



Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

### **ISSUE**

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include bilateral hip bursitis as causally related to, or as a consequence of, her accepted December 18, 2020 employment injury.

### **FACTUAL HISTORY**

On December 18, 2020 appellant, then a 52-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her back when she fell into snow as she walked to her building from the parking lot while in the performance of duty. She stopped work on that date. OWCP accepted the claim for an exacerbation of lumbar spondylolisthesis and lumbar strain.

On December 21, 2020 Dr. Brian Morelli, a Board-certified orthopedic surgeon, described appellant's history of injury on December 18, 2020 and indicated that she had a non-antalgic gait and ambulated without an assistive device. He found that appellant's bilateral hips were normal, but noted mild ecchymosis of the right-side low back and right hip. Dr. Morelli diagnosed strain of the lumbar region and spondylolisthesis.

In a March 12, 2021 note, Dr. Marco Palmieri, an osteopath, described the December 18, 2020 employment injury and diagnosed lumbar spondylosis, spondylolisthesis of the lumbar region, and spine stenosis of the lumbar region. He recounted appellant's symptoms of right leg pain, but reported no positive physical findings in the bilateral hips and thighs. Dr. Palmieri examined appellant on April 29, 2021 and repeated these findings.

On June 21, 2021 Dr. Morelli performed an OWCP-authorized decompressive laminectomy at L4 and L5 and a posterior interbody arthrodesis with posterolateral arthrodesis at L4-5.

Dr. Morelli examined appellant on July 16, 2021 and reported pain radiating down her legs with loss of sensation. On physical examination, he found right trochanteric bursa tenderness to palpation. Dr. Morelli also reported no tenderness in the bilateral hips and full range of motion without pain.

Alexandra Sperduit, a physical therapist, provided treatment beginning August 9, 2021.

On December 10, 2021 appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan which demonstrated spondylosis and degenerative disc disease. She underwent a lumbar computerized tomography (CT) scan which also demonstrated these conditions.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

On January 11, 2022 Dr. Palmieri diagnosed lumbar degenerative disease. He related that appellant's back pain radiated to her hips, buttocks, and legs. Dr. Palmieri found a mildly-antalgic gait.

Appellant returned to part-time limited-duty work on April 14, 2022.

In reports dated March 23 and June 22, 2022, Dr. Morelli related appellant's history of injury and medical history. He examined her due to left groin pain, right sacroiliac joint tenderness/dysfunction, residual low back pain, and right trochanteric bursa tenderness to palpation and gait abnormalities. Dr. Morelli found no focal motor defects and a negative impingement test of the hips and thighs bilaterally. On March 23, 2022 he diagnosed lumbar spondylosis. Dr. Morelli further found sacroiliitis or chronic postoperative pain. On June 22, 2022 he diagnosed a history of lumbar fusion and lumbar post-laminectomy syndrome and noted that appellant had chronic back and radicular pain and presumably right sacroiliitis. He requested additional diagnostic studies.

On June 27, 2022 OWCP referred appellant for a second opinion examination with Dr. Jonathan Paul, a Board-certified orthopedic surgeon. In his July 14, 2022 report, Dr. Paul reviewed appellant's medical history and recounted symptoms of pain in her low back, right leg, and left hip as well as physical findings of paresthesia into the right big toe following surgery and an antalgic gait. He diagnosed status-post L4-5 lumbar fusion with persistent pain. Dr. Paul determined that appellant's work-related condition had not resolved and that she had objective findings of muscle spasm and limited range of motion.

On August 17, 2022 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), recommended authorizing a right hip MRI scan to determine whether "there is a component of right hip pathology accounting for the ongoing right hip/buttocks/thigh pain."

On September 14, 2022 Dr. Morelli examined appellant due to right sacroiliac joint dysfunction. He related that she was experiencing bilateral groin pain and opined that this condition may be related to her back or a separate pathology. On physical examination, Dr. Morelli found positive equivocal straight leg raising, negative Faber test reproduction of pain into appellant's groin, and a non-antalgic gait. He requested a bilateral MRI scan of the hips to evaluate for a labral tear.

Dr. Paul completed a supplemental report on September 23, 2022 and opined that appellant should not return to work at the physical location of the employing establishment and provided restrictions including no lifting over 10 pounds and sitting and standing as needed, with the freedom to get up and walk around if required to report to her duty station.

