

File Number:
HR10-D-H

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U.S. DEPARTMENT OF LABOR

OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311
Phone: (202) 693-0045

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Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A hearing was held on _____ As a result of such hearing, it has been determined that the decision issued by the District Office should be vacated and the case remanded to the district office for further action as explained in the enclosed copy of the Hearing Representative's Decision.

Your case file has been returned to the Jacksonville District Office. You may contact that office by writing to our Central Mail Room at the following address:

US DEPARTMENT OF LABOR
OWCP/DFEC, PO Box 8311
LONDON, KY 40742-8311

Sincerely,

Division of Federal Employees' Compensation

PAUL FELSER
FELSER LAW FIRM PC
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, August 28, 2020

U.S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of _____
Claimant; Employed by _____ Case No. _____

An Oral Hearing was held on _____ As a result, the decision of the District Office dated _____
has been set aside, and the case has been remanded for additional actions, for the
reasons set forth below:

The issue for determination is whether the evidence of record is sufficient to establish that the claimant sustained a work-related injury in the performance of duty, in the manner alleged.

The claimant is an employee of the _____ where she works as a _____.
She filed form CA-1 "Notice of Traumatic Injury" on _____
alleging that she was injured at work on _____ when she
slipped and fell on a wet floor, landing on her back and right side, injuring her back, neck, head
and hip on the right side of her body.

On the back of form CA-1, Supervisor _____ advised that her knowledge of the facts
was consistent with the claimant's statements, but argued the claimant was not in the
performance of duty at the time of the incident. She was walking the claimant to the VAMC ER
due to another condition. When she fell, they were *en route* and waling in the breezeway that
connects the _____ Regional Office with the _____ VAMC.

In a letter dated _____, the employing agency challenged the claim based on
insufficient medical evidence. The medical evidence received did not provide a diagnosis that
could be related to the work incident, nor did it support that the incident aggravated a medical
condition causally related to employment factors.

The following medical documents were received to the record in connection with the initial claim
form:

- _____ letter from _____ Staff Physician, Dr. _____ advising the claimant
was evaluated in the Emergency Department and should be excused from work until _____

- _____ note from _____ Hospital
Emergency Department indicating the claimant was seen and treated there on _____
and may return to work on _____

- _____ letter advising the claimant was seen in the office of Dr. _____ due to
a recent fall with subsequent injuries that caused moderate to severe pain. She would
not be able to return to work for 4 weeks.

On [redacted] the District Office released a letter to the claimant advising that the additional evidence was needed for acceptance of the claim. The claimant was asked to provide a written statement to explain why she was being taken to the VAMC ER on the date of injury prior to the fall at work and what condition she was being treated for. She was asked to describe any prior similar injury or disability from work. She was also asked to provide a detailed description of the work injury on [redacted]. Additionally, the claimant was asked to provide a complete copy of the medical records from the VAMC on [redacted] and from the ER on [redacted]. Lastly, the claimant was advised she should provide a narrative report from her physician in support of the claim, with dates of examination and treatment; history and date of injury; detailed description of findings; results of all X-ray and laboratory tests; diagnosis and clinical course of treatment followed; and physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. The claimant was advised she would be afforded an additional 30 days to provide such evidence in support of the claim.

A letter was also released to the employing agency on [redacted] requesting additional information relevant to the claimed injury. The employer was asked to explain why the supervisor was escorting the claimant to the VAMC ER prior to the work incident of [redacted]. The employer was asked to respond within 30 days and was reminded that 20 CFR 10.117(b) provides that, in the absence of a full reply from the agency, OWCP may accept the claimant's allegations as factual.

The employer responded with a written statement dated [redacted] advising that the claimant advised her supervisor that she was having multiple panic attacks. This was the reason she was escorting the claimant to the VAMC emergency room when she slipped and fell.

The claimant responded with a written statement dated [redacted] advising that she was having a panic attack on [redacted] that had subsided. She was instructed by her supervisor to accompany her to the VAMC emergency room as a precaution. No further treatment for panic attack was received. Treatment was received for injuries resulting from the fall on [redacted]. The injury occurred while she was walking to the VAMC ER via the breezeway that connects the [redacted] Regional Office with the [redacted] VAMC with her supervisor, directed to be evaluated after a panic attack that had subsided. She slipped and fell on the wet floor of the breezeway landing on her back and right side. Her head hit the floor. There were no floor signs to warn of the hazard. She injured her back, neck, head and hip. Due to the fall, she was having severe headaches, neck pain radiating down her back and low back spasms with sharp pain shooting down the right leg. The claimant confirmed she had a pre-existing back condition, but in no way did it hinder her ability to complete her work. It was managed and under control. The claimant advised she had submitted the VAMC records from [redacted] and the ER report dated [redacted].

