

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

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**A.D., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Elgin, IL, Employer** )  
\_\_\_\_\_ )

**Docket No. 21-0143**  
**Issued: November 15, 2021**

*Appearances:*

*Stephanie Leet, 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, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 10, 2020 appellant, through counsel, filed a timely appeal from an October 27, 2020 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.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish disability from work commencing May 22, 2017 causally related to the accepted March 13, 2017

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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.*

employment injury; and (2) whether she has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted March 13, 2017 employment injury.

### **FACTUAL HISTORY**

On March 21, 2017 appellant, then a 25-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2017 she injured her lower back as a result of a motor vehicle accident when driving a long life vehicle (LLV) while in the performance of duty. She stopped work on March 22, 2017 and worked intermittently thereafter. OWCP accepted appellant's claim for lumbar strain.

On April 19, 2017 appellant was treated in the emergency room by Amy Forsberg, a physician assistant, for low back and right leg pain, which began on March 13, 2017 when her postal truck was struck by another vehicle. Ms. Forsberg diagnosed acute back pain and prescribed pain medication.

An x-ray of the lumbar spine, dated April 20, 2017, revealed minimal lumbosacral dextrocurvature, nonspecific straightening of the lumbar spine, and spondylosis of the L5 without evidence of spondylolisthesis. A magnetic resonance imaging (MRI) scan of the lumbar spine dated May 8, 2017 was normal.

On May 11, 2017 appellant was treated by a healthcare provider, whose signature was illegible, for worsening back pain radiating down the right leg. The clinical impression was back and leg pain. In work status discharge instructions, appellant was diagnosed with back pain with radiculopathy and held appellant off work.

On May 15, 2017 Dr. Dennis Wen, a Board-certified neurosurgeon, treated appellant for back and right leg pain and paresthesias. Appellant reported working as a letter carrier and on March 13, 2017<sup>3</sup> her postal truck was struck by another vehicle causing low back pain, which progressed into radiating pain to the right foot. Dr. Wen noted that a May 8, 2017 MRI scan of the lumbar spine was read as normal, but demonstrated an L5-S1 central bulge. Findings on examination revealed poor lumbar extension and rotation, diffuse lumbar tenderness, and markedly antalgic gait. He diagnosed severe low back and radiating right leg pain with hyperpathia, and allodynia lower leg/foot. Dr. Wen recommended an MRI scan of the thoracic spine and noted that appellant was not working. In a work status slip dated May 15, 2017, he diagnosed back and right leg pain and opined that appellant was totally disabled.

On May 22, 2017 appellant filed a claim for compensation (Form CA-7) for work-related disability commencing May 8, 2017.

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<sup>3</sup> Dr. Wen noted the date of injury as March 31, 2017. However, this appears to be a typographical error as the correct date is March 13, 2017.

In a development letter dated June 8, 2017, OWCP requested that appellant submit medical evidence to support disability during the period claimed causally related to the accepted March 13, 2017 employment injury. It afforded her 30 days to submit the requested evidence.

On June 27, 2017 Dr. Erika Jones, Board-certified in emergency medicine, evaluated appellant for lower back pain and right leg pain. Appellant reported being diagnosed with a lumbosacral strain after a motor vehicle accident in March 2017. She indicated that she was in a neurologist's office earlier in the day for an electromyogram (EMG) and nerve conduction velocity (NCV) study, but she could not complete the test because she was in pain. Dr. Jones diagnosed leg pain, back pain, and alcohol intoxication.

OWCP subsequently received x-rays of the lumbar spine and right hip dated June 1, 2017, which were negative. An EMG/NCV study dated June 29, 2017 was normal.

By decision dated August 10, 2017, OWCP denied appellant's claim, finding that she had not established disability from work, commencing May 22, 2017, causally related to the accepted March 13, 2017 employment injury.

OWCP received additional evidence. In reports dated August 14 and September 25, 2017, Dr. Wen continued to treat appellant for persistent back and radiating right leg pain with paresthesias. He noted an MRI scan of the lumbar spine reported minimal L4-5 and L5-S1 disc bulges. Findings on examination revealed a markedly antalgic gait, mild back pain with straight leg raising, and reduced sensation to pin prick in the right foot. Dr. Wen recommended appellant not return to work at the employing establishment unless sedentary light duty was available involving no lifting or twisting. He further noted that appellant could resume working a part-time home care position where she is sedentary and does not lift or transfer.

In an August 14, 2017 duty status report (Form CA-17), Dr. Wen noted the diagnosis due to injury was herniated nucleus pulposus and indicated that appellant could not resume work. In a prescription note dated September 25, 2017, he diagnosed mild L4-5, L5-S1 disc bulge and persistent back and right leg pain. In a separate prescription note of even date, Dr. Wen advised that appellant was able to resume her home care job because it was sedentary and did not involve lifting. In a work status note of the same date, he diagnosed back and leg pain and indicated that appellant could not work until the follow-up appointment.

