

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

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<b>L.R., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 24-0554</b>
	)	<b>Issued: July 17, 2024</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CITIZENSHIP AND IMMIGRATION</b>	)	
<b>SERVICES, Tampa, FL, Employer</b>	)	
_____	)	

*Appearances:* *Case Submitted on the Record*  
*Capp Taylor, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 30, 2024 appellant, through counsel, filed a timely appeal from a February 20, 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 his accepted August 9, 2017 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board. The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference.<sup>3</sup> The relevant facts are set forth below.

On August 11, 2017 appellant, then a 55-year-old immigration services assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2017 he experienced pain and other symptoms in his mid and low back and both legs, after lifting boxes while in the performance of duty. He stopped work on August 10, 2017.<sup>4</sup> By decision dated October 12, 2017, OWCP accepted appellant's claim for strain of muscle, fascia, and tendons of the lower back.

The record reflects that a January 31, 2017 lumbar x-ray revealed very mild disc space narrowing at the L3-4 and L4-5 level with mild progression of findings at the L3-4 level from the comparison study; an August 11, 2017 lumbar x-ray revealed no acute finding for lumbar spine; an August 11, 2017 thoracic spine x-ray revealed slight scoliosis and multilevel degenerative disc disease; an August 18, 2017 magnetic resonance imaging (MRI) scan of the thoracic spine revealed multi-level disc bulges with no evidence of spinal stenosis or foraminal narrowing; an August 18, 2017 lumbar MRI scan showed multi-level disc bulges at L3 through L5-S1 and stenosis at L4-5 with mild bilateral foraminal narrowing and facet arthropathy; a December 11, 2017 cervical MRI scan showed severe neural foraminal stenosis C3-7, and disc protrusion contacting spinal cord C3-4.

On February 23, 2018 appellant underwent anterior cervical discectomy with plating instrumentation at the levels of C3-4, C4-5, and C5-6.<sup>5</sup>

Appellant continued treatment for his back, including lumbar radiofrequency ablation L4, L5, and S1 for lumbago and spondylosis on July 10, August 7 and 14, 2018.

On June 2, 2021 appellant, through counsel, requested expansion of the acceptance of his claim to include aggravation of cervical and lumbar disc disease with stenosis and thoracic radiculopathy as causally related to the accepted August 9, 2017 employment injury.

In a May 11, 2021 report, Dr. Robert R. Reppy, an osteopathic family medical specialist, reported that on August 9, 2017 appellant was lifting a heavy box at work and felt a "pop" in his neck with immediate pain from the neck to the lower back. He noted that appellant's pain down

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<sup>3</sup> *Order Remanding Case*, Docket No. 23-1082 (issued January 8, 2024).

<sup>4</sup> Appellant returned to work for two hours on October 16, 2017 and stopped work thereafter.

<sup>5</sup> A June 1, 2018 electromyography and nerve conduction velocity (EMG/NCV) study was consistent with probable bilateral cervical radiculopathy.

the legs from the lumbar area, and inability to raise his arms above his head for longer than a brief time has persisted since the August 9, 2017 injury. Dr. Reppy reported that appellant tried to return to light-duty work on August 11, 2017, but he left work by August 18, 2017 to receive lumbar epidurals and eventually cervical surgery in January 2018 with a revision surgery at C6-7 in August 2018. He noted that appellant had a spinal stimulator implant and was considered retired as a functional capacity evaluation (FCE) test determined that he could no longer work. Dr. Reppy provided examination findings, noting that appellant's range of motion of cervical spine was very limited. At the lumbar spine, forward flexion was limited such that flexion and side-bending were limited to the fingertips reaching only the top of the knee. Dr. Reppy provided impressions of status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5 and thoracic radiculopathy. He indicated that, by medical definition, appellant had more than the "lower back sprain" accepted by OWCP as his condition had persisted beyond six months.

In a June 30, 2021 letter, OWCP informed appellant of the deficiencies of his claim for expansion. It advised him of the type of medical evidence needed and afforded appellant 30 days to provide the necessary evidence.

In a July 19, 2021 report, Dr. Reppy again provided impressions of status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5 and thoracic radiculopathy. He indicated that the May 19, 2021 cervical computerized tomography (CT) scan confirmed the presence of anterior cervical discectomy and fusion (ACDF) hardware from C3 to C7, and that the plates, screws and bone grafts were all intact.

By decision dated August 11, 2021, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions of aggravation of cervical and lumbar disc disease as causally related to the accepted employment injury.

On August 18, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In support thereof, appellant submitted an August 16, 2021 letter, wherein Dr. Reppy opined that OWCP should accept the diagnoses of lumbar stenosis at L4-5, aggravation of cervical fusion at C6-7 and thoracic region radiculopathy as the final diagnoses. He indicated that those diagnoses were confirmed by MRI scan. Dr. Reppy also explained that a "strain" diagnosis was no longer applicable when, by medical definition, the symptoms persisted beyond six months. In this case, Dr. Reppy indicated that appellant's symptoms persisted for over four years from the date of injury.

In a September 22, 2021 report, Dr. Reppy continued to provide impressions of status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5 and thoracic radiculopathy.

By decision dated November 18, 2021, OWCP's hearing representative affirmed OWCP's August 11, 2021 decision, finding that there was no reasoned medical opinion which supported that appellant had suffered an aggravation of his preexisting degenerative disc disease causally related to the accepted August 9, 2017 work injury.

