

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

R.T., Appellant

and

**DEPARTMENT OF THE ARMY, DEFENSE
HEALTH AGENCY, Fort Drum, NY, Employer**

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) **Docket No. 24-0149**
) **Issued: August 13, 2024**
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 8, 2023 appellant, through counsel, filed a timely appeal from a November 24, 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.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 November 24, 2023 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work during the period March 7, 2021 through March 1, 2022, causally related to her accepted March 2, 2021 employment injury; and (2) whether 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 2, 2021 employment injury.

FACTUAL HISTORY

On March 15, 2021 appellant, then a 49-year-old health aid technician, filed a traumatic injury claim (Form CA-1) alleging that on March 2, 2021 she injured her right shoulder, leg, and back when she fell over a stool, while in the performance of duty. The employing establishment reported that she stopped work on March 9, 2021, and returned to full-duty work on March 15, 2021.

OWCP received a March 9, 2021 attending physician's report, (Form CA-20) from a physician with an illegible signature who noted "lower back strain needs time to resolve."

A March 15, 2021 return to work evaluation from Dr. Andy Chern, Board-certified in occupational medicine, provided work restrictions.

March 15, 2021 diagnostic reports read by Dr. Brian Ewy, a Board-certified diagnostic radiologist, revealed that x-rays of the lumbar spine were negative, a left leg venous duplex doppler ultrasound revealed no evidence for any underlying deep vein thrombosis, a nonvascular left lower extremity ultrasound was unremarkable, examination of the left tibia and fibula was unremarkable.

Emergency room records dated March 15, 2021 related a clinical impression of acute lumbar back pain associated with muscle strain and multiple contusions with soft tissue hematoma to the left lower leg.

In treatment notes dated March 15, 2021, Christopher Moeller, a physician assistant, noted that appellant fell at work about two weeks prior, after tripping over a stool. He related that she had pain in her left shin and calf and her lower back. Mr. Moeller explained that appellant did not wish to be seen at that time and used heat and Ibuprofen; however, she had minimal relief. He diagnosed acute lumbar back pain associated with muscle strain and multiple contusions with soft tissue hematoma to the left lower leg. Mr. Moeller provided restrictions of no bending, stooping, or lifting greater than five pounds for one week, no strenuous activity for one week, and no work for three days.

On April 8, 2021 Heather Emmanuel, a physician assistant, diagnosed bilateral lumbago with sciatica, and placed appellant off work until May 20, 2021. This report was countersigned by Dr. Ryan Tyler, Board-certified in family practice.

In an April 9, 2021 report, Dr. Tyler noted appellant's history of injury and diagnosed lumbago with sciatica on the right and left side. He indicated that appellant was temporarily 100 percent disabled.

OWCP continued to receive multiple progress reports from Ms. Emmanuel and Dr. Tyler reiterating appellant's diagnosis and disability status.

By decision dated May 24, 2021, OWCP denied the claim, finding that appellant had not established a medical diagnosis in connection with the accepted March 2, 2021 employment incident.

On June 3, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 7, 2021.

A June 24, 2021 x-ray of the right femur, read by Dr. Dean J. Phillips, a Board-certified diagnostic radiologist, revealed no acute fracture or destructive osseous lesion and was within normal limits. A June 24, 2021 x-ray of the right hip read by Dr. Phillips was within normal limits.

In August 16 and October 22, 2021 reports, Dr. Tyler noted appellant's history of injury and treatment, and diagnosed strain of right iliopsoas muscle, lumbago with sciatica on the right side, and reactive depression. In the August 16, 2021 report, he noted that appellant could not return to work because she could not walk well enough to perform her job.

OWCP continued to receive progress reports from Ms. Emmanuel.

By decision dated December 1, 2021, OWCP's hearing representative reversed the May 24, 2021 decision in part, finding that appellant had established that the incident occurred in the performance of duty as alleged, and that the medical evidence of record was sufficient to establish the claim with regard to whether she had met her burden of proof to establish employment-related contusion with soft tissue hematoma to the left lower leg. However, the hearing representative also affirmed the May 24, 2021 decision in part, finding that expansion of the claim to include additional conditions was denied as the medical evidence of record was insufficient to establish causal relationship between appellant's additional diagnoses, and the accepted employment injury.

On December 30, 2021 OWCP formally accepted the claim for contusion of left lower leg, subsequent encounter, and hematoma left leg.

On November 3, 2022 appellant, through counsel, requested reconsideration of the December 1, 2021 denial of expansion. In support thereof, she submitted a May 19, 2022 report from Ms. Emmanuel.

