

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On September 9, 2014 appellant, then a 40-year-old waste-water treatment plant operator, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2014 he felt sharp pain in his lower back when moving a metal locker onto a truck while in the performance of duty. On November 4, 2014 OWCP accepted appellant's claim for lumbar sprain.

On February 28, 2018 appellant requested that OWCP expand the acceptance of his claim to include HNP and adjustment disorder as causally related to the September 2, 2014 accepted employment injury.

In a March 1, 2018 development letter, OWCP informed appellant of the deficiencies of his expansion claim. It advised him of the type of medical evidence needed and afforded him 30 days to submit the necessary evidence.

In a March 26, 2018 report, Dr. Scott J. Miscovich, a family and occupational medicine practitioner, opined that appellant's HNP at T12-L1 was the direct result of the employment incident, as confirmed by his October 20, 2015 magnetic resonance imaging (MRI) scan report. He maintained that appellant had no preexisting back injury, muscle spasms, or back pain.

By decision dated April 3, 2018, OWCP denied expansion of the acceptance of appellant's claim to include HNP and adjustment disorder. It noted that his claim remained accepted for lumbar back sprain.

On July 16, 2018 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted an April 16, 2018 report, wherein Dr. Miscovich opined that appellant's HNP was caused when he lifted a heavy locker onto a truck on September 2, 2014. Dr. Miscovich explained that when the locker snagged on something and stopped, this caused a change in the momentum that was exerted by appellant.

By decision dated July 23, 2018, OWCP denied modification of its April 3, 2018 decision.

On August 28, 2018 appellant, through counsel, appealed to the Board.

While the appeal was pending, OWCP received reports dated July 13, July 27, September 13, October 15, and November 13, 2018, wherein Dr. Miscovich diagnosed dislocation of the T1-T2 thoracic vertebra, adjustment disorder, and HNP.

In a report dated January 14, 2019, Dr. Miscovich diagnosed HNP, adjustment disorder, dislocation of the T1-T2 thoracic vertebra, acute lumbar myofascial strain, and lumbar sprain. He repeated these diagnoses in reports dated February 12, March 12, April 12, May 10, June 13, July 15, August 19, October 23, and November 25, 2019.

³ Docket No. 18-1632 (issued June 1, 2020); Docket No. 16-1824 (issued June 2, 2017).

On June 5, 2019 Dr. Spencer Lau, an osteopathic physician specializing in family practice, diagnosed intervertebral disc rupture; dislocation of the T1-T2 thoracic vertebra; strain of the muscle, fascia, and tendon of the lower back; sprain of the ligaments of the lumbar spine; and complete lesion of the L1 level of the lumbar spinal cord.

A physician assistant saw appellant on September 20, 2019 and diagnosed HNP, adjustment disorder, dislocation of T1-T2 thoracic vertebra, acute lumbosacral myofascial strain, and lumbar sprain.

In a February 11, 2020 report, Dr. Miscovich again diagnosed HNP, adjustment disorder, dislocation of the T1-T2 thoracic vertebra, acute lumbar myofascial strain, and lumbar sprain.

By decision dated June 1, 2020, the Board affirmed the July 23, 2018 decision in part, finding that appellant had not met his burden of proof to expand the acceptance of his claim to include adjustment disorder as a result of the accepted September 2, 2014 employment injury. However, the Board also set aside the July 23, 2018 decision in part, finding that the issue of expansion of the acceptance of appellant's claim to include the additional condition of an HNP was not in posture for decision as Dr. Miscovich had consistently opined that appellant's September 2, 2014 employment injury caused the HNP seen on the October 2015 MRI scan. The Board remanded the case for further development on the issue of whether appellant's diagnosed HNP was caused or aggravated by the accepted injury, followed by a *de novo* decision.⁴

OWCP continued to receive evidence. In reports dated April 13, May 12, June 9, July 8, August 7, September 4, and October 7, 2020, physician assistants and nurse practitioners repeated Dr. Miscovich's findings.