In an undated letter, which OWCP received on December 3, 2021, appellant indicated that Dr. Reppy had been his treating physician since May 11, 2021.

OWCP received additional progress notes from Dr. Reppy, wherein he continued to provide impressions of status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5 and thoracic radiculopathy.

On November 13, 2022 appellant, through counsel, requested reconsideration. He argued that the medical evidence presented was based on an accurate history and objective findings that appellant's August 9, 2017 work injury aggravated preexisting cervical and lumbar disc disease.

In a January 31, 2023 report, Dr. Reppy reiterated his earlier opinion that based on the diagnostic testing and medical definition of "strain," OWCP should accept the diagnoses of lumbar stenosis at L4-5, aggravation of cervical fusion at C6-7 and thoracic region radiculopathy as the final diagnoses, not just a lumbar strain.

By decision dated February 7, 2023, OWCP denied modification of its November 18, 2021 decision.

On May 8, 2023 appellant, through counsel, requested reconsideration.

OWCP thereafter received a May 3, 2009 CT scan of cervical spine which indicated no fracture or subluxation, but multilevel degenerative changes including foraminal stenosis.

In April 6 and June 8, 2023 progress notes, Dr. Reppy continued to provide impressions of status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5 and thoracic radiculopathy.

In an April 25, 2023 report, Dr. Reppy reviewed appellant's history of injury on August 9, 2017 and recounted appellant's medical treatment. He diagnosed lumbar stenosis at L4-5, aggravation of cervical fusion at C6-7, and thoracic radiculopathy. Dr. Reppy described the mechanism of injury and opined that appellant's August 9, 2017 employment injury caused his cervical and lumbar stenosis based on the changes seen in the diagnostic testing. He stated that appellant's lumbar spine transformed in seven months from an asymptomatic mild degenerative condition to a bilateral stenosis causing great pain. Dr. Reppy further stated that the cervical CT scan of May 3, 2009 showed no sign of severe cervical stenosis, which suddenly appeared after the August 9, 2017 work injury on December 11, 2017 CT scan. He opined that symptoms stemming from appellant's cervical spine and the cervical fusion surgery were consequential to and causally related to the employment injury. Dr. Reppy also explained how lifting injuries are the most common etiology of lumbar and cervical diseases. He further opined that appellant was unable to work, based on the FCE test.

By decision dated July 12, 2023, OWCP denied modification.

Appellant appealed to the Board. By order dated January 8, 2024, the Board found that OWCP failed to consider Dr. Reppy's June 8, 2023 in reaching its decision. The Board set aside OWCP's July 12, 2023 decision and remanded the case for further development to be followed by a *de novo* decision.<sup>6</sup>

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<sup>6</sup> *Supra* note 4.

While the appeal was pending before the Board, OWCP received follow-up reports from Dr. Reppy dated October 16 and December 14, 2023, and February 1, 2024. Dr. Reppy continued to provide impressions of status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5 and thoracic radiculopathy. In his October 16 and December 14, 2023 reports, he indicated that OWCP had been provided ample objective medical evidence to amend the list of accepted conditions.

By *de novo* decision dated February 20, 2024, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish that the additional conditions of aggravation of cervical and lumbar disc disease with stenosis and thoracic radiculopathy were causally related or consequential to the accepted August 9, 2017 employment injury.

### **LEGAL PRECEDENT**

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.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.<sup>9</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 employment injury.<sup>10</sup>

In a 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

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<sup>7</sup> *J.T.*, Docket No. 23-1176 (issued March 19, 2024); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>8</sup> *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>9</sup> *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</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 his accepted August 9, 2017 employment injury.

In support of his expansion claim, appellant submitted progress reports dated May 11, 2021 through February 1, 2024 wherein Dr. Reppy provided impressions of status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5 and thoracic radiculopathy. However, Dr. Reppy did not provide an opinion on causal relationship. 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.<sup>12</sup> This evidence is, therefore, insufficient to establish expansion of the claim.

In a May 11, 2021 report, Dr. Reppy related that on August 9, 2017 appellant was lifting a heavy box at work and felt a "pop" in his neck with immediate pain radiating from his neck to his lower back. However, Dr. Reppy did not provide an opinion on causal relationship between the additional diagnosed conditions and the accepted employment injury.<sup>13</sup> This evidence is, therefore, insufficient to establish expansion of the claim.

In an April 25, 2023 report, Dr. Reppy opined that appellant's cervical stenosis definitely developed as a result of the August 9, 2017 work injury as there were no signs of severe stenosis prior to the work injury based on a May 3, 2009 MRI scan. He, however, did not provide sufficient rationale explaining how the accepted employment injury physiologically caused or aggravated the additional diagnosed conditions. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>14</sup> Accordingly, this evidence is insufficient to establish expansion of the claim.

Appellant also submitted a May 3, 2009 CT scan of cervical spine. The Board, however, has held that diagnostic test reports, standing alone, lack probative value as they do not provide an opinion on causal relationship.<sup>15</sup>

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<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); see also *L.S.*, Docket No. 18-0518 (issued February 19, 2020).

<sup>12</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *Id.*

<sup>14</sup> See *C.B.*, (*S.B.*), Docket No. 19-1629 (issued April 7, 2020); *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>15</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

As the medical evidence of record is insufficient to establish causal relationship between additional conditions and the accepted August 9, 2017 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.

**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 his accepted August 9, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 20, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2024  
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