

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

O.R., Appellant	)	
	)	
and	)	<b>Docket No. 23-0929</b>
	)	<b>Issued: June 5, 2024</b>
<b>FEDERAL JUDICIARY, U.S. PROBATION</b>	)	
<b>AND PRETRIAL SERVICES, New Haven, CT,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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 June 23, 2023 appellant filed a timely appeal from a June 8, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**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 March 15, 2022 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the June 8, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

## **FACTUAL HISTORY**

On March 24, 2022 appellant, then a 55-year-old probation officer, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2022 he injured his lower back when the government vehicle he was operating was involved in a motor vehicle accident (MVA) while he was in the performance duty. He did not stop work.

In support of his claim, appellant submitted records by Dr. Keith Wade, a chiropractor. In an unsigned note dated March 30, 2022, Dr. Wade diagnosed cervical, thoracic, and lumbar sprains. He noted that he had obtained cervical and lumbar x-rays. On April 13, 2022 Dr. Wade diagnosed segmental and somatic dysfunction of the cervical, lumbar, and thoracic region. He indicated that palpation revealed numerous subluxations. In an unsigned report dated April 8, 2022, Dr. Wade diagnosed cervical, thoracic, and lumbar sprains.

By decision dated April 29, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis from a qualified physician in connection with the accepted March 15, 2022 employment incident.

On June 6, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 13, 2022.

OWCP thereafter received a September 14, 2022 report by Dr. Gregory R. Czarnecki, an osteopath and Board-certified internist, who diagnosed acute and subacute left lumbar radiculopathy. Dr. Czarnecki indicated that appellant had developed low back pain radiating into the left lower extremity after a MVA at work on March 15, 2022. He advised that his initial evaluation had revealed reduced Achilles/S1 reflex on the left and "clear neural tension signs" supporting a diagnosis of radiculopathy. Dr. Czarnecki found a "high probability that [appellant's] symptoms are related to the accident from direct causation."

A report of magnetic resonance imaging (MRI) scan of the lumbar spine dated September 23, 2022 demonstrated a left subarticular protrusion at L5-S1 causing asymmetrical compression of the left traversing S1 nerve roots with otherwise no "substantial mass effect on the traversing or foraminal nerve roots elsewhere within the lumbar spine."

In an October 14, 2022 report, Dr. Pietro A. Memmo, a Board-certified physiatrist and pain management specialist, related that appellant was injured at work in a MVA on March 5, 2022 but that his claim had been denied. He discussed appellant's history of a remote lumbar injury in 2020 from which he had recovered after two months of chiropractic care. Dr. Memmo diagnosed compressive lumbosacral radiculopathy, which he found correlated with the findings on MRI scan of a large disc herniation with an annular tear along the L5-S1 level with nerve root compression. He recommended epidural injections. Dr. Memmo opined that, based on the history of injury obtained from appellant, "it appears that the motor vehicle accident is a substantial contributing factor to his current condition and need for treatment."

On November 7, 2022 Dr. Czarnecki evaluated appellant for low back pain with radiculopathy into the left lower extremity following an employment-related MVA in March 2022. On examination, he found pain in the left lower extremity with straight leg raise, but with improved tolerance. Dr. Czarnecki diagnosed lumbar disc disease with radiculopathy. He related that it

remained his opinion “that there is a high probability that [appellant’s] symptoms are related to the accident from direct causation.”

By decision dated October 28, 2022, OWCP’s hearing representative vacated the April 29, 2022 decision denying appellant’s traumatic injury claim and remanded the case for OWCP to further develop the medical evidence and issue a *de novo* decision.

On December 22, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions to Dr. Ira L. Spar, a Board-certified orthopedic hand surgeon, for a second opinion evaluation. It requested that he provide the diagnoses resulting from the employment injury with supporting rationale.