On August 18, 2020 Dr. Dwight Lin, a specialist in physical medicine and rehabilitation, noted that appellant was seen on consultation for chronic low back pain, worsening over the past year. He diagnosed chronic low back pain, lumbar radicular pain, lumbar facet joint pain at L2-L5, lumbar spondylolisthesis, and thoracic disc displacement.

In reports dated January 6, February 3, March 3, April 7, and May 12, 2021, a physician assistant diagnosed HNP, adjustment disorder, dislocation of the T1-T2 thoracic vertebra, acute lumbar myofascial strain, and lumbar sprain.

On August 27, 2021 Dr. Lau diagnosed lumbar strain, acute lumbosacral myofascial strain, and lumbar disc herniation with radiculopathy.

In a report dated October 28, 2021, Dr. Lau diagnosed lumbar sprain, acute lumbosacral myofascial strain, and lumbar disc herniation with radiculopathy.

In a second opinion report dated January 19, 2022, Dr. William Daner, a Board-certified orthopedic surgeon, stated that appellant had no preexisting back pain prior to the September 2, 2014 accepted injury. Objective findings included a disc bulge at T12-L1 without significant central or neural foraminal stenosis, and degenerative changes at multiple spinal levels. Dr. Daner opined that these degenerative changes likely preexisted the accepted injury and were thus unrelated. He noted that appellant's subjective complaints of pain radiating down his left leg, but

⁴ Docket No. 18-1632 (issued June 1, 2020).

not his right, did not correlated with objective findings. Dr. Daner diagnosed lumbar sprain, T12-L1 intervertebral disc protrusion without significant central or neural foraminal stenosis, early degenerative spondylosis, morbid obesity, and opioid dependence. He opined that the HNP at T12-L1 was an incidental finding unrelated to the accepted September 2, 2014 employment injury; and that the accepted injury did not aggravate preexisting degenerative changes and spondylosis, due to the presence of appellant's significant obesity. Dr. Daner further opined that appellant's work-related lumbar sprain had resolved, as the typical recovery time for a lumbar sprain was within several months. He further noted that appellant's prolonged pain was related to his excessive body mass index (BMI) and medication usage. Dr. Daner noted that there was no indication for orthopedic surgical intervention or further treatment for appellant's accepted lumbar sprain.

In reports dated January 19 and March 22, 2022, physician assistants again noted appellant's diagnoses. On April 21, 2022 Dr. Lau reiterated appellant's diagnoses.

By *de novo* decision dated March 29, 2022, OWCP denied appellant's request for expansion of the acceptance of the claim to include the additional diagnosis of HNP at T12-L1.

On April 6, 2022 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 14, 2022.

OWCP subsequently received additional evidence. In a July 22, 2021 report, Dr. Lau diagnosed acute lumbosacral myofascial strain; thoracic, thoracolumbar, and lumbosacral intervertebral disc disorder; and HNP at the T12-L1 level with pain radiating to the S1 level and left lower extremity. He noted that a thoracolumbar MRI scan was recommended, but appellant did not fit within current MRI units.

In a September 24, 2021 report, Dr. Lau advised that appellant presented for evaluation of his spinal conditions. On physical examination, he observed tenderness to the T12-L1 level with radiating pain downward to the lower lumbar levels of L5-S1 with right-sided thigh pain on prolonged standing. Dr. Lau diagnosed lumbar sprain, acute lumbosacral myofascial strain, and lumbar disc herniation with radiculopathy.

In a September 1, 2022 form report, Dr. Miscovich diagnosed strain of the muscle, fascia, and tendon of the lower back, and intervertebral disc disorders of the lumbar region with radiculopathy. He checked a box marked "Yes" indicating that a work incident was the only cause of appellant's condition.

By decision dated September 29, 2022, the hearing representative affirmed the March 29, 2022 decision of OWCP and denied expansion of the acceptance of appellant's claim to include HNP at T12-L1.

LEGAL PRECEDENT

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.⁵

⁵ V.S., Docket No. 19-1370 (issued November 30, 2020); *M.M.*, Docket No. 19-0951 (issued October 24, 2019);

To establish causal relationship between any additional conditions claimed and the accepted employment injury, an employee must submit rationalized medical evidence.⁶ 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 accepted employment injury.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include the additional condition of HNP at T12-L1 as causally related to his accepted employment injury.

