

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

D.C., Appellant	)	
	)	
and	)	Docket No. 24-0464
	)	Issued: July 29, 2024
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, Sacramento, CA, Employer	)	
	)	

*Appearances:*  
Steven E. Brown, 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, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 29, 2024 appellant, through counsel, filed a timely appeal from a February 29, 2024 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.

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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.*

## ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional conditions as causally related to, or as a consequence of, the accepted April 5, 2021 employment injury.

## FACTUAL HISTORY

On April 5, 2021 appellant, then a 28-year-old compliance inspection and support officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he strained a muscle in his lower right back when he tripped on a chair while in the performance of duty. He stopped work on April 5, 2021 and returned to work on April 9, 2021.

On May 28, 2021 Dr. Huy T. Duong, a Board-certified neurosurgeon, recommended decompression and possible fusion at L3-S1.

In a report dated June 8, 2021, Dr. Rudolf Iskandar, a Board-certified physiatrist, described the mechanism of injury as appellant almost falling after tripping over a chair leg. He obtained a history of appellant bending over in the shower to wash his leg on May 25, 2021 and feeling his back pop, with the onset of severe low back and buttocks pain with new numbness and left foot weakness and urinary incontinence. Dr. Iskandar noted that Dr. Duong had performed an unauthorized lumbar laminectomy and decompression at L3-S1 on May 28, 2021, following which appellant was hospitalized for 11 days and then transferred to a skilled nursing facility. He diagnosed aftercare for musculoskeletal system surgery, a history of decompressive lumbar laminectomy, and lumbar disc degeneration with neurological manifestation. Dr. Iskandar provided similar findings in an unsigned state workers' compensation progress report of even date.

In a development letter dated November 17, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to respond.

Subsequently, OWCP received an April 6, 2021 report, wherein Dr. Iskandar related a history of appellant nearly falling on April 5, 2021 after he tripped on the leg of a chair he was adjusting at work. Dr. Iskandar noted that appellant's current symptoms included "radicular pain down to the right leg knee with paresthesia sensations." He advised that appellant had a history of injuring his low back in high school lifting weights with no subsequent problems. Dr. Iskandar diagnosed lumbar muscle sprain and found that appellant could perform modified work.

In a hospital report dated May 26, 2021, Dr. Alexander James Becka, a Board-certified internist, obtained a history of appellant experiencing new pain with a left foot drop, saddle anesthesia, and urinary incontinence. He noted that a magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated degenerative changes and congenitally short pedicles most notable at L3-4 and L5-S1 where "multiple moderate to large disc protrusions result in moderate thecal sac compression with impingement of the bilateral intrathecal L4 nerve roots and bilateral intrathecal L5 nerve roots as well as possibly the right intrathecal S1 nerve roots." Dr. Becka diagnosed a lumbar disc herniation with radiculopathy, low back pain, and urinary incontinence and referred appellant to neurosurgery for possible surgery.

The record contains progress reports from visits with Dr. Iskandar and accompanying unsigned state workers' compensation form reports dated June 29, 2021 through October 28, 2022.

By decision dated December 17, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish the occurrence of the alleged employment incident.

An MRI scan of the lumbar spine, obtained on December 21, 2021, demonstrated significant improvement in the lumbar spinal canal after posterior decompression at L3-S1, large central right disc protrusions at L3-4, L4-5, and L5-S1 without residual canal stenosis, and multilevel foraminal narrowing especially at L4-5 on the right.

On January 3, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.<sup>3</sup>

Following a preliminary review, by decision dated March 1, 2022, OWCP's hearing representative vacated the December 17, 2021 decision and remanded the case for OWCP to accept the claim for lumbar sprain.<sup>4</sup>

On March 2, 2022 OWCP accepted the claim for lumbar sprain.

In a July 5, 2022 report, Dr. Iskandar discussed appellant's current complaints and provided findings on examination. He noted aftercare for musculoskeletal system surgery and a history of decompressive lumbar laminectomy. Dr. Iskandar diagnosed lumbar disc degeneration with neurological manifestation, lumbar strain, and left sciatica. He noted that appellant was still awaiting approval from workers' compensation to see a rehabilitation specialist and physical therapy. Dr. Iskandar indicated that the trip and fall was consistent with examination findings showing strain. He continued to submit progress reports.