On April 14, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work during the period March 7, 2021 through March 1, 2022.

OWCP received treatment notes from Samantha J. Furman, a nurse practitioner, dated January 4 through May 19, 2022. Ms. Furman related appellant's diagnosis as intervertebral disc disorder with radiculopathy.

In a September 20, 2022 report, Dr. Tyler discussed appellant's history of injury and treatment, examined appellant, and noted that his findings included subjective complaints and objective findings. He diagnosed lumbar paraspinal muscle spasm, lumbar spondylosis, tremor, and reactive depression.

By decision dated November 4, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On November 22, 2022 appellant, through counsel, again requested reconsideration.

In an October 18, 2022 report, Dr. Jon Wat, an osteopath specializing in family medicine, recounted appellant's history of injury. He noted that appellant had a medical history of right-sided sciatica. Dr. Wat further noted that appellant had low back pain radiating into the bilateral lower extremities. He indicated that the mechanism of injury was a twisting motion, that the injury was work related, and that the history of injury was consistent with his objective findings. Dr. Wat opined that appellant was 100 percent disabled.

In a November 18, 2022 report, Dr. Wat noted that appellant reported anxiety and depression, along with her back pain, and opined that her conditions were work related.

An October 26, 2022 x-ray of the lumbar spine revealed mild degenerative spondylosis changes, and sacralization of the right L5 transverse process.

By decision dated February 14, 2023, OWCP denied modification of the December 1, 2021 denial of expansion.

By development letter dated March 8, 2023, OWCP noted receipt of appellant's Form CA-7 claim for disability from work during the period March 7, 2021 through March 1, 2022, and advised appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated April 21, 2023, OWCP denied appellant's claim for disability from work during the period March 7, 2021 through March 1, 2022, finding that the medical evidence of record was insufficient to establish that appellant was disabled from work during the claimed period due to the accepted employment injury.

On May 2, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 27, 2023.

Dr. Wat continued to treat appellant and saw her on March 3 and June 16, 2023. In a September 15, 2023 report, he opined that appellant had lumbar radiculopathy from her March 2, 2021 employment injury, and was disabled from work.

On November 20, 2023 appellant, through counsel, requested expansion of the acceptance of the claim to include additional medical conditions. He submitted additional evidence including reports dating from April 11, 2023 by Dr. Michelle Johnston, Board-certified in anesthesiology and pain medicine. In her April 11, 2023 report, Dr. Johnston diagnosed lumbar radiculopathy and radiculopathy, lumbar region. She responded "Yes" as to whether appellant's complaints were consistent with the history of injury and objective findings, and opined that appellant was 100 percent disabled. Dr. Johnston continued to treat appellant on May 31, July 18, and September 12, 2023. She indicated that an October 26, 2022 lumbar spine x-ray revealed mild degenerative changes, and a September 21, 2021 magnetic resonance imaging (MRI) scan revealed mild facet osteoarthritis at L4-5 and L5-S1 with no stenosis. Dr. Johnston diagnosed work-related

lumbar radiculopathy and noted that appellant resigned from her employment in March 2022, and was not working.

By decision dated November 24, 2023, OWCP's hearing representative affirmed the April 21, 2023 OWCP decision, finding that the medical evidence of record was insufficient to establish disability from work during the period March 7, 2021 through March 1, 2022 causally related to the accepted employment injury. He also found that expansion of the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between appellant's additional diagnosed condition(s) and the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵

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.⁶ Disability is, thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁷ 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.⁸ 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.⁹

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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 claimed disability and the accepted employment injury.¹⁰

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

⁴ *Supra* note 2.

⁵ See *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *A.R.*, Docket No. 20-0583 (issued May 21, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁶ 20 C.F.R. § 10.5(f); see *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

⁷ *D.W.*, Docket No. 20-1363 (issued September 14, 2021); *L.W.*, Docket No. 17-1685 (issued October 9, 2018).

⁸ See *M.W.*, Docket No. 20-0722 (issued April 26, 2021); *D.G.*, Docket No. 18-0597 (issued October 3, 2018).

⁹ See *A.R.*, *supra* note 5; *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

¹⁰ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

claimed. To do so, would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work during the period March 7, 2021 through March 1, 2022, causally related to her accepted March 2, 2021 employment injury.

In support of her disability claim, appellant submitted a March 9, 2021 duty status report from a physician with an illegible signature. The Board has held that medical evidence containing an illegible signature, or which is unsigned has no probative value, as it is not established that the author is a physician.¹² As such, this evidence is, therefore, insufficient to establish appellant's disability claim.

