

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

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Y.B., Appellant )

and )

U.S. POSTAL SERVICE, ATCO POST OFFICE, )  
Atco, NJ, Employer )  
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**Docket No. 22-0121**  
**Issued: November 19, 2024**

*Appearances:*

Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 3, 2021 appellant, through counsel, filed a timely appeal from a June 21, 2021 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.<sup>3</sup>

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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.*

<sup>3</sup> The Board notes that, following the June 21, 2021 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a lumbar condition as causally related to the accepted January 16, 2004 employment injury.

## FACTUAL HISTORY

On January 20, 2004 appellant, then a 44-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 16, 2004 she sustained a concussion when a wheeled recycling bin fell on top of her and struck her head while she was in the performance of duty. She stopped work on January 17, 2004. OWCP initially accepted appellant's claim for concussion and cervical sprain. It paid her wage-loss compensation for disability from work on the supplemental rolls commencing March 2, 2004 and on the periodic rolls commencing June 13, 2004.

In a February 9, 2004 note, Dr. William R. Wolfe, a Board-certified neurologist, indicated that appellant's concussion, vertigo, and headaches rendered her unable to return to work. On March 4, 2004 he noted her continuing symptoms of headaches, dizziness, and nausea. Appellant continued to receive medical treatment for symptoms related to her head and cervical spine injuries. She primarily complained of experiencing severe headaches/migraines and problems with balance, concentration, and memory. After the January 16, 2004 injury, appellant received OWCP-authorized physical therapy and chiropractic care multiple times per week, which focused on treating her neck region. She also received periodic injections in her neck, which she reported only provided temporary relief.

The findings of a December 22, 2005 x-ray of appellant's lumbar spine revealed no evidence of fracture or subluxation, mild curvature of the lumbar spine convex left, and mild narrowing of the neural foramina at L5-S1.

In 2010, OWCP expanded the acceptance of appellant's claim to include dizziness and giddiness. In 2016, it further expanded the acceptance of her claim to include post-concussion syndrome, spinal subluxation, intervertebral cervical disc disorders, brachial neuritis/radiculitis, and herniated cervical disc(s) with myelopathy and cervical radiculopathy.

In a November 8, 2016 report, Dr. Alan F. Kwon, a Board-certified anesthesiologist, indicated that appellant presented to his office for the first time complaining of headaches, nausea, dizziness, ear ringing, and neck pain, which radiated into the deltoid muscles in both shoulders. He noted that physical examination of the lumbosacral spine revealed poor range of motion upon flexion and extension and tenderness to palpation of the paravertebral muscles. Appellant had intact motor strength upon hip flexion, knee extension, and plantar flexion/dorsiflexion. Dr. Kwon diagnosed post-traumatic cervicalgia, post-traumatic concussion, chronic pain syndrome, cervical disc herniation.

In October 4, November 1, and December 13, 2017 reports, Dr. Alan Carr, an osteopath and Board-certified anesthesiologist, indicated that appellant reported low back pain, self-rated at the 5/10 pain level, which radiated to her posterior left thigh and calf. Physical examination of appellant's back was deferred on the dates these reports were produced.

A March 28, 2018 magnetic resonance imaging (MRI) scan of appellant's low back contained an impression of degenerative disc disease from L1-2 through L5-S1 with mild disc bulges at L2-3 through L5-S1; mild central stenosis at L3-4 and L4-5 with disc abutting the traversing right S1 nerve root at L5-S1; mild foraminal stenosis at L3-4 and L5-S1; and moderate foraminal stenosis at L4-5.

Appellant submitted a May 14, 2018 report of Dr. Carr, received by OWCP on June 5, 2018 and requested expansion of the acceptance of her claim to include a herniated lumbar disc with radiculopathy causally related to the accepted January 16, 2004 employment injury. In the May 14, 2018 report, Dr. Carr indicated that since the initial visit to his office on November 8, 2016 she had reported episodic lower back pain, which radiated to the left foot with paresthesias along the lateral aspect of the left foot. He advised that appellant denied a history of low back pain prior to her 2004 injury and reported a recent gradual worsening of her low back pain without additional trauma/injury. Appellant further reported that her symptoms had previously responded well to chiropractic care and were improved for many years after her 2004 accident. Dr. Carr indicated that her injury of having a large heavy recycle bin fall onto her head and upper spine "correlates to her diffuse spinal complaints." He discussed recent diagnostic testing and indicated that at her most recent office visit on May 14, 2017 appellant exhibited decreased painful range of motion of the lumbar spine, positive seated and supine straight leg raise testing on the left for pain into the posterior left thigh, knee, and proximal calf, L5-S1 facet joint tenderness upon tenderness along with left S1 joint tenderness, positive axial loading and Faber test on the left, and diminished reflexes in the left patella. Dr. Carr noted that appellant had exhausted conservative therapies without improvement in her symptoms. He requested that OWCP consider approval of medically necessary and appropriate intra-articular injections to treat appellant's diagnosed lumbar herniated nucleus pulposus (HNP) with radiculopathy.

