

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

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J.S., Appellant)	
)	
and)	Docket No. 24-0685
)	Issued: September 10, 2024
U.S. POSTAL SERVICE, WAUNAKEE POST OFFICE, Waunakee, WI, Employer)	
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Appearances:
Appellant, pro se
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 June 14, 2024 appellant filed a timely appeal from a February 7, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include degenerative arthritis of the right hip, right total hip replacement, and degenerative

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that OWCP received additional evidence following the February 7, 2024 decision. 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.*

arthritis of the right knee, as causally related to the accepted December 10, 2017 employment injury.

FACTUAL HISTORY

On December 12, 2017 appellant, then a 28-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2017 she fell on black ice and fractured her right ankle while in the performance of duty. She stopped work on that date. OWCP accepted the claim for nondisplaced fracture of lateral malleolus of right fibula. It paid appellant wage-loss compensation on the supplemental rolls, effective January 25, 2018, and on the periodic rolls, effective February 4, 2018. Appellant returned to work on May 27, 2018, and OWCP continued to pay her wage-loss compensation.

In a July 21, 2022 report, Dr. Michelle Poliak-Tunis, Board-certified in physical medicine and rehabilitation and pain medicine, noted that she had treated appellant since her December 2017 injury. She related that after appellant's ankle trauma and fracture, her gait was greatly affected. Dr. Poliak-Tunis opined that due to the impairment in her gait, appellant developed severe neuropathic pain in her right lower extremity, including significant ankle pain, knee pain, and hip pain. She explained that appellant did not have any pain in her right lower extremity prior to the 2017 injury. Dr. Poliak-Tunis noted that magnetic resonance imaging (MRI) scans of appellant's right hip and knee revealed significant osteoarthritis and a meniscal tear of the knee. She opined that these conditions were "most likely due to" appellant's gait being impaired over many years. Dr. Poliak-Tunis also noted that appellant's ankle demonstrated significant abnormalities following the 2017 fracture and opined that the abnormalities were due to the initial injury. She indicated that she would refer appellant to orthopedic surgeons for evaluation of her hip osteoarthritis, chronic ankle and knee pain. Dr. Poliak-Tunis reiterated that appellant had significant neuropathic pain in her right lower extremity which she did not have prior to the 2017 injury.

Appellant underwent a total right hip replacement on February 17, 2023.

On October 20, 2023 OWCP referred appellant, a statement of accepted facts (SOAF), and the case file to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion examination and a determination of whether the acceptance of appellant's claim should be expanded to include authorization of a total hip arthroplasty and additional conditions as causally related to the accepted employment injury.

In a January 3, 2024 report, Dr. Shivaram noted review of the SOAF and recounted appellant's history of injury and medical history. He related appellant's physical examination findings and diagnosed work-related healed fracture of the lateral malleolus of the right ankle and sensory motor polyneuropathy of the right lower extremity. Dr. Shivaram also diagnosed degenerative arthritis, right hip status post right total hip replacement, and degenerative arthritis of the right knee, and opined that those conditions were not work related. He explained that the work-related fracture of the lateral malleolus in 2017 had resolved and appellant had a stretch injury to the sural nerve of the right ankle that was responsible for her symptoms of tingling in the foot and ankle. Dr. Shivaram explained that the sensory neuropathy in the distribution of the sural nerve was not the etiological factor for onset and progression of degenerative arthritis of the right

hip and knee. He noted that appellant was significantly obese, that degenerative arthritis of the hip or knee was multifactorial, that there was higher incidence of arthritic conditions in the obese population, that appellant was being treated by a rheumatologist for a positive antinuclear antibody (ANA), which also could be responsible for the degenerative arthritis of the right hip and knee, and that genetic factors also played a role in early onset degenerative arthritis. Dr. Shivaram related that appellant had undergone right total hip replacement with good relief of symptoms and advised that she might require surgical treatment for degenerative arthritis of the knee. He noted that he had reviewed and disagreed with the report from Dr. Poliak-Tunis as appellant's right total hip replacement was unrelated to the nondisplaced right fibular fracture in 2017. Dr. Shivaram explained that appellant had a relatively minor injury to the ankle with a nondisplaced fracture of the fibula, which was treated with a walking boot, and that appellant's initial complaints of hip pain were approximately three years following the injury to the ankle. He noted that sometimes with injury to the ankle, patients may suffer from stretch injury to the sural nerve, which can cause some sensory abnormality in the lower extremity; however, this was not an etiological factor in the development of osteoarthritis of the hip. Dr. Shivaram opined that based on the foregoing, appellant's osteoarthritis of the right hip and knee was unrelated to her right ankle injury.