A print-out was received identifying the claimant's service-connected conditions and accepted disabilities: 30% for temporomandibular joint disorder; 100% for major depressive disorder with anxiety and insomnia; 30% for migraine and tension headaches; 10% for low back facet sclerosis; 20% for lumbar radiculopathy, right lower extremity. The following conditions were identified as not service connected: lumbar radiculopathy, left lower extremity and bilateral flat feet.

The following additional medical documents were received to the record within the allowed period:

- ER records from the VAMC with lab and radiological results, noting the claimant was seen for typical panic attacks after starting a new job last month and also headaches, back pain and nausea after a fall in the wet breezeway on the way to the VAMC, landing on her right side and back, striking her head with no loss of consciousness. X-rays of the spine showed mild degenerative changes with no acute fractures.
- ER notes from Health Care noting the claimant was seen for lower back pain and body aches after a slip and fall. She was seen in the VA and x-rays were negative. Pain medication was not helping and she felt like she was having spasms. The clinical impression was neck pain; acute low back pain without sciatica, unspecified back pain laterally; muscle spasm and myalgia.
- progress notes by MD, indicating that he saw the claimant for back pain began a couple of weeks ago after she slipped on a wet floor and fell down at the VA, injuring her low back, neck and right leg. X-rays did not reveal any acute fracture. She had mild degeneration of the lumbar spine. She was having pain despite medication. She was seen in the Emergency Room a few days prior. She stated she was unable to work because she had to drive to for her job and it was too painful to sit in the car that long. A diagnosis of lumbosacral strain and muscle spasm of back was given. The claimant was referred for physical therapy to treat acute low back pain with sciatica and neck pain after recent fall.
- progress notes by MD, noting the claimant presented with low back pain, most prominent in the thoracic spine and in the lumbar spine. It did not radiate. It was constant, moderate in intensity, dull, throbbing, aching, and cramping. This was an acute episode with no prior history of back pain. The current episode of pain started 2 weeks ago, precipitated by a fall at work on Aggravating factors contributing to the back pain may be a recent fall. She denied radicular leg pain, numbness in the legs, weakness of the legs or incontinence. She had not found anything that helps relieve the pain. It worsens with movement. She had been to ER, treated by other doctors. X-ray of the lumbar spine was ordered along with pregnancy test, which was negative. Pain injection was also ordered. The primary diagnosis given was low back sprain.
- progress notes by MD, noting the claimant was seen for low back pain under worker's compensation. The pain did not radiate. It was an acute episode with no prior history of back pain. The current episode of back pain started 2 weeks ago. The precipitating event was a fall at work on She reported stiffness, muscle spasm, radicular right leg pain and numbness in the right lower leg and foot. She denied weakness of the legs or incontinence. She had not found anything to relieve the pain, which worsened with movement. Dr. diagnosed sacroiliitis, not otherwise specified; and low back pain. He ordered lumbar

MRI. He noted that sciatica continued to linger despite aggressive medical treatment. PT would be arranged depending on MRI results and referral to orthopedic.

- A request for approval of MRI and physical therapy for low back was received from Dr.
- progress notes by , MD, noting the claimant requested a copy of her chart from every visit. She was seen for sacroiliitis, not elsewhere classified, discomfort most prominent in the thoracic spine and in the lumbar spine, radiates to the right buttock, thighs, and right foot; constant, moderate in intensity, dull, throbbing, aching, and cramping. This was a chronic problem with essentially constant pain. The current episode of pain started 2 months ago, precipitated by a fall at work on . Associated symptoms included stiffness, paravertebral muscle spasm, radicular right leg pain and numbness in the right lower leg and right foot. She denied weakness of the legs or incontinence. She had not found anything to relieve the pain. The pain worsened with movement. Since the last visit, she was given a trigger point injection with only about 2-3 days of relief and the back pain came back. Due to the worker's comp insurance, she had not been able to schedule MRI or Physical Therapy. A primary diagnosis of low back pain was given.

