



## ISSUE

The issue is whether appellant has met her burden of proof to establish that her claim should be expanded to include additional conditions, of left hip strain and sciatica, as causally related to her March 6, 2015 employment injury.

## FACTUAL HISTORY

On March 12, 2015 appellant, then a 50-year-old financial technician, filed a traumatic injury claim (Form CA-1) alleging that, on March 6, 2015, she injured and twisted her back, shoulder, and knee while trying to grab a door to prevent from falling. She indicated that she was the last person to leave her work and when she stepped back to lock the door, she slipped on ice that had not been removed from behind the door. Appellant did not initially stop work.

In a March 9, 2015 treatment note, Dr. Charles Brenner, a Board-certified orthopedic surgeon, indicated that appellant slipped on ice and jerked her shoulder. He advised that she had pain, “mostly in the [left] shoulder to mid back and down into [left] buttocks and leg and gross abnormality and swelling.” Dr. Brenner indicated that her left shoulder range of motion was decreased due to pain. He diagnosed back pain, shoulder pain, and “palps.”

In a March 18, 2015 report, Dr. John Byrne, a Board-certified orthopedic surgeon, noted that appellant presented with a complaint of shoulder pain. He advised that this occurred after a fall at work on the ice. Dr. Byrne indicated that appellant slipped and her left leg, back, and neck twisted as she attempted to support herself. He advised that she presented with neck, low back, left shoulder, left knee pain, and left second toe numbness. Dr. Byrne also found that appellant had pain radiating down the left leg, but no bowel or bladder symptoms. He reviewed her prior history, which included that she had an L4-5 disc bulge and facet hypertrophy and bilateral foraminal stenosis at L4-5 as noted by a September 23, 2011 magnetic resonance imaging (MRI) scan. Dr. Byrne diagnosed pain in the shoulder, sprain/strain of the left knee and leg not otherwise specified, strain of the left shoulder and upper arm, pain in the joint and foot, and sprain of the hip and thigh.

In a May 19, 2015 attending physician’s report, Dr. Patricia Bray, Board-certified in occupational medicine, noted that appellant slipped on stairs at work that were not cleared of snow and ice. She advised that as appellant slipped, she twisted to reach the railing with her left hand and caught herself and did not fall, but felt a pop in her back, left knee, and shoulder. Dr. Bray indicated that she had a history of an Achilles rupture and repair in 2011 and a right rotator cuff repair in 2012. She diagnosed L5 radiculopathy and sensory, acute trapezius strain and acute left knee sprain. Dr. Bray indicated that appellant was unable to assess sensory and motor function. She checked the box marked “yes” in response to whether she believed the condition was caused or aggravated by an employment activity.

On June 18, 2015 OWCP accepted the claim for sprain of the shoulder and upper arm, unspecified on the left, sprain of unspecified sites of the knee and leg on the left, along with sprain of the back, lumbar region.

In a January 13, 2016 report, Dr. Byrne, noted that appellant was seen for follow up of her shoulder. He also opined, “[i]n addition hip and sciatica discomfort is bothered by this as well. [Appellant’s] biggest issue is sleeping is difficult because of the mattress.” Dr. Byrne examined appellant’s hips and determined that she had normal range of motion and no crepitus. He noted that there was no tenderness to palpation and no pain on the right hip, but there was pain on the left. Dr. Byrne diagnosed impingement syndrome of the shoulder. He indicated that in addition, appellant had a “neuropathy for both the hip and the shoulder, especially with the significant pain down the leg and hip consistent with a sciatica and trochanteric bursitis from this work-related injury.” Dr. Byrne recommended a new mattress for better contour and fit for her body sleeping to get better sleep and to improve the sciatic pain.

Dr. Byrne provided an addendum dated February 24, 2016 in which he explained that appellant had “pain in the hip completely associated with the low back injury which was from the work-related injury.” In a March 23, 2016 certificate of disability, he noted that she could return to light-duty work with restrictions to include: working for four to eight hours a day, as tolerated with symptoms due to sciatica and shoulder symptoms.