OWCP received progress notes dated March 2, 2023 from a physician assistant; work capacity evaluations (Form OWCP-5) dated August 10 and December 7, 2023, signed by a nurse practitioner; an October 12, 2023 duty status report (Form CA-17) signed by a nurse practitioner; and diagnostic test results dated April 4, 2023.

By decision dated February 7, 2024, OWCP expanded the acceptance of appellant's claim to include sensory, motor polyneuropathy of the right lower extremity.

By a separate decision also dated February 7, 2024, OWCP denied expansion of the acceptance of the claim to include the additional diagnoses of degenerative arthritis of the right hip, right total hip replacement, and degenerative arthritis of the right knee. It found that the medical evidence of record was insufficient to establish that those medical conditions were causally related to the accepted December 10, 2017 employment injury, as required for coverage under FECA.

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.³

To establish causal relationship between any additional conditions claimed and the accepted employment injury, an employee must submit rationalized medical evidence.⁴ The opinion of the physician must be based on a complete factual and medical background of the

³ See *G.M.*, Docket No. 24-0388 (issued May 28, 2024); *S.S.*, Docket No. 23-0391 (issued October 24, 2023); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ *S.S.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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 accepted employment injury.⁵

In connection with an expansion claim, the claimant bears the burden of proof to establish a claim for any consequential injury.⁶ 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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include degenerative arthritis of the right hip, right total hip replacement, and degenerative arthritis of the right knee, as causally related to the accepted December 10, 2017 employment injury.

OWCP referred appellant to Dr. Shivaram for a second opinion regarding whether her additional conditions were causally related to the accepted employment injury. In a January 3, 2024 report, Dr. Shivaram, noted his review of the SOAF and the medical record. He diagnosed degenerative arthritis, right hip status post right total hip replacement, and degenerative arthritis of the right knee. Dr. Shivaram opined that these conditions, diagnosed some three years later, were not caused by the ankle injury in December 2017. He explained that appellant had a relatively minor injury to the ankle with a nondisplaced fracture of the fibula, which was treated with a walking boot. Dr. Shivaram also explained that while patients with an injury to the ankle may suffer from a stretch injury to the sural nerve; an injury to the ankle and sural nerve was not the cause of the osteoarthritis of the hip and knee. He related that degenerative arthritis of the hip or knee was multifactorial, appellant was obese and there was higher incidence of arthritic conditions in the obese population, appellant was being treated by a rheumatologist for a positive ANA, which also could be responsible for the degenerative arthritis of the right hip and knee, and genetic factors also played a role in early onset degenerative arthritis. Dr. Shivaram's report is well rationalized and is based on examination findings and an accurate history of injury.⁸ Accordingly, the Board finds that Dr. Shivaram's second opinion report constitutes the weight of the medical evidence.

In support of her claim for expansion, appellant submitted a July 21, 2022 report from her treating physician, Dr. Poliak-Tunis, who related that appellant's ankle trauma and fracture in December 2017 altered appellant's gait. She noted that MRI scans revealed significant osteoarthritis of appellant's right hip and a meniscal tear of the right knee. Dr. Poliak-Tunis opined that these conditions were "most likely due to" appellant's gait being altered by the

⁵ *T.K., id.; I.J.*, 59 ECAB 408 (2008).

⁶ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁷ *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁸ *See J.R.*, Docket No. 20-0292 (issued June 26, 2020); *C.J.*, Docket No. 18-0148 (issued August 20, 2018).

December 2017 work injury to the right ankle. However, as her opinion is speculative, it is of no probative value.⁹ Therefore, this report is insufficient to establish expansion of the claim.

OWCP also received reports of diagnostic studies. However, the Board has held that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹⁰ Consequently, these reports are insufficient to establish expansion of the claim.

The record also contains progress reports and forms from a physician assistant and a nurse practitioner. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹¹ Consequently, this evidence will not suffice for purposes of establishing entitlement to FECA benefits.

As the medical evidence of record is insufficient to establish causal relationship between appellant's degenerative arthritis of the right hip, right total hip replacement, and degenerative arthritis of the right knee and the accepted December 10, 2017 employment injury, the Board finds that appellant has not met her 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include degenerative arthritis of the right hip, right total hip replacement, and degenerative arthritis of the right knee, as causally related to the accepted December 10, 2017 employment injury.

⁹ *P.W.*, Docket No. 20-0407 (issued July 17, 2020); *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁰ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

¹¹ 5 U.S.C. § 8101(2) 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, 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.F.*, Docket No. 19-1573 (issued March 16, 2020) (medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as these care providers are not considered physicians as defined under FECA); *N.B.*, Docket No. 19-0221 (issued July 15, 2019) (physician assistants are not considered physicians as defined under FECA); *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).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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