In a January 12, 2023 report, Dr. Spar reviewed the medical record and SOAF and documented physical examination findings. He noted that prior examination findings had revealed decreased or absent left ankle-deep tendon reflexes and left buttock pain and loss of sensation in the L5 distribution with straight leg raises. Dr. Spar advised that an MRI scan demonstrated disc bulging at three levels without foraminal stenosis at L5-S1. He related, “The nerve root affected at L5-S1 is the S1 root which would be the lateral foot and not the back of the calf. The neurological abnormality described does not fit the MRI study which also did not indicate foraminal compression.” Dr. Spar diagnosed “status post lumbar sprain” due to the March 15, 2022 MVA and opined that the findings on MRI scan of the three abnormal lumbar and sacral discs were “not traumatic in nature.” He opined that no further treatment was indicated, that appellant was asymptomatic with no abnormal objective findings, and that there was no residual impairment due to the March 15, 2022 injury.

In an unsigned report covering his dates of service of appellant from March 22, 2022 to January 13, 2023, Dr. Wade advised that he had evaluated appellant on that date to review his final x-rays due to the March 15, 2022 incident. He found that he had marked improvement in range of motion and decreases pain. Dr. Wade opined that updated x-rays revealed a “moderately improved lordosis curvature localized with C5-6 levels and mild remaining hypolordosis curve at L4/5/S1 levels.” He advised that appellant would likely have accelerated osteoarthritic degeneration of the spine due to his injury and the persistent segmental joint dysfunction which remains.

By decision dated February 13, 2023, OWCP accepted appellant’s claim for a resolved lumbar spine sprain. It denied the claim for disc bulges, finding that the opinion of Dr. Spar represented the weight of the evidence, and that the record was insufficient to establish causal relationship between any additional diagnosed conditions and the accepted March 15, 2022 employment incident.

On March 15, 2023 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

OWCP thereafter received November 22, 2022 and March 21, 2023 reports by Brian Hill, a registered nurse, and a January 11, 2023 medical report by Dr. Memmo. Dr. Memmo noted that appellant had lumbosacral radiculopathy due to a left L5-S1 disc extrusion. He noted that appellant asserted that he had injured himself at work, but that he did not have “any of the early medical records to render an opinion....”

In an undated note received March 31, 2023, Dr. Wade discussed appellant's history of a car accident at work on March 15, 2022. He indicated that appellant had previously been a patient but "had not been seen in some time since resolving his previous back complaint." Dr. Wade advised that he returned to the office on March 22, 2022 due to his work-related injury. He diagnosed "severe traumatic strain/sprain of the spine and spinal subluxation of the back and neck related to the car accident." Dr. Wade asserted that the spinal subluxations had been documented based on the initial x-rays and included in every encounter note. He discussed the chiropractic treatment provided and noted that appellant had been released from care in January 2023.

By decision dated June 8, 2023, OWCP treated appellant's March 15, 2023 request for a review of the written record as a request for reconsideration and denied modification of its February 13, 2023 decision. It advised that his claim remained denied for the condition of a disc bulge.

### **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>3</sup>

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.<sup>4</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>5</sup> Additionally, the opinion of the physician 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 specific employment factor(s) identified by the claimant.<sup>6</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 March 15, 2022 employment injury.

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<sup>3</sup> *L.M.*, Docket No. 23-1040 (issued December 29, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>4</sup> *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>5</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Board notes that OWCP improperly treated appellant's request for a reviewing of the written record as a request for reconsideration. However, the Board finds that this was harmless error as appellant was still afforded procedural due process under FECA.<sup>7</sup>

On September 14, 2022 Dr. Czarnecki reviewed appellant's history of an MVA at work on March 15, 2022. He diagnosed left lumbar radiculopathy which he found was supported by objective findings on examination. Dr. Czarnecki found a "high probability" that appellant's symptoms were directly related to the accident. He reiterated his opinion regarding causation in a November 7, 2022 report. However, Dr. Czarnecki's finding that it was highly probable that appellant's symptoms resulted from the MVA is speculative in nature and lacks sufficient medical reasoning to demonstrate that the conclusions reached was sound, logical, and rationale.<sup>8</sup> His opinion is thus insufficient to establish expansion of the claim.