On remand from the Board's June 1, 2020 decision, OWCP referred appellant to Dr. Daner for a second opinion examination. In a January 6, 2022 report, Dr. Daner noted that appellant had no preexisting back pain prior to the September 2, 2014 accepted employment injury. Appellant's current objective findings included a disc bulge at T12-L1 without significant central or neural foraminal stenosis, and degenerative changes at multiple spinal levels. Dr. Daner opined that these degenerative changes likely preexisted the accepted injury and were thus unrelated. He noted that appellant's subjective complaints of pain radiating down his left leg, but not his right, did not correlate with his objective findings. Dr. Daner opined that the HNP at T12-L1 was an incidental finding unrelated to the accepted September 2, 2014 employment injury; and that the accepted injury did not aggravate preexisting degenerative changes and spondylosis, due to the presence of appellant's significant morbid obesity. He further opined that appellant's work-related lumbar sprain had resolved, and that appellant's prolonged pain was related to his excessive BMI and medication usage. As Dr. Daner's report is well rationalized and based on examination and an accurate history of the employment injury, the Board finds that his report constitutes the weight of the medical evidence.⁸

In support of his claim, appellant submitted a series of progress reports from Dr. Miscovich. These reports from Dr. Miscovich noted diagnoses, including HNP at the T12-L1 level, but did not provide an opinion regarding the cause of the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.⁹ As such, these reports are insufficient to establish expansion of acceptance of appellant's claim to include HNP at the T12-L1 level.

In a form report dated September 1, 2022, Dr. Miscovich diagnosed strain of the muscle, fascia, and tendon of the lower back, and intervertebral disc disorders of the lumbar region with

Jaja K. Asaramo, 55 ECAB 200 (2004).

⁶ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁷ *T.K., id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *A.C.*, Docket No. 21-1093 (issued July 21, 2022).

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

radiculopathy. He checked a box marked “Yes” indicating that a work incident was the only cause of appellant’s condition. The Board has held, however, that when a physician’s opinion on causal relationship consists only of a checkmark on a form, without further explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁰ As such, this form report is insufficient to establish expansion of acceptance of appellant’s claim to include HNP at the T12-L1 level.

In a July 22, 2021 report, Dr. Lau diagnosed acute lumbosacral myofascial strain; thoracic, thoracolumbar, and lumbosacral intervertebral disc disorder; and HNP at the T12-L1 level with pain radiating to the S1 level and left lower extremity. He noted that a thoracolumbar MRI scan was recommended, but appellant did not fit within current MRI units. Similarly, in his August 18, 2020 report, Dr. Lin noted that appellant was seen on consultation for chronic low back pain, worsening over the past year. He diagnosed chronic low back pain, lumbar radicular pain, lumbar facet joint pain at L2-L5, lumbar spondylolisthesis, and thoracic disc displacement. However, neither Dr. Lau, nor Dr. Lin offered an opinion regarding the cause of appellant’s HNP condition. As previously noted, medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of no probative value.¹¹ As such, this evidence is insufficient to establish expansion of the acceptance of appellant’s claim to include HNP at the T12-L1 level.

OWCP also received a number of progress reports by physician assistants and nurse practitioners. The Board has held that medical reports signed solely by physician assistants, nurse practitioners, and physical therapists are of no probative value as such healthcare providers are not considered physicians as defined by FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹²

As the medical evidence of record is insufficient to establish that the acceptance of appellant’s claim should be expanded to include HNP at the T12-L1 level as causally related to his accepted September 2, 2014 employment injury, the Board finds that appellant has not met his 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.

¹⁰ *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹¹ *Supra* note 10.

¹² Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). See also *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *C.A.*, Docket No. 18-0824 (issued November 15, 2018) (nurse practitioners are not considered physicians as defined by FECA).

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand acceptance of his claim to include the additional condition of herniated nucleus pulposus (HNP) at T12-L1 as causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board