In an April 1, 2016 report, Dr. Byrne explained that appellant was at work on April 1, 2016 when she slipped on ice which had not been cleared. He advised that she injured her neck, low back, left shoulder, left knee, left second toe, and left hip. Dr. Byrne explained that appellant related that she had pain radiating down her left leg. He indicated that it was “an oversight on our part” as appellant’s left hip is also a part of her slipping on the ice on March 6, 2015 despite the failure to mention it in his initial report. Dr. Byrne explained that appellant had a partial tear of the rotator cuff from straining her shoulder when she slipped. He indicated that appellant would try occupational therapy to her shoulder and physical therapy to her hip and knees. Dr. Byrne diagnosed sprain/strain knee, pain in the foot, sprain in the hip/thigh and sprain/strain of the shoulder. He advised that appellant returned to light-duty work on April 21, 2015 with restrictions of no lifting over five pounds, no standing or sitting more than one hour without breaks, no climbing or kneeling, and she could only work four or five hours a day. Dr. Byrne noted that a lumbar spine MRI scan was ordered due to the significant pain and weakness that appellant endured down her leg. He advised that physical therapy had not helped. Dr. Byrne determined that the MRI scan did not reveal any nerve impingement. He explained that she was to continue physical therapy and if there was no improvement to her shoulder, she was to consider surgery. Dr. Byrne noted that he discussed surgery with appellant and also ordered a left hip MRI scan. He advised that it revealed no pathology so it was presumed muscular. Dr. Byrne noted that she was to continue physical therapy for the hip.

Dr. Byrne indicated that appellant underwent surgery to the shoulder on September 30, 2015 and returned on October 2, 2015 for her postoperative visit. He recommended continued physical therapy and exercise. Dr. Byrne also noted that appellant’s hip and sciatica continued to bother her. He argued that the delay in her treatment was due to the insurance company not authorizing treatment. Dr. Byrne noted that appellant had not received physical therapy to her hip since October 2015. He opined that she had a sciatica and left side issue from the injury and was recovering from the left shoulder injury and surgery. Dr. Byrne recommended limited duties from four to eight hours as tolerated and ultimately get rehabilitation approved.

In an April 20, 2016 report, Dr. Byrne noted that appellant indicated that she was in a follow up for her left hip and shoulder. He noted that her past medical history included: sciatica; shoulder pain, impingement syndrome of the shoulder; chronic pain syndrome; pain in the joint and foot; sprain of the hip and thigh; knee strain; seizure disorder with pituitary adenoma surgery removed in 1994 and afterwards temporal lobe damage; lumbar spondylosis; rupture of the Achilles tendon; cervical sprain; lumbar stenosis with neurogenic claudication; lumbar radiculopathy; syncope and collapse; pain of the knee, strain of upper arm; morbid obesity; diabetes mellitus; borderline; anemia; sprain of the lumbar region. Dr. Byrne noted that appellant's past surgical history also included: arthroscopy of the right shoulder; left lumbar epidural injections; Achilles tendon repair on the left in 2011; shoulder arthroscopy on the right in 2012 and the left on September 30, 2015. He indicated that appellant's current work status was light duty and no heavy lifting/sedentary. Dr. Byrne assessed a sprain of the hip and thigh. He explained that there were significant issues that were not addressed and were waiting approval or rehabilitation. Dr. Byrne recommended that appellant return to regular-duty work.

In a separate attending physician's report also dated April 20, 2016, Dr. Byrne noted appellant's history of injury and indicated that she injured her left shoulder, knee, hip, and back. He checked the box marked "no" in response to whether there was any history or evidence of concurrent or preexisting injury or disease of physical impairment. Dr. Byrne noted that his findings were "postop and injuries needing rehab[ilitation]." He diagnosed shoulder pain, sprain of the hip, sciatica, and another condition which was illegible. Dr. Byrne checked the box marked "yes" in response to whether he believed the condition was caused or aggravated by appellant's employment activity. He advised that he was awaiting rehabilitation approval for physical therapy. Dr. Byrne recommended a return to work on December 16, 2015. In a disability certificate dated April 20, 2016, he recommended that appellant could return to full-duty work on April 18, 2016 with no restrictions.