On the District Office issued a formal decision denying the claim with a finding that the medical evidence of record was insufficient to establish a causal relationship between any diagnosed condition and the established work events of . In her statement, the claimant advised that she had a similar pre-existing injury in the military but it had been under control prior to the work accident. She provided a list of VA approved conditions showing that she suffers from a long history of pre-existing lumbar radiculopathy left lower extremity (deemed not service connected); low back facet sclerosis (10% service connected pre-discharge exam); lumbar radiculopathy, right lower extremity (20% service connected pre-discharge exam) and migraines and tension headaches (30% service connected pre-discharge exam). The claimant did not submit medical records for all prior treatment of these pre-existing conditions, as was requested. The medical records that were received were devoid of an accurate medical history as they did not recognize any of the pre-existing lumbar conditions. Additionally, the claimant failed to provide medical records for prior medical of her pre-existing lumbar conditions.

The District Office discussed the specific deficiencies in the medical records, noting that no physician of record provided a well-reasoned opinion based on a complete and accurate history of injury explaining how the work incident of caused or contributed to any diagnosed condition. Medical records from the VA dated released the claimant to full duty work on . On Hospital released her back to work effective . She did not return to work and sought treatment on with Dr. , who stated in his report, "The pain began a couple of weeks ago after she fell at work at the in ." "She states that she is unable to work because she has to drive to for her job and it is too painful for her to sit in the car for that amount of time." Dr. listed nine conditions, but did not state which condition, if any, was caused by the work incident of . Dr. kept the claimant off work based on her opinion she was unable to work due to pain. Dr. report was devoid of any mention of the long history of pre-existing lumbar radiculopathy lower right and lower left extremities and low back facet sclerosis. Thus, his report was devoid of an accurate medical

history of the pre-existing lumbar conditions and was of diminished probative value in establishing the claim. In reports dated [redacted] Dr. [redacted] stated, "This is an acute episode with no prior history of back pain. She states that the current episode of pain started 2 weeks ago." Dr. [redacted] statements were not accurate and were contradicted by the VA lumbar disability ratings. His report was devoid of any mention of the long history of pre-existing lumbar radiculopathy, lower right and lower left extremities and low back facet sclerosis. Thus, his reports were devoid of an accurate medical history of the pre-existing lumbar conditions and were of diminished probative value in establishing the claim. Dr. [redacted] report was also devoid of any mention of the long history of pre-existing lumbar radiculopathy lower right and lower left extremities and low back facet sclerosis. Thus, her reports were devoid of an accurate medical history and were of diminished probative value in establishing the claim.

The claimant disagreed with this decision and requested an appeal in the form of an Oral Hearing before the Branch of Hearings and Review. A Hearing was held by telephone on [redacted].

The claimant did not attend the Hearing; however, her authorized representative, Attorney Paul Felser, offered argument on the record on behalf of the claimant. Employing agency representatives were also present for the Hearing to observe the proceedings.

At the Hearing, Attorney Felser noted the factual components of the claim were not an issue. It was a slip and fall. The claimant hit her head. She immediately had complaints of neck pain, low back pain, head, right hip, neck and back issues. She was on the way to the VA medical center when the injury occurred. She continued there after the fall and was seen that very day. Medical evidence from that visit was provided showing immediate pain, difficulties, imitations and restrictions. She had consistent medical treatment following the injury. The ER notes from the VA showed she hit her head during the fall and was diagnosed with headaches. There was medical evidence from [redacted] ER a couple of days later. Dr. [redacted] at [redacted] medical diagnosed muscle spasms. An MRI was ordered and the claimant was placed off work. Dr. [redacted] identified a lesion of the sciatic nerve, which should be considered a diagnosis. There was indication of positive straight leg test on [redacted]. In his [redacted] note, Dr. [redacted] gave a consistent history of events, comprehensive analysis and assessment with a clear diagnosis for the injury, lumbosacral strain and muscle spasms of the back. There was an acute trauma and the noted conditions do not spontaneously occur.

