

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

S.R., Appellant)	
)	
and)	Docket No. 24-0146
)	Issued: April 22, 2024
U.S. POSTAL SERVICE, WEST CARROLLTON)	
POST OFFICE, Dayton, OH, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 7, 2023 appellant, through counsel, filed a timely appeal from an October 20, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 his burden of proof to expand the acceptance of his claim to include a right hip tear causally related to the accepted April 16, 2022 employment

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.*

injury; and (2) whether appellant has met his burden of proof to establish disability from work commencing December 31, 2022 causally related to his accepted April 16, 2022 employment injury.

FACTUAL HISTORY

On April 18, 2022 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 16, 2022 he injured his right hand, right shoulder, and the right side of his body when he tripped over an uneven driveway while in the performance of duty. He stopped work on the date of injury.

OWCP received an April 16, 2022 emergency department report by Dr. Matthew Paul Kiefaber, Board-certified in emergency medicine, who recounted that appellant had tripped on uneven pavement that day, landing on his right hand and wrist. Dr. Kiefaber noted that appellant underwent back surgery six years previously. X-rays of the right shoulder and wrist were negative for osseous abnormalities, while right hip and lumbar spine x-rays demonstrated postoperative changes without acute displaced fracture. Dr. Kiefaber diagnosed right wrist strain, lumbar sprain, right lower extremity contusion, and right shoulder sprain. He prescribed medication.

Appellant returned to modified duty with restrictions on April 19, 2022.

A July 28, 2022 magnetic resonance imaging (MRI) scan of the right hip demonstrated an old fixation rod within the right femur, mild degenerative changes of the right hip joint, a probable chronic tear or avulsion of the right gluteus medius tendon and probable chronic atrophy of the right gluteus medius muscle, and fluid in the region of the right greater trochanter indicative of bursitis.

In an October 17, 2022 attending physician's report (Form CA-20), Dr. Aco Jovanov, a Board-certified family medicine physician, provided appellant's history of the April 16, 2022 injury and a 1985 right hip surgery. He diagnosed a right hip contusion, right gluteus medius avulsion tear, and right shoulder strain. Dr. Jovanov checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the April 16, 2022 employment injury.

By decision dated October 31, 2022, OWCP accepted the claim for right hip contusion and right shoulder strain.

Beginning January 17, 2023, appellant filed a series of claims for compensation (Form CA-7) for total disability from work commencing December 31, 2022.

In a development letter dated January 23, 2023, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation commencing December 31, 2022 and continuing. It advised him of the type of additional evidence needed and afforded him 30 days to respond.

Appellant continued to file Form CA-7 claims for total disability from work commencing January 14, 2023.

In a February 2, 2023 Form CA-20, Dr. Matthew Lawless, Board-certified in orthopedic surgery and sports medicine, provided appellant's history of a fall in April 2022, with a right femur fracture with open reduction and fixation in 1984. He noted that an MRI scan study demonstrated a tear of the right gluteus medius muscle. Dr. Lawless diagnosed chronic right abductor deficiency and performed a right hip abductor repair. He held appellant off work from December 12, 2022 through March 12, 2023. Dr. Lawless checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the April 2022 fall as described by appellant.

By decision dated March 2, 2023, OWCP denied appellant's claim for disability from work commencing December 31, 2022 and continuing. It found that the medical evidence of record was insufficient to establish disability that he was disabled from work commencing December 31, 2022, causally related to his accepted April 16, 2022 employment injury.

On March 7, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.³ A telephonic hearing was held before a representative of OWCP's Branch of Hearings and Review on August 16, 2023.

In a March 30, 2023 Form CA-20 report, Dr. Lawless noted performing surgical repair of the right hip abductor on December 12, 2022. He held appellant off work through June 2, 2023.⁴

By decision dated October 20, 2023, OWCP's hearing representative affirmed OWCP's March 2, 2023 decision, finding that appellant had not submitted sufficient rationalized medical evidence to support that the claimed period of disability was causally related to the accepted work injury. The hearing representative further found that the medical evidence of record was insufficient to establish that the accepted injury caused or contributed to the diagnosed right hip tear with related surgery for which appellant was off work from December 2022 through June 2023.

LEGAL PRECEDENT -- ISSUE 1

Where 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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is causal relationship between the diagnosed and the accepted employment injury must be based on a complete factual

³ Appellant continued to file Form CA-7 claims for disability from work commencing February 25, 2023.

⁴ The record indicates that appellant returned to work on June 2, 2023.