On May 11, 2018 appellant was evaluated by Dr. Muhammad Choudry, a Board-certified internist, for a right thigh injury, which occurred on May 10, 2018 when a shelf fell from a box she was carrying striking her in the right thigh. Dr. Choudry diagnosed contusion of the right thigh.

On July 26, 2018 appellant, through counsel, requested reconsideration. She asserted that she continued to have residuals of her accepted conditions, which prevented her from returning to her job without restrictions until February 2018. Appellant also requested her claim be expanded to include disc herniation, sciatica, thoracic strain, vertebral fracture, compression fracture, and radiculopathy.

By decision dated September 12, 2018, OWCP denied modification of the August 10, 2017 decision.

On November 26, 2018 Mr. Ambrosia treated appellant for low back pain with radiculopathy with an onset date of March 13, 2017. He diagnosed strain of muscle, fascia, and tendon of the lower back, sustained in motor vehicle accident, and radiculopathy, lumbar region. In a work status discharge instruction of the same date, Mr. Ambrosia discharged appellant from his care with restrictions.

On January 19, 2019 Dr. Roland Liang, Board-certified in emergency medicine, treated appellant for anxiety, panic attacks, and difficulty breathing due to work-related stress. He diagnosed anxiety reaction.

An MRI scan of the lumbar spine dated April 8, 2019 was negative.

Dr. Wen evaluated appellant on May 28, 2019 for back and right leg pain. Appellant reported injuring her low back when another vehicle struck her postal truck. Dr. Wen? noted an MRI scan of the lumbar spine showed minimal L4-5 and mild L5-S1 central disc bulging. He diagnosed lumbar strain, back pain, and right radiculopathy with disc bulges. Dr. Wen noted that as a rural carrier appellant was required to lift up to 70 pounds with repetitive reaching and twisting several hours each day. Because of her demanding postal carrier duties, he released her from work from May 27, 2017 through February 22, 2018. However, Dr. Wen indicated that appellant was able to resume work as a part-time personal care assistant, which was sedentary and did not involve lifting or transfers. He opined to a reasonable degree of medical certainty that, as a result of the March 2017 motor vehicle accident, appellant developed back and right leg pain, back strain, bulging disc herniation's at L4-5 and L5-S1, and lumbar radiculopathy.

On September 4, 2019 appellant, through counsel, requested reconsideration.

By decision dated October 24, 2019, OWCP denied modification of the September 12, 2018 decision.

On April 22, 2020 appellant, through counsel, requested reconsideration. In support of her request, she submitted a March 9, 2020 report from Dr. Neil Allen, a Board-certified neurologist. Following a review of the medical records, Dr. Allen noted that appellant's injury occurred on March 13, 2017 when her delivery vehicle was struck on the left side while attempting a left turn. Appellant reported being jerked backwards, forwards, and side to side and experienced an immediate onset of low back and right lower limb pain. X-rays of the lumbar spine dated April 20, 2017 revealed spondylosis of L5 without evidence of spondylolisthesis. Dr. Allen explained that the motor vehicle accident on March 13, 2017 caused appellant's lumbar spine to be flexed forward and side to side at a high rate of speed and these rapid changes in motion resulted in forceful shifting of the gel-like center of her L4-5 and L5-S1 discs. The applied stress caused the breakdown and bulging of the fibrous outer layer of the L4-5 and L5-S1 discs. Dr. Allen opined that appellant's claim should be expanded to include intervertebral disc disorders with radiculopathy of the lumbar region as causally related to the March 13, 2017 employment injury.

By decision dated October 27, 2020, OWCP denied modification of the October 24, 2019 decision.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>7</sup>

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.<sup>8</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.<sup>9</sup>

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.<sup>10</sup> The opinion of the physician 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 factors identified by the employee.<sup>11</sup>

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing May 22, 2017, causally related to her accepted March 13, 2017 employment injury.

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>7</sup> *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

<sup>8</sup> *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

<sup>9</sup> *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>10</sup> *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

<sup>11</sup> *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

On May 15, 2017 Dr. Wen diagnosed severe low back and radiating right leg pain with hyperpathia, and allodynia lower leg/foot and noted that appellant was off work. In work status slips dated May 15 and August 14, 2017, he diagnosed back and right leg pain and opined appellant was totally disabled from work. Similarly, in reports dated August 14 and September 25, 2017, Dr. Wen treated appellant for persistent back and radiating right leg pain with paresthesias. He recommended that appellant not return to work at the employing establishment unless sedentary light duty was available involving no lifting or twisting. Likewise, in an August 14, 2017 duty status report (Form CA-17), Dr. Wen diagnosed herniated nucleus pulposus and indicated that appellant could not resume work. He evaluated appellant on May 28, 2019 and diagnosed lumbar strain, back pain, and right radiculopathy with disc bulges. Dr. Wen held her off work from May 27, 2017 through February 22, 2018. However, he did not provide an opinion on causal relationship. Thus, these reports are of no probative value and are insufficient to establish appellant's claim for compensation.<sup>12</sup>