Attorney Felser argued that medical documents after the fall identified consistent findings as muscle spasms and acute back pain following the injury. The claimant was experiencing headaches, which is a diagnosis permitted by OWCP, accepted in many past claims. The claim was initially administratively approved for \$1500 of medical treatment, indicating there was little doubt of a work-related injury. There was quite a bit of medical evidence to establish an acute injury, even though the claimant also had a pre-existing condition. Quite a bit of documentation regarding the pre-existing condition had been submitted for the appeal. He noted that it is well-established under the law that a work-related aggravation of an underlying condition is compensable, no matter how slight. The claim should have been accepted for at least the bare minimal conditions: sprain, strain, lesion of the sciatic nerve, headaches, which were consistent with the claimed injury. An acceptance of even a contusion would have kept the claim from being fully denied. The fact that she had a pre-existing condition was not disqualifying. An aggravation of that condition would be consistent with her acute injury. The MRI studies done before and after the injury showed differences. The more recent MRI showed an annular tear at L5. The claim should be accepted or at the very least remanded for additional development as the evidence was sufficient to establish a *prima facie* claim.

Attorney Felser asked that the record remain open for 30 days to allow for the submission of additional medical evidence for the appeal. The request was granted and the record held open. Copies of the transcript were released to the claimant, her representative and the employing agency. Their comments were invited. As of this date, no comments on the transcript have been received. On [redacted] Attorney Felser requested a time extension to submit post-hearing documentation for the appeal due to the COVID19 pandemic. On [redacted] Attorney Felser was advised that his request had been granted and an additional extension for the submission of evidence had been allowed through [redacted].

Following the conclusion of the Hearing, Attorney Felser provided 100 pages of medical records from the VA documenting prior treatment of the claimant's pre-existing service connected conditions, as was requested by the District Office.

The following additional medical documents were also received to the record in connection with the appeal, documenting treatment and evaluation of the claimant's medical conditions after the fall at work or

- [redacted] letter from Dr. [redacted] noting the claimant was under medical treatment for back pain after an injury due to a fall on [redacted]. Since then, she was seen in clinic by physicians for several visits and continued with back pain and right leg weakness and loss of sensation despite treatment. She had a prior back injury while in service in the military, but this had been stable for years. The current symptoms were due to the recent fall. Pain and weakness in her right leg indicated sciatic nerve irritation. Although x-rays were normal, MRI was required to make a diagnosis of spinal nerve impingement, which would dictate any further treatments and referrals needed. Little improvement was seen in the past 1 ½ months of treatment. Delaying necessary imaging would only deteriorate the condition.
- [redacted] office notes from Dr. [redacted] noting the claimant was seen for follow up for workers' compensation low back pain with no improvement and she had not had physical therapy. The pain in the lower back was radiating into the right lower extremity, buttock, thigh, calf and foot. It was a constant pain that was precipitated by a fall at work on [redacted]. She had not found anything to relieve the pain, worsened by walking, back flexion sitting and standing. Her medical history was significant for sciatica. Examination was performed and the assessment was low back pain; paresthesia of skin; and lesion of sciatic nerve, right lower limb. The claimant was referred for an MRI of the lumbar spine without contrast.
- [redacted] MRI report, lumbar spine, significant for new desiccation of the L5 disc with a small broad-based disc bulge; new annular tear/fissure in the posterior aspect of the L5 disc when compared with prior lumbar MRI of [redacted] mild facet joint arthropathy at L4-5 and L5-S1; no significant muscular atrophy.
- [redacted] office notes from Dr. [redacted] noting some pain relief for low back pain with the current treatment regimen to a more tolerable level. She still continued to have pain every day, heavily relying on medications for relief. Time was spent going over the MRI report of [redacted]. The MRI changes suggested new disc disease at L5 - S1

when compared to a previous MRI done at the same facility in The claimant would be referred to an Orthopedic spine specialist to help manage the problem.