In a June 5, 2018 report, Dr. Snigdha Weinberg, a Board-certified neurologist, noted that appellant presented complaining of chronic headaches, neck pain, and low back pain. She advised that, upon physical examination, appellant had normal muscle tone and 5/5 strength in all muscle groups of the upper and lower extremities.

In a July 16, 2018 report, Dr. Larisa Syrow, a Board-certified neurologist, indicated that appellant presented to her for the first time in order to evaluate headaches, which appellant reported had started since her January 16, 2004 employment injury. She noted that appellant's past medical history included lumbar degenerative disc disease. Dr. Syrow advised that, upon physical examination, appellant had normal muscle tone and 5/5 strength in all muscle groups of the upper and lower extremities. She diagnosed headaches and recommended medication and physical therapy.

On November 26, 2018 OWCP referred appellant for a second opinion examination and evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether she presently had residuals of the January 16, 2004 employment injury, either in the form of the accepted conditions or a diagnosed herniated lumbar disc with radiculopathy. In a December 14, 2018 report, Dr. Askin indicated that the physical examination revealed that appellant did not have any objectively determinable manifestation of lumbar HNP with radiculopathy. He noted that she did not have lower extremity atrophy, deep tendon reflex asymmetry, or a true positive straight leg raising test. Dr. Askin maintained that such clinical manifestations of lumbar HNP and radiculopathy were absent. In a December 14,

2018 work capacity evaluation (Form OWCP-5c), he indicated that appellant could perform her regular work on a full-time basis.

In a December 26, 2018 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed. OWCP afforded appellant 30 days to submit the necessary evidence.

In a December 20, 2018 report, Dr. Syrow indicated that appellant presented complaining of having head, neck, and low back pain since 2004. She reported physical examination findings, noting that there was no tremor in appellant's lower extremities. Dr. Syrow diagnosed chronic migraine, intractable chronic post-traumatic headache, generalized headaches, generalized anxiety disorder, and cervical radiculopathy.

On January 8, 2019 OWCP referred appellant for a second opinion examination and evaluation with Dr. Andrea Reznik, a Board-certified neurologist. It requested that Dr. Reznik provide an opinion regarding whether appellant presently had residuals of the accepted January 16, 2004 employment injury.

By decision January 28, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a herniated lumbar disc with radiculopathy causally related to the accepted January 16, 2004 employment injury. It noted: "Thus, expansion of your claim to include the additional diagnosis(es) of HNP with radiculopathy is denied as the evidence of record does not demonstrate that the medical condition(s) is/are related to the established work injury/illness as required for coverage under the FECA."

In a February 1, 2019 report, Dr. Reznik determined that appellant had a normal neurological examination and did not have objective findings upon which to base a diagnosis causally related to the accepted January 16, 2004 employment injury. She found that appellant was able to perform the full duties of her federal employment.

On October 15, 2019 appellant, through counsel, requested reconsideration of the January 28, 2019 decision.

Appellant submitted a March 30, 2019 report from Dr. Syrow who reported physical examination findings, noting that appellant complained of multiple symptoms including low back pain. Dr. Syrow diagnosed neck pain, bilateral arm weakness, difficulty walking, chronic migraine, generalized anxiety disorder, intractable chronic post-traumatic headache, cervical radiculopathy, chronic pain syndrome, functional neurological system disorder, and lumbar degenerative disc disease.

In a March 30, 2019 report, Dr. Syrow opined that the symptoms appellant suffered due to the January 16, 2004 employment injury included chronic intractable migraines, chronic neck and back pain, numbness in both arms related to cervical radiculopathy, numbness in both legs related to lumbar radiculopathy, difficulty walking, problems with memory loss/concentration, and generalized anxiety with panic attacks.

In a September 30, 2019 report, Dr. Carr discussed the medical treatment and evaluation of appellant's cervical region and upper extremities since the January 16, 2004 employment injury. He opined that her chronic bilateral cervical radiculopathy was permanent and directly related to the January 16, 2004 employment injury.

