

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

C.G., Appellant	)	
	)	
and	)	<b>Docket No. 20-1121</b>
	)	<b>Issued: February 11, 2021</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Gansevoort, NY, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 8, 2020 appellant filed a timely appeal from an April 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> 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.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted because there is sufficient medical evidence of record containing diagnoses. The Board, in exercising its discretion, denies her request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

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

## ISSUE

The issue is whether appellant has met her burden of proof to establish that her back and neck conditions were causally related to the accepted July 2, 2018 employment incident.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> 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 July 17, 2018 appellant, then a 50-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on July 2, 2018, she sustained back and neck injuries when involved in a motor vehicle accident which occurred while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on July 3, 2018 and had not yet returned.

In an authorization for examination and/or treatment (Form CA-16) dated July 17, 2018, S.A., an employing establishment human resources management specialist, authorized medical treatment at a health facility. S.A. checked a box indicating doubt that appellant's condition was caused by an injury sustained in the performance of duty.

In a development letter dated July 19, 2018, OWCP informed appellant regarding the deficiencies of her claim. It advised her of the medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In an x-ray report dated July 3, 2018, Dr. Damon Deteso, a Board-certified diagnostic radiologist, related that an x-ray of appellant's lumbosacral spine revealed small endplate osteophytes in the lower lumbar spine from L3 to L5, bilateral facet arthropathy at L5-S1, and degenerative changes.

In a report dated July 13, 2018, Dr. Carol S. Fisher, a Board-certified orthopedic surgeon, diagnosed lumbar radiculopathy secondary to her work-related motor vehicle accident. She indicated that, based on x-rays, appellant exhibited some mild facet arthropathy at L5-S1. Dr. Fisher related that appellant complained of neck and back pain after the motor vehicle accident.

On August 21, 2018 OWCP received an undated report from Dr. Timothy Brooks, Board-certified in emergency medicine, indicating that appellant was seen on July 3, 2018 following a July 2, 2018 motor vehicle accident. Appellant's diagnoses were listed as neck/back injury and low back spasm.

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<sup>3</sup> Docket No. 19-0480 (issued July 18, 2019).

By decision dated August 28, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that appellant's conditions were causally related to her accepted July 2, 2018 employment incident.

On January 2, 2019 appellant appealed to the Board.

During the pendency of the prior appeal, OWCP received narrative and state workers' compensation program form reports by Dr. Fisher dated from August 24, 2018 through May 21, 2019, finding continued cervical and lumbar stiffness, left trapezial spasm, bilaterally positive straight leg raising tests, bilateral lumbar radiculopathy, and decreased sensation in both lower extremities. Dr. Fisher opined that these conditions were a continuation of the symptoms from injuries sustained in the July 2, 2018 motor vehicle accident. She also checked boxes or answered questions "Yes" indicating her support for a causal relationship between appellant's ongoing condition and the July 2, 2018 accident. Dr. Fisher found appellant totally disabled for work as she could not drive or lift as required.

OWCP also received narrative and state workers' compensation program form reports by Dr. Radana Dooley, a Board-certified physiatrist, dated from December 10, 2018 through March 7, 2019. Dr. Dooley provided a history of injury and treatment. On examination, she noted limited range of cervical spine motion, bilaterally positive straight leg raising tests, and weakness in the left lower extremity. Dr. Dooley diagnosed cervicgia, cervical radiculopathy, lumbar radiculopathy, spondylosis without myelopathy, other intervertebral disc displacement, and other intervertebral disc degeneration. She also checked boxes or answered questions "Yes" indicating her support for a causal relationship between appellant's ongoing condition and the July 2, 2018 accident. Dr. Dooley held appellant off work.<sup>4</sup>

By decision dated July 18, 2019,<sup>5</sup> the Board affirmed OWCP's August 28, 2018 decision, finding that appellant had not met her burden of proof to establish that the claimed back and neck conditions were causally related to the accepted July 2, 2018 employment incident.

On December 23, 2019 appellant requested reconsideration. She provided additional evidence.

In June 26 and August 5, 2019 reports, Dr. Fisher noted severe lumbar stiffness. She opined that appellant's back problems and related diagnoses were directly related to the July 2, 2018 accepted employment-related motor vehicle accident.

Dr. Gordan N. Kuhar, a Board-certified anesthesiologist specializing in pain management, administered a series of lumbar epidural corticosteroid injections commencing July 9, 2019. In reports dated from September 23, 2019 through January 6, 2020, he noted the July 2, 2018 accepted employment-related motor vehicle accident and appellant's subsequent treatment.

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<sup>4</sup> Appellant also submitted imaging study reports. July 13, 2018 lumbar x-rays demonstrated normal alignment, no spondylolisthesis, small endplate osteophytes from L3 to L5, bilateral facet arthropathy at L5-S1, and degenerative changes without acute osseous abnormality. December 10, 2018 x-rays of the cervical spine demonstrated mild degenerative changes. Appellant participated in physical therapy treatments in January 2019.

<sup>5</sup> *Id.*

Dr. Kuhar diagnosed lumbar radiculopathy, lumbar spondylosis, lumbar intervertebral disc degeneration, low back pain, mechanical spine pain syndrome with intermittent exiting nerve root irritation, sacroiliitis, increasing upper extremity weakness, cervical radiculopathy, cervical root disorders, and occipital neuralgia. He opined that the July 2, 2018 accident significantly worsened appellant's prior well-controlled back issues and introduced new back complaints. Dr. Kuhar explained that a September 27, 2019 magnetic resonance imaging (MRI) scan<sup>6</sup> demonstrated annular pathology not present on previous imaging studies, suggesting that the July 2, 2018 motor vehicle accident had caused a new injury. He held appellant off work as she could not lift 70 pounds as required.