Appellant underwent an October 27, 2022 MRI scan of the left hip which demonstrated mild lateral hip joint narrowing, hamstring tendinopathy with low grade tearing, cam deformity with mild-to-moderate lateral hip joint arthrosis, joint effusion, gluteal tendinopathy, and a low-grade tear at the greater trochanter with soft tissue edema and bursitis. Her right hip MRI scan of even date demonstrated cam deformity with moderate lateral arthrosis, anterior superior labral tear,

joint effusion, gluteal tendinopathy and low-grade tear at the greater trochanter with edema and minimal bursitis.

On November 8, 2022 Dr. Palmieri reviewed the October 27, 2022 MRI scans and diagnosed chronic lumbar radiculopathy, lumbar fusion, lumbar post-laminectomy syndrome, and lumbar radiculopathy. He found that appellant's gait was mildly antalgic and that she ambulated with the assistance of a cane.

In reports dated November 16, 2022 through January 4, 2023, Dr. Morelli reviewed the October 27, 2022 MRI scans and diagnosed bilateral hip bursitis and explained that this condition was likely exacerbated by appellant's altered gait from chronic pain and lumbar spine fusion. He found that she could continue to perform modified-duty work.

On January 17, 2023 Dr. Waqaas Quraishi, a Board-certified physiatrist, listed appellant's injury on December 18, 2020 and examined her due to low back and right leg pain. He diagnosed lumbar disc degeneration and lumbar radiculopathy. Dr. Quraishi recommended a percutaneous spinal cord stimulator implant. He found that appellant's gait and stance were abnormal and that she demonstrated an antalgic gait.

OWCP, on March 2, 2023, expanded the acceptance of appellant's claim to include post laminectomy syndrome and chronic pain syndrome.

On March 2, 2023 OWCP referred the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Katz for an opinion on whether appellant's bilateral hip bursitis was a consequence of the accepted employment injury.

In his March 3, 2023 report, Dr. Katz reviewed the SOAF and medical record including Dr. Morelli's January 4, 2023 report. He was unable to find any evidence of the diagnosis of bilateral hip bursitis and advised that he was "unable to recommend that it be accepted under this claim."

In March 8 and 15, 2023 development letters, OWCP advised appellant of the deficiencies of her claim for the consequential condition of bilateral hip bursitis. It afforded her 30 days to submit additional evidence.

Appellant completed a June 11, 2023 narrative statement, wherein she described her bilateral hip pain developing one month following her accepted L4-5 spinal fusion. She asserted that her gait was impacted by the pain in her back and in her hips causing her to limp. Appellant denied any prior hip injuries or treatment.

On June 15, 2023 OWCP referred the medical record, a SOAF, and a series of questions to Dr. Eric M. Orenstein, a Board-certified orthopedic surgeon serving as a DMA, for an opinion on whether appellant's bilateral hip bursitis was a consequence of the accepted employment injury.

In his June 23, 2023 report, Dr. Orenstein reviewed the SOAF and medical records. He found that there was no documentation that after the work injury appellant's hips were symptomatic. The DMA noted that on November 16, 2022 Dr. Morelli reported a normal gait and normal physical examination of both hips with no areas of localized tenderness and normal range

of motion. He attributed the bilateral hip bursitis with gluteus medius partial tears found on the MRI scan as likely resulting from impingement lesions and osteoarthritis of the hips rather than the lumbar fusion. Dr. Orenstein concluded that there was no evidence in the medical records to support bilateral hip bursitis as consequential to the accepted conditions or lumbar spine fusion.

By decision dated June 28, 2023, OWCP denied appellant's request to expand the acceptance of her claim to include bilateral hip bursitis as causally related to, or as a consequence of, her accepted December 18, 2020 employment injury.

On June 7, 2023 Dr. Quraishi performed an OWCP-authorized surgical implantation of a dorsal column stimulator. He examined appellant on July 13 through August 17, 2023 due to pain in her back.

In a June 1, 2023 addendum, Dr. Morelli explained that symptoms of bilateral hip greater trochanteric tenderness/bursitis were first documented on July 16, 2021. He related that it was common during the postoperative period for patients to experience bilateral hip bursitis secondary to altered gait mechanics and the use of a walker and other assistive devices. Dr. Morelli noted that symptoms may wax and wane over time depending on the current level of inflammation which could not be seen on x-ray and might not be seen on MRI scans. He opined that imaging was not required to prove a bursitis condition, but rather the diagnosis was made by a physical examination and tenderness over the lateral hip/trochanter region. Dr. Morelli related that appellant had a persistent problem in her hips since surgery and that this condition was causally related to her workplace injury and subsequent surgical treatment.