In an October 14, 2019 report, Dr. Carr advised that appellant had been treated by his office primarily for her severe cervical spine pain and radiculopathy, and noted that, during this timeframe, she had lumbar radicular components of her pain down to the lower extremity with numbness and tingling. He indicated that care for the lumbar condition was deferred while she was at his office because of the severity of her upper extremity pain. Dr. Carr noted, “[i]t is with a reasonable degree of medical certainty, that this radicular component in the lower extremities is directly related to the work-related injury [appellant] had on [January 16, 2004].” He maintained that the other reason the lumbar condition had not been addressed was because his office could not treat all the areas of the spine at one time and “because of the severity and profound affects [appellant’s] cervical spine had on her activities of daily living.” Dr. Carr indicated that appellant had ongoing chronic lumbar radiculopathy and paresthesias secondary to her January 16, 2004 employment injury.

In an August 12, 2019 report, Dr. Syrow reiterated the findings and opinions made in her prior reports.

In a December 10, 2019 attending physician’s report (Form CA-20), Dr. Syrow listed the January 16, 2004 employment injury and diagnosed chronic intractable post-traumatic migraine, neck pain, anxiety and panic attacks, functional neurologic disorder, and back pain. She checked a box marked “Yes” indicating that the diagnosed conditions were related to the employment activity.

Appellant submitted a May 10, 2019 electromyogram/nerve conduction velocity (EMG/NCV) study of the upper extremities.

By decision dated January 14, 2020, OWCP denied modification of its January 28, 2019 decision.

On June 18, 2020 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a May 22, 2020 report, Dr. Syrow advised that appellant continued to have numerous ongoing symptoms, including back pain, which radiated into her legs. She opined that appellant’s medical conditions were related to the January 16, 2004 employment injury involving a falling recycling bin, including lumbar disc herniation and resulting radiculopathy with pain radiating down the legs, lower extremity numbness, and gait difficulty. Dr. Syrow maintained that “this resulting chronic and incapacitating condition was sustained directly due to the accident on [January 16, 2004].” She indicated that the force of the recycling bin caused misalignment/protrusion of the lumbar disc, which in turn caused compression of the nerve root. Dr. Syrow indicated, “[t]he onset of the pain, numbness and difficulty with balance started exactly after this incident[,] which corroborates the relationship between the injury and the lumbar radiculopathy.”

On August 14, 2020 OWCP requested that Dr. Syrow clarify her opinion regarding appellant’s lumbar and lower extremity conditions. It afforded her 15 days to respond. No response was received.

By decision dated September 2, 2020, OWCP denied modification of its January 14, 2020 decision.

On March 22, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence.

Appellant submitted an August 24, 2020 report from Dr. Syrow who reported her findings upon physical examination, noting that appellant continued to report having low back pain.

In a September 3, 2020 report, Dr. Syrow indicated that appellant reported that on January 16, 2004 she injured her lumbar spine when falling backward after being struck in the head by the recycling bin. Appellant denied having lower back pain prior to the event and reported that her lower back pain started shortly after the injury. Dr. Syrow indicated that appellant advised she did not pursue treatment until years later because she focused her treatment on the headaches, cervical spine disease, and the difficulty with walking and concentration. She advised that her assessment of appellant's pathophysiologic process was that, in the course of the January 16, 2004 accident, appellant hyperextended her lumbar spine when falling backward, thereby directly compressing the lumbar discs and leading to the bulges and protrusions seen at multiple levels of the lumbar spine, *i.e.*, L2-3, L3-4, L4-5, and L5-S1. Dr. Syrow noted that, given that appellant did not seek treatment until several years after the January 16, 2004 injury, it was difficult to assess whether the radiculopathy symptoms caused by foraminal stenosis seen on MRI scan were directly caused by that injury. She further indicated that "it is likely that the injury accelerated or even precipitated the development of degenerative disc disease and foraminal stenosis."

In a September 16, 2020 letter, Dr. Syrow indicated that she had been treating appellant for multiple neurological symptoms, including neck and low back pain, which resulted from her 2004 employment injury when a recycling bin fell on her head. She opined that appellant would benefit from continued physical therapy. On November 16, 2020 Dr. Syrow produced a similar letter supporting continued physical therapy.

In a November 16, 2020 report, Dr. Syrow reported her findings upon physical examination, noting that appellant continued to report having low back pain.

In a November 16, 2020 Form CA-20, Dr. Syrow listed the January 16, 2004 employment injury and diagnosed migraine, memory/concentration difficulties, anxiety and panic attacks, walking difficulties, backpain, and left leg numbness. She checked a box marked "Yes" indicating that the diagnosed conditions were related to the employment activity.

In December 14, 2020 and February 16, April 6, and May 11, 22, 2021 reports, Dr. Miteswar Purewal, a Board-certified anesthesiologist, discussed his evaluation of appellant's cervical condition and diagnosed cervical facet syndrome and cervical radiculopathy/radiculitis.