In a memorandum of telephone call dated May 20, 2016, appellant called to request that her claim be expanded to include the additional conditions of hip strain and sciatica.

By letter dated May 20, 2016, OWCP requested that appellant provide additional evidence to support her request to expand her claim to include hip strain and sciatica. It requested that appellant provide a report from her treating physician with medical rationale, objective findings, and an explanation as to how and why the hip sprain and sciatica were causally related to the original injury. OWCP requested that she submit such evidence within 30 days.

In a May 23, 2016 report, Dr. Byrne again noted appellant's history of injury. He noted that the sciatica she is experiencing is coming from her low back, radiating into her left hip, and down her leg. Dr. Byrne explained that the MRI scan for the left hip did not show any pathology so it was "presumed muscular." He recommended that she resume physical therapy to her hip. Dr. Byrne advised that her hip and sciatica continued to bother her, and opined that "[o]nce again the sciatica is related to the fall she sustained on March 6, 2015 when she slipped on ice and injured her back and left hip. The sciatic pain runs down her left leg including her left hip." Dr. Byrne reiterated that "[appellant] has a sciatica issue and left side issue from the injury and of course recovering from the left shoulder injury and surgery. [Appellant] [will] continue doing the limited time scale from four to eight hours which she can tolerate and ultimately get the rehabilitation approved if possible. At this point with her diagnosis: including the sciatic nerve, the hip strain,

shoulder and knee these are significant issues that had not been addressed and we are waiting approval for rehabilitation unit produced.”

In a July 1, 2016 report, Dr. Byrne noted that appellant was seen for follow up of the left shoulder. Additionally, he noted that she was seen for follow up of her hip and shoulder and was awaiting authorization for treatment. Dr. Byrne examined appellant and determined that the right and left hip had normal range of motion and no crepitus. He diagnosed impingement syndrome of the shoulder and sprain of the hip and thigh.

By decision dated August 4, 2016, OWCP denied appellant’s request to expand her claim to include the additional conditions of hip strain and sciatica. It found that the evidence of record did not demonstrate that the claimed medical conditions were causally related to the accepted March 6, 2015 employment injury. OWCP also noted that Dr. Byrne had released appellant to regular duty on April 18, 2016.

On October 3, 2016 appellant requested reconsideration of the August 4, 2016 denial of the expansion of her claim. She provided a detailed statement of her basis for requesting reconsideration including citation to evidence already of record. In support of her request, appellant resubmitted the March 18, 2015 MRI scan order by Dr. Byrne.

OWCP also received a March 16, 2015 attending physician’s report, which was signed by a nurse and an August 25, 2016 report from a nurse.

On October 11, 2016 appellant’s representative noted that appellant requested reconsideration. He noted that the decision had two dates August 3 and 4, 2016 and wondered if it was reasonable to reissue the decision.

By decision dated December 15, 2016, OWCP found that the evidence of record was insufficient to modify the August 4, 2016 decision. It found that the record did not contain a well-reasoned medical opinion from a qualified physician to support a relationship between the initial injury and the additional conditions, including left hip strain and sciatica.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

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<sup>3</sup> *Supra* note 1.

employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

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>6</sup> To establish causal relationship between the condition, as well as any attendant disability claimed 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>7</sup>

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>8</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her claim should be expanded to include additional conditions, including left hip strain and sciatica, as causally related to her March 6, 2015 employment injury.

The Board initially notes that the record contains a March 18, 2015 MRI scan read by Dr. Byrne, which revealed a sprain of the hip and thigh. However, this report is of limited probative value as it is a diagnostic test report and does not specifically address how a hip or thigh sprain is causally related to the original employment injury.<sup>10</sup> Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>11</sup> OWCP also received a March 16, 2015 attending physician's report, which was signed by a nurse and an August 25, 2016 report from a nurse. The Board has long

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<sup>4</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>5</sup> See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> See *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> See *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>8</sup> See *John W. Montoya*, 54 ECAB 306 (2003).