In an initial evaluation dated October 24, 2022, Dr. Sanjay J. Chauhan, a Board-certified neurologist, obtained a history of appellant experiencing low back pain on April 5, 2021 when he tripped on the leg of a chair and grabbed equipment to stop his fall. He related that appellant subsequently worked limited duty and experienced transient left leg numbness while performing his light-duty work. Dr. Chauhan noted that on May 25, 2021 appellant's pain worsened, his leg became numb, and he experienced difficulty with urination. Appellant sought treatment at the hospital and underwent lumbar surgery on May 28, 2021. Dr. Chauhan discussed appellant's current complaints of mild low back pain, lower extremity weakness and numbness, and urinary incontinence with coughing or sneezing. He diagnosed lumbar sprain, intervertebral lumbar disc dysfunction with radiculopathy, intermittent urinary incontinence, severe left foot drop, moderate right foot drop, and numbness in the groin area consistent with residuals of the above diagnoses. Dr. Chauhan opined that appellant had sustained disc extrusion, especially at L4-5 and L5-S1, due

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<sup>3</sup> Appellant continued to submit progress reports from Dr. Iskander dated December 17, 2021 through May 23, 2022.

<sup>4</sup> The hearing representative further found that appellant had experienced an intervening injury on May 25, 2021 in the bathroom with new objective and subjective findings and that the medical evidence did not support causal relationship between the May 25, 2021 incident and resulting surgery and the accepted work injury.

to the employment injury, which “led to surgery and neurologic residuals. All the diagnoses I have added need to be included with his current claim.” Dr. Chauhan advised that appellant was totally disabled from work.

By decision dated December 6, 2022, OWCP denied appellant’s request to expand the acceptance of his claim to include degenerative disc disease and complications of surgery to include left foot drop and incontinence causally related to the accepted April 5, 2021 employment injury. It indicated that Dr. Iskandar had noted that appellant fell in the shower on May 25, 2021, sought treatment the ER and underwent subsequent surgery.

Dr. Chauhan continued to submit progress reports. In a report dated February 27, 2023, he discussed appellant’s current complaints, including back pain, weakness and numbness in the lower extremities, and urinary incontinence with coughing and sneezing. Dr. Chauhan provided a history of the April 5, 2021 employment injury and noted that appellant had strained and twisted his lower back. He advised that appellant experienced transient numbness in the left leg working limited duty and that his condition worsened such that he underwent surgery on May 28, 2022. Dr. Chauhan provided his review of the medical evidence, including the results of diagnostic studies. He noted that Dr. Iskandar had diagnosed a sprain based on an x-ray. Dr. Chauhan opined that the tripping injury had caused a large disc herniation or extrusion that had worsened during the period in which appellant performed modified work and resulting in impingement. He asserted that OWCP should expand its acceptance of the claim to include intervertebral lumbar disc dysfunction with radiculopathy, intermittent urinary incontinence, severe left foot drop, moderate right foot drop, and numbness in the groin area. Dr. Chauhan submitted a similar report dated April 12, 2023.

In a March 7, 2023 report, David Kunz, a physician assistant recounted appellant’s medical history and noted findings of lumbar spondylolisthesis, stenosis, radiculopathy and pain.