- office notes from MD, evaluation of progressive lower back pain ongoing since she fell in She was injured in the military and has chronic back pain. She fell when working at the VA Hospital in and injured her back again. She was seen by Dr. She had low back pain, limited range of motion bending at the waist and complaints of migraine headaches. Dr. diagnosed annular tear of lumbar disc (primary) and BMI of 24. Recommendations included referral for physical therapy, functional capacity evaluation and pain assessment.
- progress notes by Dr. noting that the claimant was seen for follow-up for work-related back pain. She had not been to physical therapy and there was no improvement. The pain in the lower back was radiating into the right lower extremity, buttock, thigh, calf and foot. It was a constant pain that was precipitated by a fall at work on She had not found anything to relieve the pain, worsened by walking, back flexion sitting and standing. Her medical history was significant for sciatica. The primary diagnosis was low back pain. Other diagnoses were sciatica, right side; and other intervertebral disc disorders, lumbar region. The claimant was to start PT and epidural injections of the lumbar spine. She continued to have significant pain despite months of pain medications.
- letter from Dr. indicating the claimant fell at work on She had a previous injury to the lower back that was recognized on MRI performed on After the injury, an MRI was performed on When the radiologist compared the MRI findings, new L5 changes were seen since the prior injury MRI in Given the MRI changes, it would appear that this was of a permanent nature. The claimant continued to have daily pain and limitation of movement since the injury, seen in movements of the lower back such as flexion and rotation, as well as prolonged sitting, ambulating and weight-bearing. Dr. advised he was unable to determine return to work status as the claimant needed to see an orthopedic spine specialist to help her develop a plan of treatment. The diagnoses given were: lesion of sciatic nerve right lower limb; sacroiliitis, not otherwise classified; cervicalgia; muscle spasm of back; and headache.
- progress notes by Dr. noting the claimant was seen for paperwork for workers' comp. She was evaluated for low back pain radiating into the right lower extremity, a chronic problem with constant pain. The current episode of pain started 3 months ago. The event that precipitated it was a fall at work on Nothing was found to relieve the pain. Her medical history was also significant for back pain while in the military. Dr. provided his detailed examination findings and the following assessment: sacroiliitis; sciatica; other intervertebral disc degeneration, lumbosacral region; low back pain; muscle spasm of back; sacroiliitis, not elsewhere classified; and sciatica, right side. The claimant had been in physical therapy for 3 weeks, which was helping and just had her first pain management visit. The plan was for an epidural into the lumbar spine to lessen the pain in the lower back.

Based on my careful consideration of the evidence of record at this time, I find that the decision dated _____ should be set aside. Based on submission of new evidence on appeal, the claim is not in posture for a decision at this time. Additional development of the medical evidence is warranted before a decision on this matter is rendered.

A claimant seeking benefits under the FECA has the burden of proof to establish the essential elements of his or her claim. When the claimant alleges an injury in the performance of duty, the claimant must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The claimant must also establish that such event, incident or exposure caused an "injury" as defined in the Act and its regulations.¹ The term "injury" as defined by the FECA refers to some physical or mental condition caused by trauma or repeated exposure to, or contact with, certain factors, elements, or conditions.²

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.³

In this case, the claimant works as a _____ for the _____. She filed form CA-1 on _____ alleging that she was injured at work on _____ when she slipped and fell on a wet floor in the breezeway between the regional office building and the _____ Medical Center while *en route* to the VAMC, landing on her back and right side, striking her head. Statements from the claimant and her supervisor confirm that the incident occurred when the claimant was being escorted to the _____ Medical Center to be evaluated for a panic attack.

Directly after the fall on _____, the claimant was seen by Dr. _____ at the VA Medical Center where she was evaluated for panic attacks and back pain, headaches and nausea. X-rays showed degenerative disc disease, but no acute injuries. She went to the ER on _____ and was seen for lower back pain and body aches after a slip and fall. The clinical impression was neck pain; acute low back pain without sciatica, unspecified back pain laterally; muscle spasm and myalgia. Dr. _____ saw the claimant for low back pain on _____ after a fall about 2 weeks ago. He noted x-rays showed degenerative disc disease. A diagnosis of lumbosacral strain and muscle spasm of back was given. On _____ Dr. _____ saw the claimant for an episode of low back pain started 2 weeks ago, precipitated by a fall at work on _____. The primary diagnosis given was low back sprain. On _____ diagnosed sacroiliitis, not otherwise specified; and low back pain. He ordered lumbar MRI. He noted that sciatica continued to linger despite aggressive medical treatment. On _____ Dr. _____ diagnosed low back pain in connection with the work incident.

The claim was denied by the District Office with a finding that the medical evidence was insufficient to establish a causal relationship between any diagnosed condition and the work incident on _____. The evidence received to the record showed the claimant had long-standing, pre-existing service-connected conditions affecting her low back. None of the

1 *Melissa A. Carter*, 45 ECAB 618 (1994.)

2 *Christine S. Hebert*, 49 ECAB ____ (Docket No. 96-812, issued August 4, 1998.)

3 *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

physicians of record took this history of injury into account in any of the reports of record. The reports not based on an accurate history of injury and with insufficient medical reasoning were insufficient to meet the burden of proof.