<sup>9</sup> See *H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>11</sup> See *R.S.*, Docket No. 17-1139 (issued November 16, 2017); *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

held that nurses are not considered physicians under FECA and are therefore not competent to render a medical opinion.<sup>12</sup>

The Board finds that the initial treatment records contemporaneous with the work injury do not offer any opinion regarding the hip strain and sciatica. For example, Dr. Brenner began treating appellant on March 9, 2015. He determined that she had pain, “mostly in the [left] shoulder to mid back and down into [left] butt and leg and gross abnormality and swelling.” Dr. Brenner diagnosed back pain, shoulder pain, and “palps.” He did not diagnose a hip strain or sciatica. Likewise, Dr. Bray saw appellant on May 19, 2015. She explained that as appellant slipped, she twisted to reach the railing with her left hand and caught herself and did not fall, but felt a pop in her back, left knee and shoulder. Dr. Bray noted appellant’s prior surgeries which included an Achilles rupture and repair in 2011 and a right rotator cuff repair in 2012. She diagnosed L5 radiculopathy and sensory, acute trapezius strain and acute left knee sprain. However, Dr. Bray did not diagnose either a hip strain or sciatica. The lack of contemporaneous medical evidence casts doubt on the claim for additional medical conditions.<sup>13</sup>

Appellant contacted OWCP on May 20, 2016 and requested that her claim be expanded to include the conditions of hip strain and sciatica. The remaining relevant evidence includes several reports from Dr. Byrne. The Board finds that the reports of Dr. Byrne are insufficient to establish her claim for the acceptance of additional medical conditions.

In his initial report dated March 18, 2015, Dr. Byrne noted that appellant presented with a complaint of shoulder pain. He advised that this occurred after a fall at work on the ice. Dr. Byrne also noted that appellant presented with neck, low back, left shoulder, left knee pain, and left second toe numbness. He also found that she had pain radiating down the left leg, but had no bowel or bladder symptoms. Dr. Byrne reviewed appellant’s prior medical history, which included that she had an L4-5 disc bulge and facet hypertrophy and bilateral foraminal stenosis at L4-5 on a September 23, 2011 MRI scan. He diagnosed: pain in the shoulder; sprain/strain of the left knee and leg not otherwise specified; strain of the left shoulder and upper arm, pain in the joint and foot, and sprain of the hip and thigh. While he noted a sprain in the hip or thigh, Dr. Byrne did not provide any findings to support this diagnosis.<sup>14</sup> His March 18, 2015 report also does not address the cause of the diagnosed conditions.<sup>15</sup>

In his January 13, 2016 report and addendum dated February 24, 2016, Dr. Byrne noted that appellant was seen for follow up of her shoulder. While he also noted hip and sciatica discomfort, upon examination, Dr. Byrne determined that she had normal range of motion and no

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<sup>12</sup> See *M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

<sup>13</sup> See *Constance G. Patterson*, 42 ECAB 206 (1989).

<sup>14</sup> *Supra* note 10.

<sup>15</sup> *Id.*

crepitus or pain in the left hip. He diagnosed impingement syndrome of the shoulder and explained that in addition, she had a “nevus for both the hip and the shoulder, especially with the significant pain down the leg and hip consistent with a sciatica and trochanteric bursitis from this work-related injury.” These reports are of limited probative value regarding causal relationship, however, as they do not contain medical rationale explaining how the claimed conditions are related to the accepted employment injury.<sup>16</sup>

In his April 1, 2016 report, Dr. Byrne explained that appellant injured her neck, low back, left shoulder, left knee, left second toe, and left hip. He explained that appellant related that she had pain radiating down her left leg and her hip, which was not mentioned in the initial visit on March 18, 2015. Dr. Byrne opined that “[h]er left hip is also a part of her slipping on the ice on March 6, 2015” and his failure to document her condition was an oversight. While he advised that her hip and sciatica continued to bother her, there is no explanation relating how this occurred as a result of the March 6, 2015 incident. The need for rationale is further heightened by the initial failure to document the condition and because the medical history of preexisting conditions such as the L4-5 disc bulge dating back to September 23, 2011 and her facet hypertrophy and bilateral foraminal stenosis. The Board finds that the April 1, 2016 report is of limited probative value as it does not address how the March 6, 2015 work incident caused a hip strain or sciatica.<sup>17</sup>

