally disabled due to weakness and reduced range of motion in this lumbar spine and weakness in his left leg.

In a February 8, 2024 report, Dr. Franklin Wetzel, a Board-certified orthopedic surgeon, noted the history of the May 2, 2023 work injury and appellant's medical history, noting that he

last worked on August 11, 2023. He diagnosed left L5-S1 disc prolapse based on examination findings and a September 25, 2023 lumbar MRI scan, which demonstrated a left L5-S1 disc prolapse.

On March 31, 2024 appellant requested reconsideration based on Dr. Moalemi's January 30, 2024 report. He submitted a March 31, 2024 letter from counsel, a July 2, 2023 statement, in which he explained the May 2, 2023 work injury, and physical therapy reports for the period February 9 through April 18, 2024.

By decision dated May 8, 2024, OWCP modified the October 2, 2023 decision to find that appellant had established that the May 2, 2023 employment incident occurred, as alleged. 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 incident.

### **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,<sup>4</sup> that the claim was timely filed within the applicable time limitation period of FECA, 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.<sup>5</sup> 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>6</sup>

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 that the employee must submit sufficient evidence to establish that he or she 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.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> 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

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<sup>4</sup> *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

<sup>8</sup> *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).

nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.<sup>9</sup>

### ANALYSIS

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

In his January 30, 2024 narrative report, Dr. Moalemi diagnosed intervertebral disc disorders with radiculopathy. He discussed appellant's medical history and provided findings on physical examination. Dr. Moalemi also discussed the mechanism of injury for this traumatic injury claim.<sup>10</sup> He reported that, at the time of the May 2, 2023 employment incident, appellant was flexed and rotated (a position where discs are most vulnerable) while trying to pick up a heavy package. Dr. Moalemi opined that this trauma caused a disc herniation at L5-S1 with resulting lumbar radiculopathy as the herniated disc was impinging on the nerve which, in turn led to lumbar radiculopathy. He explained that lumbar radiculopathy was caused by pressure on the nerve roots which in turn caused the affected nerve root to become inflamed. Dr. Moalemi accurately described appellant's employment factors and provided rationale explaining how, physiologically, appellant's position of being flexed and rotated when picking up a heavy package caused a disc herniation at L5-S1 as the discs were in a vulnerable position and the herniated disc then impinged on the nerve resulting in lumbar radiculopathy.<sup>11</sup> The Board finds that, while Dr. Moalemi's opinion is insufficient to establish causal relationship, it is sufficient to require further development of the claim.<sup>12</sup>

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.<sup>13</sup> OWCP has an obligation to see that justice is done.<sup>14</sup> While Dr. Moalemi's opinion is insufficient to establish the claim, it is sufficient to require further development of the medical evidence.<sup>15</sup> The case must therefore be remanded for further development.

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<sup>9</sup> A.S., Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>10</sup> *See T.W.*, Docket No. 23-0825 (issued May 13, 2024); *see J.K. (nee R.)*, Docket No. 23-0959 (issued February 14, 2024); *G.G.*, Docket No. 23-0774 (issued October 25, 2023); *S.B.*, Docket No. 20-1458 (issued March 5, 2021); *L.H.*, Docket No. 17-0947 (issued March 8, 2018).

<sup>11</sup> *A.H.*, Docket No. 24-0192 (issued May 1, 2024); *S.C.*, Docket No. 20-0492 (issued May 6, 2021); *R.S.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>12</sup> *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> *S.C., id.*; *R.S.*, Docket No. 19-1774 (issued April 3, 2020); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71.

<sup>14</sup> *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>15</sup> *See A.H., supra* note 11; *L.B.*, Docket No. 23-0961 (issued December 15, 2023); *B.C.*, Docket No. 16-1853 (issued January 19, 2016); *John J. Carlone, supra* note 12.

On remand, OWCP shall refer appellant to a specialist in an appropriate field of medicine, along with the case record and a statement of accepted facts. Its referral physician shall provide a well-rationalized opinion as to whether the accepted May 2, 2023 employment incident caused or aggravated her diagnosed condition(s). If the referral physician disagrees with Dr. Moalemi, he or she must explain with rationale why their opinion differs from that of Dr. Moalemi. After this and other such further development of the case record as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 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: September 30, 2024  
Washington, DC

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

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

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