

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

R.C., Appellant)	
)	
and)	
)	Docket No. 19-0897
DEPARTMENT OF VETERANS AFFAIRS,)	Issued: February 17, 2021
VETERANS HEALTH ADMINISTRATION,)	
BALTIMORE VA MEDICAL CENTER,)	
Baltimore, MD, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On March 25, 2019 appellant filed a timely appeal from a February 5, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees'

¹ Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated July 21, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-0897 (issued July 21, 2020). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 501.5(b).

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.³

ISSUE

The issue is whether appellant has met her burden of proof to establish medical conditions causally related to the accepted February 4, 2018 employment incident.

FACTUAL HISTORY

On February 20, 2018 appellant, then a 57-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2018 she felt a sharp pain in her back and left hip when bending to assist a patient from the floor while in the performance of duty, resulting in lumbar radiculopathy. She stopped work on February 14, 2018. In a letter dated February 26, 2018, the employing establishment confirmed that the claimed incident occurred as alleged, but controverted the claim as appellant had not established an injury.

In a report dated February 14, 2018, Dr. Jerry I. Levine, a Board-certified internist, related appellant's account of the February 4, 2018 employment incident. He diagnosed lumbar radiculopathy and prescribed medication and physical therapy.⁴ Dr. Levine held appellant off work until March 1, 2018.

In a February 28, 2018 report, Dr. Levine noted that appellant's symptoms had improved. He returned her to full duty effective March 1, 2018.

By development letter dated February 27, 2018, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted a March 26, 2018 statement, asserting that on February 4, 2018 she experienced sharp pain in her back, left hip, and groin when she bent down to assist a patient who had fallen to the floor. She indicated that she had no history of back symptoms prior to the incident.

By decision dated March 29, 2018, OWCP denied appellant's traumatic injury claim. It accepted that the February 4, 2018 employment incident occurred as alleged, but denied her claim because she had failed to submit sufficient medical evidence to establish a medical diagnosis.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the February 5, 2019 decision, OWCP received additional evidence. Appellant also submitted new evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record 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.*

⁴ Appellant participated in physical therapy treatments from February 15 through July 10, 2018.

Therefore, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

On April 25, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, held September 26, 2018. At the hearing, she noted that, at the time of the February 4, 2018 incident, the patient's lift machine was not working in the room where the patient fell. Appellant was not allowed to leave the patient on the floor, so she assisted him into bed.

The employing establishment provided an October 22, 2018 statement, contending that appellant should not have lifted the patient from the floor as he expressed "a determined level of energy to get up."

Appellant submitted additional evidence. Dr. Levine opined, in reports dated April 12 and 16, 2018, that the accepted employment incident caused left-sided lumbar radiculopathy. He provided reports through June 20, 2018, and maintained appellant on full duty.

Dr. John P. Collins, an osteopath Board-certified in physiatry, provided a May 3, 2018 report, noting a history of injury and treatment. On examination he observed limited range of left hip motion with tenderness along the abductor tendon and over the trochanteric bursa and gluteal muscles. Dr. Collins reviewed an April 30, 2016 magnetic resonance imaging (MRI) scan of the lumbar spine, which demonstrated an L4-5 central disc protrusion with mild facet joint arthrosis from L3 to S1. He diagnosed a left hip strain/sprain, trochanteric bursitis, and gluteus medius tendinitis. Dr. Collins prescribed physical therapy. In a May 21, 2018 report, he diagnosed left gluteus medius calcific tendinitis.

May 3, 2018 x-rays of both hips demonstrated "[g]lobular calcific densities surrounding the base of the left greater trochanter, most suggestive of calcific tendinitis," possible similar densities in the right greater trochanter.

In a June 11, 2018 report, Dr. Collins observed improved range of left hip motion, noting that appellant's gluteus medius tendinitis was continuing to improve. He prescribed additional physical therapy.

By decision dated December 11, 2018 and reissued February 5, 2019,⁵ an OWCP hearing representative affirmed the prior decision, finding that the medical evidence of record lacked a definitive diagnosis and supporting rationale.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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

⁵ The December 11, 2018 decision contained typographical errors in the hearing date and the date of an OWCP decision. OWCP corrected these errors and reissued the decision on February 5, 2019.

⁶ *Supra* note 2.

time limitation of FECA,⁷ 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.⁸ 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.⁹

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.¹⁰ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.¹¹ The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.¹²

Rationalized medical opinion evidence is required to establish causal relationship. 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.¹³

ANALYSIS

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

OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record lacked a firm diagnosis of an injury connected to the accepted February 4, 2018 employment incident.

In his reports dated February 14 through May 21, 2018, Dr. Levine diagnosed left lumbar radiculopathy. He had treated appellant for back and left hip symptoms related to the accepted February 4, 2018 bending incident, and included a detailed history of injury and objective findings. Additionally, in May 3 and June 11, 2018 reports, Dr. Collins diagnosed a left hip strain/sprain, trochanteric bursitis, and gluteus medius calcific tendinitis. Dr. Collins also reviewed an April 30, 2016 lumbar MRI scan, which demonstrated an L4-5 disc protrusion and multi-level facet joint

⁷ *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).

⁸ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁹ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹⁰ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

¹¹ *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *D.W.*, Docket No. 19-0968 (issued October 9, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹² *Id.*

¹³ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

arthrosis. His diagnoses were based on an accurate history of injury and treatment, objective clinical findings, and diagnostic test results. The Board, therefore, finds that the diagnoses of left lumbar radiculopathy, left hip strain/sprain, trochanteric bursitis, and gluteus medius calcific tendinitis constitute medical diagnoses in connection with the accepted February 4, 2018 employment incident.¹⁴

As the medical evidence of record establishes diagnosed conditions, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁵

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2019 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.¹⁶

Issued: February 17, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁴ *B.C.*, Docket No. 20-0079 (issued October 16, 2020); *M.K.*, Docket No. 20-0293 (issued June 22, 2020); *Y.W.*, Docket No. 19-1877 (issued April 30, 2020).

¹⁵ *Id.*

¹⁶ Christopher J. Godfrey, Deputy Chief Judge, who participated in the preparation of the decision, was no longer a member of the Board after January 20, 2021.