On June 7, 2023 Dr. Chauhan noted that OWCP had inaccurately determined that appellant had fallen at home on May 25, 2021. He related that he had obtained a history of appellant bending over to wash his feet in the shower on May 25, 2021 when he “felt a pop in the back and later on developed foot drop, severe weakness in [the] lower extremities, incontinence requiring [an] emergency room visit, hospitalization and surgery.” Dr. Chauhan noted that appellant had numbness in his left leg previously and that imaging studies should have been obtained. He related, “When [appellant] was doing simple activities of daily living such as showering, there was progression of the original injury of April 5, 2021 where in my opinion disc herniation or protrusion occurred, which became further worsened as he was doing activities of daily living. There was no new injury or condition, just progression and continuation of his injury of April 5, 2021 due to day to day activities that one has to do as part of activities of daily living.” Dr. Chauhan found direct causal relationship between the previously provided diagnoses and the April 5, 2021 employment injury. He advised that when appellant tripped on the chair, he had sustained a sprain/twisting spinal injury and probable disc herniation that had worsened with “day to day functioning and activities of daily living.” Dr. Chauhan reiterated that appellant had not sustained an intervening injury on May 25, 2021 but that instead his condition had worsened spontaneously as he performed activities of daily living. He requested authorization for an automobile with automatic transition and dual control due to appellant’s bilateral foot drop.

In a supplemental report dated June 15, 2023, Dr. Chauhan noted that OWCP had found that he failed to discuss appellant's apparent intervening injury on May 25, 2021 in the shower. He advised that he had reviewed OWCP's decision and opined that appellant had not fallen in the bathroom on May 25, 2021, but had instead experienced worsening symptoms that required hospital admission and surgery. He noted that appellant had described bending to wash his leg and feeling a pop in his back. Dr. Chauhan related, "Bending to wash legs as a part of showering is an activity of daily living and this does not constitute a new injury or intervening injury." He advised that appellant had not experienced a fall on May 25, 2021 and had not sustained a new injury. Dr. Chauhan found that appellant had sustained a disc herniation on April 5, 2021 that was not diagnosed by Dr. Iskandar as he had only obtained x-rays. He again requested that OWCP accept his additional diagnoses, in particular lumbosacral radiculopathy, urinary incontinence, bilateral foot drop, persistent bilateral S1 dermatomal sensory loss, and sensory loss to the private and groin area due to the accepted April 5, 2021 employment injury. Dr. Chauhan provided a progress report on July 18, 2023 repeating his prior findings.

On August 11, 2023 appellant, through counsel, requested reconsideration. Counsel summarized Dr. Chauhan's June 15, 2023 report and asserted that he had explained why additional diagnoses of lumbosacral radiculopathy, urinary incontinence, bilateral foot drop, and bilateral dermatomal sensory loss at S1, and sensory loss to the groin area were causally related to the accepted employment injury. Counsel maintained that the fall in the shower had not occurred but instead appellant's symptoms worsened when he bent over to wash his legs, which was an activity of daily living rather than a new injury.

By decision dated August 15, 2023, OWCP denied modification of its December 6, 2022 decision.

Appellant continued to submit progress reports from Dr. Chauhan. In a report dated January 23, 2024, Dr. Chauhan reiterated his finding that there was a direct causal relationship between his previously diagnosed conditions and the April 5, 2021 employment injury. He asserted that appellant had not sustained an intervening injury on May 25, 2021 but was instead showering and performing activities of daily living when his industrial injury spontaneously worsened.

No additional medical evidence was received.

By decision dated February 29, 2024, OWCP denied modification.

### **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.<sup>5</sup>

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<sup>5</sup> *P.T.*, Docket No. 22-0841 (issued January 26, 2023); *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); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>6</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and accepted employment injury must be based on a complete factual and medical background.<sup>7</sup> 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 accepted employment injury.<sup>8</sup>

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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions as causally related to, or as a consequence of, the accepted April 5, 2021 employment injury.

In a report dated October 24, 2022, Dr. Chauhan obtained a history of appellant tripping on the leg of a chair on April 5, 2021 and undergoing lumbar surgery on May 28, 2022. He noted that appellant had sustained disc extrusions at multiple levels, especially L4-5 and L5-S1, due to the employment injury. Dr. Chauhan opined that acceptance of the claim should be expanded to include lumbar sprain, intervertebral lumbar disc dysfunction with radiculopathy, intermittent urinary incontinence, severe left foot drop, moderate right foot drop, and numbness in the groin area. He submitted similar progress reports on February 27 and April 12, 2023. On June 7 and 15, 2023 Dr. Chauhan found instead that appellant had been performing an activity of daily living, showering, when his April 5, 2021 injury progressed. Dr. Chauhan opined that appellant had sustained a herniated disc due to his April 5, 2021 employment injury which had worsened with activities of daily living and that after he had bent over while showering on May 25, 2021 his condition had deteriorated such that he required hospitalization and surgery. He disagreed that appellant had sustained an intervening injury on May 25, 2021, finding that it was instead a spontaneous worsening of his condition. Dr. Chauhan reiterated his opinion in a January 23, 2024 report. However, Dr. Chauhan did not provide rationale, explaining, physiologically, how the accepted employment injury caused or contributed to a herniated disc. The Board has held that a