In a March 9, 2020 affidavit, Dr. Kuhar reviewed appellant's history of injury and treatment. He diagnosed degenerative changes at L2-3 to L4-5 with mild central canal and bilateral foraminal narrowing, cervicalgia, cervical radiculopathy, cervical nerve root disorders, occipital neuralgia, headache, low back pain, other intervertebral disc degeneration, lumbar radiculopathy, and sacroiliitis. Dr. Kuhar opined that the July 2, 2018 motor vehicle accident aggravated well-controlled preexisting cervical and lumbar conditions and caused new injuries. He explained that the July 2, 2018 motor vehicle accident caused mechanical spine pain syndrome with intermittent exiting nerve root irritative symptoms at L4-5, corroborated by the September 27, 2019 MRI scan, which demonstrated an L4-5 retrolisthesis with moderate-sized broad-based disc protrusion, left paracentral annular tear, encroachment on the left neural foramen, hypertrophic facet disease contributing to borderline central stenosis, and mild bilateral foraminal compromise. Dr. Kuhar found appellant unable to deliver mail, lift packages, drive a mail truck, or repeatedly enter and exit the mail truck.

Appellant also provided investigative reports and photographs dated from July 2 to 9, 2018 related to the accepted employment-related July 2, 2018 motor vehicle accident, employing establishment statements controverting the claim, and reports by Amber Wagg, a physician assistant, dated from November 2, 2018 through December 2, 2019.

By decision dated April 10, 2020, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</sup> 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 timely filed within the applicable time limitation of FECA,<sup>8</sup> 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

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<sup>6</sup> A September 27, 2019 lumbar MRI scan demonstrated mild multilevel retrolisthesis, mild/borderline L4-5 central stenosis and bilateral foraminal recess compromise, and mild multilevel disc protrusions.

<sup>7</sup> *Supra* note 2.

<sup>8</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>9</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>10</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. 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. The second component is whether the employment incident caused a personal injury and causal relationship can only be established by medical evidence.<sup>11</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>12</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 nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>13</sup>

### ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's August 28, 2018 merit decision because the Board considered that evidence in its July 18, 2019 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.<sup>14</sup>

Appellant submitted a series of reports by Dr. Kuhar dated from July 9, 2019 through March 9, 2020. Dr. Kuhar provided a detailed history of injury and treatment, and diagnosed cervical and lumbar radiculopathy, cervical nerve root disorders, cervicgia, occipital neuralgia, increasing upper extremity weakness, lumbar spondylosis, lumbar intervertebral disc degeneration, mechanical spine pain syndrome with intermittent exiting nerve root irritation, and

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<sup>9</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>10</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>11</sup> *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).

<sup>12</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).

<sup>13</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>14</sup> *J.S.*, Docket No. 19-0022 (issued November 4, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

sacroiliitis. He opined that the September 27, 2019 MRI study and objective findings on examination demonstrated that the accepted July 2, 2018 occupational motor vehicle accident aggravated preexisting conditions and caused new injuries. Dr. Kuhar explained that the July 2, 2018 motor vehicle accident caused mechanical spine pain syndrome with intermittent exiting nerve root irritative symptoms at L4-5, corroborated by the September 27, 2019 MRI scan, which demonstrated an L4-5 retrolisthesis with moderate-sized broad-based disc protrusion, left paracentral annular tear, encroachment on the left neural foramen, hypertrophic facet disease contributing to borderline central stenosis, and mild bilateral foraminal compromise.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>15</sup>

Dr. Kuhar is a Board-certified anesthesiologist who is qualified in his field of medicine to render rationalized opinions on the issue of causal relationship, and he provided an understanding of the claimed mechanism of injury. The Board finds that, although his reports are insufficiently rationalized to meet appellant's burden of proof to establish her claim, they are relevant evidence in support of her claim. Dr. Kuhar's medical reports therefore raise an uncontroverted inference of a causal relationship between appellant's claimed neck and back conditions and the accepted employment incident. Further development of appellant's claim is therefore required.<sup>16</sup>

On remand OWCP shall prepare a statement of accepted facts setting forth the accepted July 2, 2018 employment incident and refer appellant to a second opinion physician in the appropriate field of medicine for an examination and a rationalized medical opinion as to whether the accepted employment incident caused, contributed to, or aggravated the diagnosed neck and back conditions.<sup>17</sup> If the second opinion physician disagrees with the pathophysiological explanation provided by Dr. Kuhar, he or she must provide a fully-rationalized explanation explaining why Dr. Kuhar's opinion is unsupported. After this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.<sup>18</sup>

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<sup>15</sup> See *J.D.*, Docket No. 18-0279 (issued January 6, 2020); *K.P.*, Docket No. 18-0041 (issued May 24, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>16</sup> *A.G.*, Docket No. 20-0454 (issued October 29, 2020); see *J.D.*, *id.*; *K.P.*, *id.*; *M.K.*, Docket No. 17-1140 (issued October 18, 2017); *G.C.*, Docket No. 16-0666 (issued March 17, 2017); *John J. Carlone*, *supra* note 12; *Horace Langhorne*, 29 ECAB 280 (1978).

<sup>17</sup> See *A.G.*, *id.*; see also *L.P.*, Docket No. 18-1252 (issued June 4, 2020).

<sup>18</sup> 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); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 10, 2020 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: February 11, 2021  
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