OWCP also received a March 15, 2021 return-to-work evaluation from Dr. Chern which provided work restrictions. Dr. Chern, however, did not provide an opinion regarding the cause of appellant's disability. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ This evidence is, therefore, insufficient to establish appellant's disability claim.

OWCP received reports from Dr. Tyler as of April 8, 2021 wherein he diagnosed bilateral lumbago, and related that appellant was 100 percent disabled from work. Dr. Tyler did not provide rationale to support his conclusory opinion. He did not provide medical rationale explaining the cause of appellant's lumbago condition, and he did not explain why appellant was disabled from her job duties. The Board has held that a medical opinion is of limited probative value if it is conclusory in nature.¹⁴ As of August 16, 2021, Dr. Tyler submitted multiple reports wherein he diagnosed strain of right iliopsoas muscle, lumbago with sciatica on the right side, and reactive depression. He indicated that appellant could not return to work because she could not walk well enough to perform her job. However, Dr. Tyler did not provide a rationalized medical opinion explaining how appellant's disability was causally related to the accepted employment injury.¹⁵ This evidence is therefore insufficient to establish appellant's claim.

OWCP also received progress reports from physician assistants and a nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, and physical

¹¹ See *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *C.S.*, Docket No. 17-1686 (issued February 5, 2019); *William A. Archer*, 55 ECAB 674 (2004).

¹² See *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); see *R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

¹³ See *D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

¹⁵ *Supra* note 10.

therapists are not considered physicians as defined under FECA.¹⁶ Consequently, their notes do not suffice for purposes of establishing entitlement to FECA benefits.¹⁷

As the medical evidence of record is insufficient to establish disability from work during the period March 7, 2021 through March 1, 2022 causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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.¹⁸

To establish causal relationship, the employee must submit rationalized medical opinion evidence.¹⁹ 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.²⁰ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.²¹

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.²²

¹⁶ 5 U.S.C. § 8101(2) 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, 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

¹⁷ *See M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

¹⁸ *See S.J.*, Docket No. 22-0936 (issued April 27, 2023); *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *see also T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

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

²⁰ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K., id.; I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

²¹ *Id.*

²² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include other conditions as causally related to the accepted employment injury.

OWCP received reports from Dr. Tyler which diagnosed lumbago, strain of right iliopsoas muscle; sacroiliac strain; and reactive depression, however, it provided no opinion regarding causal relationship. However, as these reports did not offer an opinion regarding the cause of the diagnosed conditions they are of no probative value on the issue of causal relationship and are insufficient to establish expansion of the claim.²³

In an October 18, 2022 report, Dr. Wat noted that appellant had a history of right-sided sciatica. He indicated that the mechanism of injury was a twisting motion, and that appellant's injury was work related. Dr. Wat also provided a November 18, 2022 report in which he noted that appellant reported anxiety and depression, along with her back pain. In a September 15, 2023 report, he indicated that appellant had lumbar radiculopathy from the job injury that occurred on March 2, 2021. However, while Dr. Wat provided an opinion on causal relationship, he did not explain with medical rationale how the accepted employment injury physiologically caused or contributed to these conditions.²⁴ The Board has held that a report is of limited probative value if it does not contain sufficient medical rationale explaining how the diagnosed condition was causally related to the accepted employment injury.²⁵ These reports are, therefore, of diminished probative value and insufficient to establish expansion.

In an April 11, 2023 report, Dr. Johnston, diagnosed lumbar radiculopathy and radiculopathy, lumbar region. She responded "Yes" as to whether appellant's complaints were consistent with the history of injury. Dr. Johnston continued to treat appellant and noted that an October 26, 2022 lumbar x-ray revealed mild degenerative changes, and a September 21, 2021 MRI scan revealed mild facet osteoarthritis at L4-5 and L5-S1 with no stenosis. Dr. Johnston, however, did not provide an opinion on causal relationship. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.²⁶ Thus, this evidence is insufficient to establish expansion of the claim.

The record also contains diagnostic studies. The Board has held that reports of diagnostic testing, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship.²⁷ Consequently, this evidence is insufficient to establish expansion of the claim.

²³ See *supra* note 13.

²⁴ *D.F.*, Docket No. 23-1182 (issued March 27, 2024); see *P.B.*, Docket No. 21-0894 (issued February 8, 2023).

²⁵ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

²⁶ *Supra* note 13.

²⁷ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

As the medical evidence of record is insufficient to establish causal relationship between an additional diagnosed condition and the accepted March 2, 2021 employment injury, the Board finds that appellant 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work during the period March 7, 2021 through March 1, 2022, causally related to her accepted March 2, 2021 employment injury. The Board also finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 24, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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