I find the decision of the District Office was correct, based on the evidence of record at the time of adjudication. It is clear that the work incident of _____ occurred in the manner alleged and the claimant was in the performance of duty at that time, as she fell on the premises of the employing agency during her regular work shift. Although numerous medical reports were received from several physicians that had examined the claimant and provided a diagnosis after the fall at work on _____, the physicians did not offer any clear opinion addressing causal relationship, nor did they discuss a complete and accurate history of injury in their reports. In contrast, the claimant's physicians incorrectly stated the claimant had no significant medical history in their reports. Such reports are of diminished probative value and insufficient to establish causal relationship under the FECA.

A person who claims benefits under the FECA has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specified conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence based upon a complete factual and medical background showing causal relationship. The mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two. Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁴

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁵ The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.⁶ Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.⁷

On appeal, the claimant provided supplemental reports from her treating physicians, Drs. _____ and _____ and Dr. _____ in which they recognized and discussed the claimant's pre-existing chronic back pain due to prior service connected injuries. A new lumbar MRI report dated _____ was also received to the record. With consideration of this new evidence, the claimant's physicians explained that, when compared to a prior MRI in _____, the MRI of _____ showed new findings which were attributed to the fall at work on _____. Dr. _____ diagnosed an annular tear. Dr. _____ diagnosed new disc disease at L5 - S1 which

4 *Steven R. Piper*, 39 ECAB ____ (1987); *Nino V. DiGrezio*, 39 ECAB ____ (1988); *Jill Thimmesch*, 39 ECAB ____ (1988); *Johnson K. Yazzie*, 39 ECAB ____ (1988); *Earl D. Price*, 39 ECAB ____ (1988); *Orlando Vivens*, 39 ECAB ____ (1988); *Lawrence E. Bennett*, 39 ECAB ____ (1988); *Michael Stockert*, 39 ECAB ____ (1988); *Velta H. Mikelsons*, 39 ECAB ____ (1988); *Richard F. Hines*, 39 ECAB ____ (1988).

5 Federal (FECA) Procedure Manual, Part 2 -- Claims, Causal Relationship, Chapter 2.805.3e (January 2013).

6 *Geraldine H. Johnson*, 44 ECAB ____ (Docket No. 92-1611, issued June 9, 1993).

7 *Lourdes Davila*, 45 ECAB ____ (Docket No. 93-102, issued October 20, 1993); *Jeanne E. Swanson*, 45 ECAB ____ (Docket No. 93-60, issued January 12, 1994).

he felt were permanent in nature. In his most recent office notes, Dr. _____ gave the following diagnoses in connection with the work injury of _____: sacroiliitis; sciatica; other intervertebral disc degeneration, lumbosacral region; low back pain; muscle spasm of back; sacroiliitis, not elsewhere classified; and sciatica, right side.

I find the reports from the claimant's physicians submitted on appeal do not contain sufficient medical reasoning to meet the burden of proof under the requirements of the FECA. These are brief, unreasoned statements on causal relationship. The mere fact that comparison of MRI findings from _____ and _____ show changes is not sufficient to establish these changes are due to the work injury of _____. The claimant's physicians did not explain specifically how the work incident caused or contributed to these changes, or caused any of the noted medical conditions.

Although these new reports are not sufficient to accept the claim, I find the claimant's physicians on appeal have provided sufficient medical opinions to warrant further development of the medical evidence before a decision on the claim is reached. Drs. _____ and _____ have now provided opinions based on a reasonably accurate history of injury, acknowledging the significant pre-existing low back condition and an accurate mechanism of injury for the fall at work on _____. They performed direct examinations of the claimant, reviewed the objective medical findings and diagnostic test results and offered their unequivocal opinions supporting that changes seen on the _____ lumbar MRI at L5-S1 are causally related to the fall at work, offering firm diagnoses for the work-related medical conditions they identified.

Although the claimant's physicians have not offered sufficient medical reasoning to meet the claimant's burden of proof, they have raised an uncontroverted inference of causal relationship. This is substantial evidence in support of the claim, which has not been contradicted by any other physician of record. The medical evidence of record is therefore sufficient to require further development of the case record by the Office.⁸

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and the Office is not a disinterested arbiter.⁹ While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence and the Office has an obligation to see that justice is done.¹⁰

The non-adversarial policy of proceedings under FECA is reflected in the regulations at section 10.121.11 When all evidence has been gathered from the attending physician and there is not enough evidence regarding diagnosis or an adequately reasoned opinion about causal relationship to accept the case, but there is sufficient evidence to suggest that the claimant might be entitled to benefits, the claimant should be referred to a second opinion physician.¹²

Upon return of the case file record to the District Office, a Statement of Accepted Facts (SOAF) should be composed; and the claimant should be referred to an appropriate medical specialist for a directed "second opinion" examination, to provide a rationalized opinion addressing

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁹ *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

¹⁰ See *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Lourdes Davila*, 45 ECAB 139 (1993).

