United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant	)	
and	)	**Docket No. 21-0927**
	)	**Issued: January 26, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Laurens, SC, Employer	)	

Appearances:
Paul H. Felser, Esq., for the appellant[1]
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 June 2, 2021 appellant, through counsel, filed a timely appeal from a January 6, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the January 6, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a traumatic aggravation of lumbar degenerative disc disease and osteoarthritis of the lumbar spine as causally related to the accepted April 24, 2015 employment injury.

FACTUAL HISTORY

On April 28, 2015 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2015 she injured her chest, left leg and knee, head, and left shoulder blade when her vehicle was rear-ended while she was in the performance of duty. OWCP accepted the claim for a contusion of the chest wall, a contusion of the face, scalp, and neck, and post-concussion syndrome. Appellant stopped work on April 24, 2015 and returned to part-time employment on May 18, 2015. She stopped work again on November 30, 2015 and did not return. OWCP paid appellant wage-loss compensation for disability on the supplemental rolls effective June 9, 2015 and on the periodic rolls effective February 7, 2016.

In a progress report dated May 8, 2015, Dr. Vincent Green, Board-certified in family medicine, reviewed appellant's history of an April 24, 2015 motor vehicle accident (MVA). He noted her complaints of upper back pain and pain radiating into the left leg. Dr. Green diagnosed lumbar radicular pain.

On May 28, 2015 Dr. Christopher T. Nelson, Board-certified in family medicine, discussed appellant's complaints of continued left shoulder and left low back pain following an April 24, 2015 MVA. On July 1, 2015 he diagnosed concussion, a forehead abrasion and contusion, a chest wall contusion, left low back pain/strain, left hip pain/contusion, left upper back pain/strain, and left knee pain/strain causally related to the accepted employment injury.

On July 23, 2015 OWCP advised appellant that it had expanded the acceptance of her claim to include back sprain and left hip contusion.

An August 27, 2015 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated severe bilateral facet arthropathy at L4-5 with mild anterolisthesis of L4 on L5 with no neural impingement and asymmetric facet arthropathy on the left at L5-S1 without neural impingement.

In a report dated September 14, 2015, Dr. Matthew A. Close, an osteopath, noted that a lumbar MRI scan had demonstrated mild diffuse degenerative changes without herniation and facet arthropathy at the lower lumbar levels without neuroforaminal stenosis. He diagnosed left hip pain, low back pain with sciatica, laterality unspecified, lumbar radicular pain, facet arthropathy, and grade 1 spondylolisthesis. Dr. Close found that appellant's April 2015 MVA had "likely aggravated some underlying facet arthropathy which is causing some left-sided lower extremity neurologic symptoms."

On January 19, 2016 Dr. Close opined that appellant's April 24, 2015 employment-related MVA had exacerbated her severe facet arthropathy at L4-5 and L5-S1 and anterior spondylolisthesis at L4-5.

In a February 8, 2016 report, Dr. Katarzyna Zofia Kocol, an osteopath, evaluated appellant for low back pain after an April 2015 employment-related injury. She diagnosed facet arthropathy and spondylolisthesis. Dr. Kocol recommended a radiofrequency ablation from L3 to L5 on the left.

On August 25, 2016 Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), opined that the proposed radiofrequency ablation was medically necessary due to appellant's continued back pain. He found that she had sustained an aggravation of the facet joints "when the back was sprained at the time of the accident."

OWCP, on November 10, 2016, referred appellant to Dr. Glenn L. Scott, a Board-certified orthopedic surgeon, for a second opinion examination on the extent of her current condition and disability.

On November 30, 2016 appellant underwent an OWCP-authorized radiofrequency ablation on the right at L3 and L4.

In a report dated December 15, 2016, Dr. Scott discussed appellant's history of injury and provided findings on examination. He diagnosed degenerative disease of the lumbar spine with traumatic aggravation, lumbar facet arthropathy with secondary degenerative listhesis at L4-5, obesity, and fibromyalgia by history. Dr. Scott opined that appellant was disabled from employment.

In a March 29, 2017 report, Dr. Robert LeBlond, a physiatrist, advised that he was treating appellant for low back pain with radiculopathy after a MVA. He diagnosed osteoarthritis of the lumbar spine with radiculopathy.

On June 27, 2017 counsel requested that OWCP expand the acceptance of the claim to include traumatic aggravation of lumbar degenerative disc disease based on Dr. Scott's December 15, 2016 report.

In an unsigned report dated July 12, 2017, Dr. LeBlond indicated that he was treating appellant for lumbar osteoarthritis and radiculopathy after a work-related MVA. He opined that she had objective findings of decreased sensation at the L4 dermatome in the right lower extremity, weakness in hip flexion bilaterally, and weakness of the left lower extremity with dorsiflexion, which he attributed to her low back injury. Dr. LeBlond further noted spondylolisthesis at L4-5. He opined that appellant's employment-related injury had not resolved.

On July 24, 2017 counsel requested that OWCP expand the acceptance of the claim to include osteoarthritis of the lumbar spine with lumbar radiculopathy based on Dr. LeBlond's reports.[4]

By decision dated December 6, 2017, OWCP denied appellant's request to expand the acceptance of her claim to include the traumatic aggravation of lumbar degenerative disc disease.