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<sup>6</sup> *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>7</sup> *Supra* note 5; *see also F.A.*, Docket No. 20-1652 (issued May 21, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> *F.R.*, Docket No. 24-0075 (issued March 4, 2024); *P.T.*, Docket No. 21-0110 (issued December 8, 2021); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is causally related to the accepted employment injury.<sup>10</sup> Thus, this evidence is insufficient to establish expansion of the acceptance of the claim.

On June 8, 2021 Dr. Iskandar discussed appellant's history of almost falling after tripping over a chair leg. He obtained a history of appellant bending over in the shower to wash his legs on May 25, 2021 and experiencing the sudden onset of severe low back and buttocks pain, numbness and weakness in the left foot, and urinary incontinence. Dr. Iskandar indicated that appellant underwent a lumbar laminectomy and decompression at L3-S1 on May 28, 2021. He diagnosed aftercare for musculoskeletal system surgery, a history of decompressive lumbar laminectomy, and lumbar disc degeneration with neurological manifestation. Dr. Iskandar submitted progress reports from June 29 through November 5, 2022. On July 5, 2022 he diagnosed aftercare for musculoskeletal system surgery, a history of decompressive lumbar laminectomy, lumbar disc degeneration with neurological manifestation, lumbar strain, and left sciatica. Dr. Iskandar noted that appellant was still awaiting approval from workers' compensation to see a rehabilitation specialist and physical therapy. He indicated that the trip and fall was consistent with examination findings showing strain. In his progress reports, however, Dr. Iskandar did not provide an opinion on causal relationship between appellant's additional diagnoses and the accepted employment injury. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.<sup>11</sup> Therefore, this evidence is insufficient to establish expansion of the claim.

On May 28, 2021, Dr. Duong recommended a decompression and possible fusion from L3 to S1. In a May 26, 2021 report, Dr. Becka noted that appellant was experiencing pain, a left foot drop, saddle anesthesia, and urinary incontinence. He diagnosed a lumbar disc herniation with radiculopathy, low back pain, and urinary incontinence. Neither Dr. Duong nor Dr. Becka, however, provided an opinion on the cause of the additional diagnosed conditions. Thus, these reports are of no probative value and are insufficient to establish expansion of the claim.<sup>12</sup>

The record contains unsigned state workers' compensation reports dated June 29, 2021 through October 28, 2022. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.<sup>13</sup> Therefore, this evidence is of no probative value and is insufficient to establish expansion of the claim.

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<sup>10</sup> See *R.C.*, Docket No. 22-0888 (issued October 4, 2023); *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022).

<sup>11</sup> *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *D.R.*, Docket No. 21-1056 (issued April 13, 2023); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

<sup>12</sup> See *G.J.*, Docket No. 22-1083 (issued November 7, 2022) *V.R.*, Docket No. 19-0758 (issued March 16, 2021); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> See *A.S.*, *supra* note 11; *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

Appellant also submitted the results of diagnostic testing. However, the Board has held that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship.<sup>14</sup> Consequently, this evidence is insufficient to establish expansion of the claim.

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 expand the acceptance of his claim to include additional conditions as causally related to, or as a consequence of, the accepted April 5, 2021 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 29, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 29, 2024  
Washington, DC

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

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

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

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<sup>14</sup> See *M.P.*, Docket No. 23-1131 (issued June 18, 2024); *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.K.*, Docket No. 21-0520 (issued August 23, 2021).