Dr. Byrne’s April 20, 2016 reports are also of diminished probative value. He noted that appellant indicated that she was in a follow up for her left hip and shoulder. Dr. Byrne noted her prior medical history included: sciatica; lumbar spondylosis; lumbar stenosis with neurogenic claudication; lumbar radiculopathy; syncope and collapse; pain of the knee, strain of upper arm; morbid obesity; diabetes mellitus; borderline; anemia; sprain of the lumbar region. He diagnosed sprain of the hip and thigh. In a separate attending physician’s report, Dr. Byrne noted that appellant slipped on a snow covered icy step leaving work. He indicated that she hurt her left shoulder, knee, hip and back. Dr. Byrne checked the box “no” in response to whether there was any history or evidence of concurrent or preexisting injury or disease of physical impairment. However, this was inaccurate, as appellant has a history of many conditions as noted above. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>18</sup> Dr. Byrne also diagnosed shoulder pain, sprain of the hip, sciatica and another condition which was illegible. He checked the box marked “yes” in response to whether he believed the conditions were caused or aggravated by an employment activity. However, this was insufficient to establish that appellant’s claim should be expanded to include a left hip strain or sciatica as the Board has held that the checking of a box “yes” in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.<sup>19</sup> Dr. Byrne provided no

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<sup>16</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

<sup>17</sup> See *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>18</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>19</sup> *Calvin E. King*, 51 ECAB 394 (2000); *Linda Thompson*, 51 ECAB 694 (2000).

reasoned opinion on causal relationship. Such rationale is particularly important given appellant's history of preexisting back conditions.<sup>20</sup>

In a May 23, 2016 report, Dr. Byrne noted appellant's history of injury and advised that she injured her neck, low back, left shoulder, left knee, left second toe and left hip. He noted that she had pain radiating down her left leg. Dr. Byrne repeated his explanation regarding her hip. He indicated that the left hip "was also a part of her slipping on the ice on 6 March 2015. The sciatica [appellant] is experiencing is coming from her low back, radiating into her left hip and down her leg." Dr. Byrne also noted that the MRI scan for the left hip did not show any pathology so it was "presumed muscular." The Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>21</sup> Dr. Byrne also indicated that her hip and sciatica continued to bother her, and opined that "[o]nce again the sciatica is related to the fall she sustained on March 6, 2015 when she slipped on ice and injured her back and left hip. The sciatic pain runs down her left leg including her left hip." Dr. Byrne reiterated that "she has a sciatica issue and left side issue from the injury..." Again, he did not explain how the slipping injury caused appellant's hip strain or sciatica condition. The Board notes that, with respect to an opinion on aggravation or exacerbation, the opinion must differentiate between the effects of the work-related injury and the preexisting conditions.<sup>22</sup> Dr. Byrne did not explain how the March 6, 2015 incident affected her numerous underlying conditions. Additionally, his report was speculative and thus his report is insufficient to meet appellant's burden of proof.

In a July 1, 2016 report, Dr. Byrne diagnosed impingement syndrome of the shoulder and sprain of the hip and thigh. However, without further explanation as to how he arrived at these diagnoses, this report is of limited probative value.

For these reasons, appellant has not established that her left hip strain and sciatica are causally related to her March 6, 2015 employment injury.

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 establish that her claim should be expanded to include additional conditions, including left hip strain and sciatica, as causally related to the accepted March 6, 2015 employment injury.

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<sup>20</sup> See *P.H.*, Docket No. 16-0654 (issued July 21, 2016); *S.R.*, Docket No. 16-0657 (issued July 13, 2016).

<sup>21</sup> *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>22</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013); see also *J.R.*, Docket No. 16-0327 (issued July 6, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board