Appellant was treated by Dr. Jones on June 27, 2017 for a lumbosacral strain after a motor vehicle accident in March 2017. On January 19, 2019 Dr. Liang treated appellant for anxiety, panic attacks, and difficulty breathing due to work-related stress. He diagnosed anxiety reaction. Similarly, in a March 9, 2020 report, Dr. Allen noted a history of injury on March 13, 2017 and diagnosed intervertebral disc disorders with radiculopathy of the lumbar region causally related to the March 13, 2017 employment injury. Likewise, in a prescription note dated September 25, 2017, Dr. Wen diagnosed mild L4-5, L5-S1 disc bulge and persistent back and right leg pain. On May 11, 2018 appellant was evaluated by Dr. Choudry who diagnosed contusion of the right thigh that occurred on May 10, 2018 when she was struck by a shelf at work. The Board finds that the reports of Drs. Jones, Liang, Allen, Wen, and Choudry do not provide an opinion on appellant's disability from work during the claimed period and, thus, these reports are of no probative value.<sup>13</sup>

Also received was a May 11, 2017 report from a healthcare provider, whose signature was illegible, for worsening back pain radiating down the right leg. There is no evidence that the document from the unidentified health care provider is from a physician. Medical documents not signed by a physician are not probative medical evidence and are insufficient to establish appellant's claim.<sup>14</sup>

Finally, appellant submitted results from diagnostic testing. The Board has held, however, that diagnostic studies standing alone are of limited probative value as they do not address whether the employment injury caused appellant to be disabled during the claimed period.<sup>15</sup> These reports are, therefore, insufficient to establish the claim.

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<sup>12</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> See *D.K.*, Docket No. 21-0214 (issued September 29, 2021); *R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

<sup>15</sup> See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

As the medical evidence of record does not include a rationalized opinion on causal relationship between appellant's claimed disability and her accepted employment injury, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>16</sup> When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.<sup>17</sup> Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>18</sup>

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.<sup>19</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 factors identified by the claimant.<sup>20</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that this case is not in posture for decision with regard to the expansion of the acceptance of the claim to include additional conditions.

In a March 9, 2020 report, Dr. Allen noted appellant's history of injury recounting that the appellant had been jerked backwards, forwards, and side to side and experienced an immediate onset of low back and right lower limb pain. He explained that the motor vehicle accident caused appellant's lumbar spine to be flexed forward and side to side at a high rate of speed and these rapid changes in motion resulted in forceful shifting of the gel-like center of her L4-5 and L5-S1 discs. Dr. Allen opined that the stress caused the breakdown and bulging of the fibrous outer layer

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<sup>16</sup> *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>17</sup> *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

<sup>18</sup> *J.M., id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

<sup>19</sup> *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>20</sup> *T.K., id.*; *I.J.*, 59 ECAB 408 (2008).

of the L4-5 and L5-S1 discs. He opined that the claim should be expanded to include intervertebral disc disorders with radiculopathy of the lumbar region.

The Board finds that, while Dr. Allen's reports were not fully rationalized, these reports are sufficient to require further development of the medical evidence. Dr. Allen rendered an opinion on the issue of causal relationship, provided a pathophysiological explanation of the mechanism of the injury, and demonstrated a comprehensive understanding of the medical record and case history. The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>21</sup> Although Dr. Allen's opinion is insufficiently rationalized to establish causal relationship, it is sufficient to require that OWCP further develop the medical evidence in the claim.<sup>22</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>23</sup> OWCP has an obligation to see that justice is done.<sup>24</sup>

On remand OWCP shall refer appellant, a statement of accepted facts, and the medical record to a specialist in the appropriate field of medicine for an evaluation and a well-rationalized opinion as to whether the diagnosed conditions are causally related to the accepted March 13, 2017 employment injury. If the physician opines that the additional diagnosed conditions are not causally related to the employment injury, he or she must explain, with rationale, how or why the opinion differs from that of Dr. Allen. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision regarding the expansion of the acceptance of appellant's claim.

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing May 22, 2017, causally related to the accepted March 13, 2017 employment injury. The Board further finds that this case is not in posture for decision with regard to whether

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<sup>21</sup> *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011); *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

<sup>22</sup> *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *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); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>23</sup> *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>24</sup> *See K.P.*, Docket No. 18-0056 (issued January 27, 2020) (Chief Judge Koromilas dissenting) (the majority found that Dr. Allen's medical records review was sufficient to require further medical development); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted March 13, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 15, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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