⁵ *S.M.*, Docket No. 20-1527 (issued March 29, 2022); *D.B.*, Docket No. 20-1280 (issued March 2, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *D.M.*, Docket No. 22-0442 (issued September 12, 2023); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

and medical background.⁷ Additionally, the physicians' 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 the accepted employment injury.⁸

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.⁹

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether 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.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish expansion of the acceptance of his claim to include a right hip tear causally related to the accepted April 26, 2022 employment injury.

Dr. Kiefaber, in his April 16, 2022 report, recounted the employment injury that day and diagnosed a right lower extremity contusion and lumbar strain. However, he did not diagnose a right hip tear, nor provide medical rationale addressing causal relationship between the April 16, 2022 and 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 on the issue of causal relationship.¹¹ This evidence is, therefore, insufficient to establish expansion.

Dr. Jovanov, in an October 17, 2022 Form CA-20, noted appellant's 1985 right hip surgery and the April 16, 2022 employment injury. He diagnosed a right hip contusion and right gluteus medius avulsion tear. Dr. Jovanov checked a box marked "Yes" indicating that these conditions were caused or aggravated by the April 16, 2022 employment injury. Similarly, Dr. Lawless, in Form CA-20 reports dated February 2 and March 30, 2023, recounted appellant's history of a 1984 right femur fracture and surgery, and the April 2022 employment injury. He diagnosed chronic

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see also J.M.*, Docket No. 22-0939 (issued January 9, 2023).

¹⁰ *D.B.*, *supra* note 5; *see V.K.*, Docket No. 19-0422 (issued June 10, 2020).

¹¹ *See T.A.*, Docket No. 21-0798 (issued January 31, 2023); *T.T.*, Docket No. 19-0319 (issued October 26, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

right abductor deficiency and performed a right hip abductor repair on December 12, 2022. Dr. Lawless checked a box marked “Yes” indicating that the diagnosed conditions were caused or aggravated by the April 2022 employment injury. The Board has held that when a physician’s opinion on causal relationship consists only of checking “Yes” to a form question, without medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.¹² As such, this evidence is insufficient to establish appellant’s expansion claim.

Appellant also submitted April 16, 2022 x-ray reports and a July 29, 2022 MRI scan of the right hip. However, the Board has held that diagnostic studies, standing alone, and lack probative value on the issue of causal relationship.¹³

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met his burden of proof to establish the additional condition of a right hip tear as causally related to the accepted April 26, 2022 employment injury.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA 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.¹⁴ Under FECA, the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.¹⁵ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.¹⁶ An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.¹⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.¹⁸

The medical evidence required to establish causal relationship between a claimed period of disability and an accepted employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the

¹² *L.L.*, Docket No. 21-1319 (issued September 7, 2023); *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹³ *J.M.*, *supra* note 9; *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *see Y.D.*, Docket No. 16-1896 (issued February 9, 2017).

¹⁴ *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁵ 20 C.F.R. § 10.5(f).

¹⁶ *See H.B.*, Docket No. 20-0587 (issued June 28, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

¹⁷ *See H.B.*, *id.*; *K.H.*, Docket No. 19-1635 (issued March 5, 2020).

¹⁸ *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.¹⁹

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.²⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established disability from work commencing December 31, 2022 causally related to his accepted April 16, 2022 employment injury.

Dr. Lawless, in Form CA-20 reports dated February 2 and March 30, 2023, noted performing a surgical repair of the right hip abductor on December 12, 2022. He held appellant off work from December 12, 2022 through June 2, 2023. Dr. Lawless checked a box marked “Yes” indicating that the diagnosed conditions were caused or aggravated by the April 2022 fall. The Board has held, however, that when a physician’s opinion on the cause of a disability 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.²¹ Thus, these reports are insufficient to establish the claimed period of disability.

As appellant has not submitted rationalized medical evidence establishing causal relationship between the claimed disability and the accepted employment injury, the Board finds that he has not met his burden of proof.²²

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish expansion of his claim to include a right hip tear causally related to the accepted April 16, 2022 employment injury. The Board further finds that he has not met his burden of proof to establish disability from

¹⁹ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

²⁰ *S.W.*, Docket No. 23-0407 (issued November 27, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

²¹ *C.G.*, Docket No. 20-1092 (issued September 22, 2021); *see O.M.*, Docket No. 18-1055 (issued April 15, 2020).

²² *S.W.*, *supra* note 20; *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020).

work commencing December 31, 2022 causally related to his accepted April 16, 2022 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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