On November 13, 2023 appellant, through counsel, requested reconsideration. He reviewed the medical evidence of record and asserted that there were indications of abnormal gait not mentioned by the DMA.

OWCP continued to receive medical evidence. In a report dated November 3, 2023, Dr. Morelli diagnosed chronic lumbar radiculopathy, back pain, and bilateral hip bursitis following a lumbar L4-5 laminectomy and fusion. He attributed the hip bursitis to post-laminectomy syndrome and opined that this condition was likely exacerbated by appellant's altered gait from chronic pain and the lumbar spine fusion.

On January 3, 2024 OWCP referred appellant and a SOAF for a second opinion evaluation with Dr. Leon Sultan, a Board-certified orthopedic surgeon, to determine the nature and extent of her injury-related condition and disability, and whether she had any consequential injuries. In his February 5, 2024 report, Dr. Sultan reviewed the SOAF and the medical record. He performed a physical examination and found a noticeable waddle gait. Dr. Sultan determined that the work-related condition had not resolved, and that appellant had a chronic lower back condition secondary to failed lower back surgery on June 21, 2021 and July 7, 2023. He completed a work capacity evaluation (Form OWCP-5c) of even date and found that appellant could perform sedentary work.

By decision dated February 9, 2024, OWCP denied modification of its June 28, 2023 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>

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> The opinion of the physician must be one of reasonable certainty, and must explain the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>6</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 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>7</sup>

## ANALYSIS

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

Appellant submitted medical evidence requesting that OWCP expand its acceptance of her claim to include bilateral hip bursitis. OWCP undertook development of the claim and referred appellant, the case file, and a SOAF to Dr. Sultan for a second opinion examination. It requested that Dr. Sultan address whether she had sustained a consequential injury.

In his February 5, 2024 report, Dr. Sultan reviewed the SOAF and the medical record. He performed a physical examination and found a noticeable waddle gait. Dr. Sultan, however, did not provide an opinion on expansion. He determined that the work-related condition had not resolved, and that appellant had a chronic lower back condition secondary to failed lower back surgery on June 21, 2021 and July 7, 2023. Dr. Sultan completed a Form OWCP-5c of even date and found that appellant could perform sedentary work.

It is well established that proceedings under FECA are not adversarial in nature and that, while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares

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<sup>4</sup> *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>5</sup> *B.W.*, Docket No. 21-0536 (issued March 6, 2023); *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

<sup>6</sup> *Id*

<sup>7</sup> *See L.M.*, Docket No. 23-0605 (issued December 5, 2023); *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

responsibility in the development of the evidence.<sup>8</sup> OWCP has an obligation to see that justice is done.<sup>9</sup> Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.<sup>10</sup>

The Board, therefore, finds that the case must be remanded to OWCP for further development.<sup>11</sup> On remand, OWCP shall request that Dr. Sultan provide a supplemental report explaining, with rationale, whether the acceptance of appellant's claim should be expanded to include bilateral hip bursitis or other consequential conditions. If Dr. Sultan is unavailable or unwilling to clarify his opinion, or, if the supplemental report is vague, speculative, or lacking rationale, OWCP must refer appellant, the case record, and detailed SOAF, to another second opinion specialist in the appropriate field of medicine for a rationalized medical opinion on the issue.<sup>12</sup> Following this, and any 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>8</sup> See *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

<sup>9</sup> *S.S.*, Docket No. 16-1792 (issued January 27, 2017); *Kathleen W. Moore*, Docket No. 05-0372 (issued July 7, 2005); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

<sup>10</sup> *D.V.*, Docket No. 23-0672 (issued January 12, 2024); *F.H.*, Docket No. 21-0579 (issued December 9, 2021); *TK.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

<sup>11</sup> *J.K.*, Docket No. 24-0307 (issued June 13, 2024).

<sup>12</sup> *D.D.*, Docket No. 24-0203 (issued May 2, 2024); *J.W.*, Docket No. 22-0223 (issued August 23, 2022); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 9, 2024 decision is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 4, 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