In a February 18, 2021 report, Dr. Syrow reported the findings of her physical examination, noting that appellant complained on numbness in her left leg and foot.

In a February 18, 2021 letter, Dr. Syrow indicated that her assessment of appellant's pathophysiologic process was that, in the course of the January 16, 2004 accident involving a recycling bin that fell on her head, appellant hyperextended her lumbar spine when falling backward, thereby directly compressing the lumbar discs and leading to the bulges and protrusions seen at multiple levels of the lumbar spine, *i.e.*, L2-3, L3-4, L4-5, and L5-S1. She noted, "I believe that the mechanism of injury is the compression of the nerve root and that there is a causal relationship between the accident and the lumbar radiculopathy." Dr. Syrow advised that, although appellant did not seek treatment of her back until several years after the accident, she was

reasonably certain that the symptoms of radiculopathy were directly caused by the January 16, 2004 injury and that the injury accelerated or precipitated the development of degenerative disc disease and foraminal stenosis.

Appellant also submitted a February 22, 2021 EMG/NCV study and a March 12, 2021 MRI scan of the cervical spine.

By decision dated June 21, 2021, OWCP denied modification of its September 2, 2020 decision.

### **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>4</sup> The medical evidence required to establish causal relationship between a specific condition, and the employment injury 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 diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision.

In a May 22, 2020 report, Dr. Syrow advised that appellant continued to have numerous ongoing symptoms, including back pain, which radiated into her legs. She opined that appellant's medical conditions were related to the January 16, 2004 employment injury involving a falling recycling bin, including lumbar disc herniation and resulting radiculopathy with pain radiating down the legs, lower extremity numbness, and gait difficulty. Dr. Syrow noted that "this resulting chronic and incapacitating condition was sustained directly due to the accident on [January 16, 2004]." She maintained that the force of the recycling bin caused misalignment/protrusion of the lumbar disc, which in turn caused compression of the nerve root. Dr. Syrow indicated, "[t]he onset of the pain, numbness and difficulty with balance started exactly after this incident[,] which corroborates the relationship between the injury and the lumbar radiculopathy." In a September 3, 2020 report, she indicated that on January 16, 2004 appellant hyperextended her lumbar spine when falling backward, thereby directly compressing the lumbar discs and leading to the bulges and protrusions seen at multiple levels of the lumbar spine, *i.e.*, L2-3, L3-4, L4-5, and L5-S1. Dr. Syrow noted that, given that appellant did not seek treatment until several years after the January 16, 2004 injury, it was difficult to assess whether the lumbar radiculopathy symptoms caused by foraminal stenosis seen on MRI scan were directly caused by that injury. She further indicated that "it is likely that the injury accelerated or even precipitated the development of degenerative disc disease and foraminal stenosis." In a February 18, 2021 report, Dr. Syrow indicated that her assessment of appellant's pathophysiologic process was that, in the course of the

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<sup>4</sup> *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>5</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

January 16, 2004 employment injury involving a recycling bin that fell on her head, appellant hyperextended her lumbar spine when falling backwards, thereby directly compressing the lumbar discs and leading to the bulges and protrusions seen at multiple levels of the lumbar spine, *i.e.*, L2-3, L3-4, L4-5, and L5-S1. She noted, “I believe that the mechanism of injury is the compression of the nerve root and that there is a causal relationship between the accident and the lumbar radiculopathy.” Dr. Syrow advised that, although appellant did not seek treatment of her back until several years after the accident, she was reasonably certain that the radiculopathy symptoms were directly caused by the January 16, 2004 injury and that the injury accelerated or precipitated the development of degenerative disc disease and foraminal stenosis. The Board finds that, while Dr. Syrow’s opinion is insufficiently rationalized to establish appellant’s claim, it is sufficient to require further development of the medical evidence.<sup>6</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>7</sup> OWCP has an obligation to see that justice is done.<sup>8</sup>

The Board shall, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, along with a statement of accepted facts and the medical record to a specialist in the appropriate field of medicine for a rationalized opinion regarding whether appellant sustained a lumbar condition causally related to the accepted January 16, 2004 employment injury. If the second opinion physician disagrees with the opinion of Dr. Syrow, he or she must provide a fully-rationalized explanation of why the accepted employment injury was insufficient to have caused or contributed to appellant’s lumbar condition. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>6</sup> *B.S.*, Docket No. 22-1289 (issued August 20, 2024); *J.L.*, Docket No. 23-0733 (issued October 12, 2023); *C.S.*, Docket No. 22-1087 (issued May 1, 2023); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.*; see also *S.G.*, Docket No. 22-0330 (issued April 4, 2023); see *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

<sup>8</sup> See *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 6.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 19, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board