[4] Dr. LeBlond submitted progress reports on August 16 and October 16, 2017.

On December 28, 2017 counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On March 27, 2018 OWCP again referred appellant to Dr. Scott for a second opinion examination. On April 6, 2018 it referred her to Dr. Aneeta Jain Gupta, a Board-certified neurologist, for a second opinion examination. OWCP requested that the second opinion physicians address appellant's current disability and provide any objective findings supporting residuals of the accepted conditions.

In a report dated April 9, 2018, Dr. Scott noted that he had previously evaluated appellant. On examination he found some paravertebral spasms with a negative straight leg raise bilaterally. Dr. Scott diagnosed degenerative lumbar spine and disc disease with facet syndrome, possible associated radiculopathy *versus* pain mediated weakness, and exogenous obesity. He related that appellant's condition "represents aggravation with preexisting degenerative lumbar spine and disc disease and specific aggravation of facet syndrome and secondary instability related to it." Dr. Scott advised that the objective findings "supported disability with impaired function and pain as [a] resulted of her compensable injuries."

In a report dated May 16, 2018, Dr. Gupta performed electrodiagnostic testing which revealed mild sensory neuropathy of the lower extremities with no evidence of left lumbar radiculopathy. She reviewed appellant's history of an April 24, 2015 MVA and continued symptoms of chronic lumbar back pain with pain extending into her left leg. Dr. Gupta diagnosed myofascial pain in the muscles of the legs and lower back. She noted that appellant's pain was "very diffuse and appears to be muscular. This is most likely secondary to her work[-]related injury." Dr. Gupta advised that imaging studies showed no clear evidence of compression a nerve root and that an electromyogram (EMG) and nerve conduction velocity (NCV) study showed mild sensory neuropathy without lumbar radiculopathy.

On May 23, 2018 appellant underwent an OWCP-authorized radiofrequency ablation at L3 and L4 on the right on June 6, 2018.

A telephonic hearing was held on June 18, 2018. Counsel asserted that OWCP should have expanded the acceptance of appellant's claim to include a traumatic aggravation of degenerative disc disease based on Dr. Scott's November 10, 2016 report. He noted that Dr. Scott on April 9, 2018 had diagnosed degenerative disc disease of the lumbar spine and an aggravation of facet syndrome.

By decision dated August 30, 2018, OWCP's hearing representative affirmed the December 6, 2017 decision.

On August 29, 2019 counsel requested reconsideration. He submitted reports from physician assistants, after visit summaries, and progress reports from Dr. LeBlond.

By decision dated October 11, 2019, OWCP denied modification of its August 30, 2018 decision.

In a progress report dated October 21, 2019, Dr. LeBlond diagnosed lumbosacral spondylosis without myelopathy and osteoarthritis of the lumbar spine with radiculopathy. He advised that appellant's injury was employment related.

On December 26, 2019 appellant returned to modified employment work for four hours per day at the employing establishment. OWCP began paying her wage-loss compensation based on her loss of wage-earning capacity.

In an October 5, 2020 progress report, Dr. LeBlond evaluated appellant for "chronic lumbosacral spondylosis/radiculopathy after remote work injury."

On October 10, 2020 appellant, through counsel, requested reconsideration of OWCP's October 11, 2019 decision.

By decision dated January 6, 2021, OWCP denied modification of its October 11, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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.[6]

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.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.

ANALYSIS

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

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[5] *Supra* note 2.

[6] *See C.B.*, Docket No. 20-0629 (issued May 26, 2021); *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). *See also C.W.*, Docket No. 17-1636 (issued April 25, 2018).

[7] *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[8] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

On April 9, 2018 Dr. Scott, an OWCP referral physician, diagnosed degenerative lumbar spine and disc disease with facet syndrome, possible associated radiculopathy *versus* pain mediated weakness, and exogenous obesity. He opined that appellant's condition "represents aggravation with preexisting degenerative lumbar spine and disc disease and specific aggravation of facet syndrome and secondary instability related to it." Dr. Scott concluded that the objective findings "supported disability with impaired function and pain as [a] resulted of her compensable injuries."

The Board has held that, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[10] Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[11] Once OWCP starts to procure medical opinion, it must do a complete job in securing from its referral physician an opinion which adequately addresses the relevant issues.[12]

The case, therefore, will be remanded for clarification from Dr. Scott regarding whether appellant sustained medical conditions, other than those already accepted, due to her accepted employment injury. If Dr. Scott is unable to clarify or elaborate on his previous reports, or if the supplemental report is also vague, speculative, or lacking rationale, OWCP must submit the case record and a detailed SOAF to another second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue.[13] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

[10] *See C.Y.*, Docket No. 20-0144 (issued August 18, 2021); *D.V.,* Docket No. 17-1590 (issued December 12, 2018).

[11] *C.Y.*, *id*.; *Robert F. Hart,* 36 ECAB 186 (1984).

[12] *T.B.,* Docket No. 20-0182 (issued April 23, 2021); *Mae Z. Hackett,* 34 ECAB 1421, 1426 (1983).

[13] *J.H.,* Docket No. 19-1476 (issued March 23, 2021); *R.O.,* Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

ORDER

IT IS HEREBY ORDERED THAT the January 6, 2021 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: January 26, 2022
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