In a note received on March 31, 2023, Dr. Wade, a chiropractor, discussed appellant's history of a March 15, 2022 MVA at work and noted that he had previously treated him for a resolved back complaint. He diagnosed a sprain of the spine and spinal subluxation of the neck and back due to the employment injury and advised that he had based the diagnosis of spinal subluxations on the initial x-rays. As Dr. Wade diagnosed a spinal subluxation based on x-rays, he is considered a qualified physician under FECA to the extent he diagnosed a subluxation as demonstrated by x-ray.<sup>9</sup> However, his report was conclusory as he failed to provide rationale explaining how the accepted employment injury caused a spinal subluxation to appellant's neck and back.<sup>10</sup> The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to employment.<sup>11</sup> Therefore, this report is insufficient to establish expansion of the claim.

On October 14, 2022 Dr. Memmo diagnosed lumbosacral radiculopathy and opined that appellant's symptoms corresponded to the MRI scan findings of a large disc herniation with an annular tear at the L5-S1 level with nerve compression. He advised that based on the history obtained from appellant that MVA appeared a substantial contributing factor to his condition. Dr. Memmo's finding that the MVA "appeared" a contributing factor is couched in speculative terms, and the Board has held that medical opinions that are speculative or equivocal are of

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<sup>7</sup> See *G.B.*, Docket No. 16-1583, n.11 (issued February 21, 2018); *Lan Thi Do*, 46 ECAB 366 (1994).

<sup>8</sup> See *R.C.*, Docket No. 22-0888 (issued October 4, 2023); *L.M.*, Docket No. 17-0279 (issued January 26, 2018); *B.S.*, Docket No. 15-0002 (issued February 27, 2015); *K.W.*, 59 ECAB 271 (2007).

<sup>9</sup> Section 8101(2) of FECA provides that the term physician includes chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). See *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>10</sup> *T.W.*, Docket No. 20-0767 (issued January 13, 2021); see *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

<sup>11</sup> *S.B.*, Docket No. 21-1022 (issued May 5, 2022); *C.P.*, Docket No. 21-0744 (issued December 20, 2021).

diminished probative value.<sup>12</sup> Accordingly, Dr. Memmo's opinion is insufficient to establish expansion of appellant's claim.<sup>13</sup>

In a January 11, 2023 report, Dr. Memmo opined that appellant had lumbosacral radiculopathy due to a disc extrusion on the left at L5-S1. He noted that appellant maintained that his injury had occurred at work, but that he could not render an opinion as he did not have the early medical records to review. As Dr. Memmo declined to address causation, his report is of no probative value on the issue of expansion of the claim.<sup>14</sup>

The record further contains unsigned reports from Dr. Wade. 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>15</sup> Therefore, these reports are of no probative value and are insufficient to establish expansion.

Appellant further submitted the results from diagnostic studies. The Board has held, however, that diagnostic test reports, standing alone, lack probative value on the issue of causal relationship.<sup>16</sup> Consequently, this medical evidence is insufficient to establish expansion of the claim.

Appellant further submitted reports from a nurse. However, this does not constitute competent medical evidence as nurses are not considered physicians as defined under FECA.<sup>17</sup>

In a January 12, 2023 report, the second opinion physician, Dr. Spar advised that an MRI scan demonstrated disc bulging at three levels without foraminal stenosis at L5-S1. He diagnosed "status post lumbar sprain" due to the March 15, 2022 MVA and opined that the findings on MRI scan of the three abnormal lumbar and sacral discs were "not traumatic in nature." Dr. Spar provided a rationalized medical opinion based on an accurate history of injury and clinical examination findings. Therefore, the Board finds that his report constitutes the weight of the

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<sup>12</sup> See *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

<sup>13</sup> *S.S.*, *id.*

<sup>14</sup> See *D.W.*, Docket No. 19-0968 (issued October 9, 2019); *H.Y.*, Docket No. 08-1261 (issued October 20, 2008).

<sup>15</sup> *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *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).

<sup>16</sup> See *S.K.*, Docket No. 22-0950 (issued June 23, 2023); *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

<sup>17</sup> 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 also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *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).

medical evidence.<sup>18</sup> As the medical evidence of record is insufficient to establish causal relationship between additional conditions and the accepted March 15, 2022 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 March 15, 2022 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 8, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 5, 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>18</sup> See *L.L.*, Docket No. 22-0733 (issued May 9, 2023); *A.C.*, Docket No. 21-1093 (issued July 21, 2022).