¹¹ 20 C.F.R. § 10.121.

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluation Medical Evidence*, Chapter 2.810.9(b)(1) (June 2015).

whether the claimant sustained a work-related injury as alleged.¹³ The Office provides a physician with a SOAF to assure that the medical specialist's report is based upon a proper factual background.¹⁴ The SOAF must include the date of injury, claimant's age, the job held on the date of injury, the employer, the mechanism of injury and the claimed or accepted conditions.¹⁵

The second opinion physician should also receive copies of the medical evidence of record to review prior to the examination, including diagnostic studies, treatment records and office notes from the attending physicians. Additionally, it is noted that the claimant's representative has provided copies of the claimant's VA treatment records for her pre-existing injuries. These should also be provided to the second opinion physician for consideration.

The second opinion physician should discuss the history of injury according to the SOAF and available records; conduct a thorough examination; provide his or her own detailed subjective and objective examination findings; discuss the objective test results; and provide a firm diagnosis for medical conditions affecting the claimant following the work incident of November 26, 2019. The second opinion physician should discuss the work incident and the claimant's pre-existing conditions, then provide a rationalized medical opinion explaining whether the work incident caused or contributed to any diagnosed medical condition by direct causation, aggravation, acceleration, precipitation or otherwise.

If the second opinion physician believes a pre-existing condition was in some way aggravated, accelerated or in any other way affected by the work incident, the rationalized medical opinion must include a discussion of the nature of the underlying conditions; their natural or traditional course; how the underlying conditions may have been affected by federal work duties as determined by medical records covering the period of employment; whether such affects, if any, caused material changes in the underlying conditions; or, if no material changes occurred, would the symptoms or changes indicative of a temporary aggravation have subsided or resolved immediately upon appellant's removal from the employment environment; or if not, at what point would such symptoms or changes have resolved. The physician should explain whether work-related aggravation of underlying conditions caused disability from work during any time period.¹⁶

The second opinion physician should be reminded that, under the FECA, it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relation. If the medical evidence reveals that an employment factor contributes in any way to the employee's condition, such condition would be considered employment related for purposes of compensation under the Act.¹⁷ Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.¹⁸ However, the normal progression of untreated disease cannot be stated to constitute aggravation of a condition merely because the performance of normal work duties reveals the underlying condition.¹⁹

¹³ *Robert J. Pitchford*, ECAB Docket 03-1415, Issued August 8, 2003.

¹⁴ *Helen Casillas*, 46 ECAB 1044 (1995).

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statements of Accepted Facts*, Chapter 2.809.12 (June 1995); see also *Darletha Coleman*, 55 ECAB ___ (Docket No. 03-868, issued November 10, 2003).

¹⁶ *Newton Ky Chung*, 39 ECAB ___ (1988).

¹⁷ *Arnold Gustafson*, 41 ECAB ___ (Docket No. 89-0438 issued October 30, 1989).

¹⁸ *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁹ *Glenn C. Chasteen*, 42 ECAB 493 (1991).

If the second opinion physician finds the claimant sustained a work-related injury, he or she should explain whether the work-related medical condition(s) persist; if the work-related injury has resolved. The second opinion physician should explain whether any medical treatment is needed for the work-related conditions. Any period(s) of disability due to a work-related medical condition should be identified.

The second opinion physician should provide medical reasoning to support his or her medical opinions; and provide a discussion of any supportive evidence.

Once the second opinion physician's report is received, the District Office should undertake any additional development of the evidence such as it finds warranted, and issue a *de novo* decision on the issue of whether the evidence is sufficient to establish a work-related injury, as alleged.

For the reasons set forth above, the decision dated . is hereby set aside, and the case is remanded to the District Office for actions consistent with this decision.

Issued:
Washington, D.C.

Electronically Signed (DSL)
Hearing Representative
Branch of Hearings and Review
for
Director, Office of Workers'
Compensation Programs