United States Department of Labor
Employees' Compensation Appeals Board

M.V., Appellant	)	
and	)	**Docket No. 18-0884**
	)	**Issued: December 28, 2018**
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, Holtsville, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 19, 2018 appellant, through counsel, filed a timely appeal from an October 12, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that following the October 12, 2017 decision, OWCP received additional evidence. 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 establish that acceptance of her claim should be expanded to include additional conditions causally related to the accepted August 22, 2013 employment injury.

FACTUAL HISTORY

On August 22, 2013 appellant, then a 47-year-old immigration services (records) analyst, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained injuries to her lower back and left side of her body when she slipped and fell on a wet marble floor when entering the employing establishment. She was treated at the hospital that day and released. OWCP accepted the claim for cervical and lumbar sprain. It has paid appellant compensation benefits for her work-related conditions on the supplemental rolls since October 17, 2013.

Appellant underwent a series of diagnostic tests on August 22, 2013. A brain computerized axial tomography (CAT) scan was within normal limits; x-ray of the left ankle was negative for fractures; x-ray of the lumbosacral spine showed a straightening of normal lordosis, but no fracture; and x-ray of the cervical spine was negative for fracture or subluxation.

On August 26, 2013 appellant came under the care of Dr. Fernando Checo, an orthopedic surgeon. Dr. Checo initially diagnosed lumbar muscle sprain and cervical neck sprain due to the August 22, 2013 slip and fall.

Appellant was also seen by Dr. Seema V. Nambiar, a Board-certified physiatrist. In her initial report of September 10, 2013, Dr. Nambiar noted the history of the August 22, 2013 work injury. She indicated that the CAT scan of appellant's brain performed in the emergency room was negative and that the lumbar spine x-rays revealed straightening, no fracture. An assessment of cervicalgia, myofascial pain, lumbago, lumbar strain, and extremity pain was provided.

An October 7, 2013 magnetic resonance imaging (MRI) scan of the cervical spine revealed minimal disc bulges at C4-5, C5-6, and C6-7 with no definite disc herniation and no cord compression or spinal stenosis.

In an October 8, 2013 report, Dr. Checo reviewed the MRI scan and indicated that C5-6 disc herniation, slight stenosis, and loss of lordosis could be seen. He diagnosed cervical neck sprain, lumbar muscle sprain, C5-6 disc herniation, and possible radiculopathy.

In an October 22, 2013 report and reports thereafter, Dr. Nambiar provided an assessment of cervicalgia, myofascial pain, lumbago, history of shoulder pain, and myalgia.

An October 24, 2013 electromyogram/nerve conduction velocity (EMG/NCV) study was negative for cervical radiculopathy, carpal tunnel syndrome, or ulnar neuropathy.

An October 25, 2013 lumbar spine MRI scan revealed broad-based central disc herniation at L5-S1 with mild compression of the S1 nerve roots in the lateral recesses bilaterally and compression of the exiting right L5 nerve root.

In an October 28, 2013 report, Dr. Checo noted the results of the cervical and lumbar spine MRI scans and the EMG. He diagnosed lumbar muscle sprain, cervical neck sprain, C4-5, C5-6, and C6-7 degenerative changes, and L5-S1 herniated disc.

In a November 1, 2013 attending physician's report (Form CA-20), Dr. Checo opined, by checking a box marked "yes," that appellant's diagnosed conditions of lumbar muscle sprain, cervical neck sprain, C4-5, C5-6, and C6-7 degenerative changes, and L5-S1 disc herniation were caused or aggravated by the August 22, 2013 work injury.

In reports dated December 11, 2013 and January 8, 2014, Dr. Checo diagnosed cervical neck sprain, lumbar muscle sprain, and spondylosis.

A December 20, 2013 ultrasound of the bilateral cervical spine revealed evidence of articular and/or soft tissue inflammatory changes involving the bilateral facet joints at C1-7 consistent with myositis, myofasciitis.

In a January 7, 2014 report, Dr. Nambiar provided an assessment of cervicalgia, myofascial pain, cervical sprain, and arm pain. On February 4, 2014 she provided an assessment of cervicalgia, myofascial pain, and lumbago.

On February 7, 2014 Dr. Checo indicated that appellant could return to work four hours a day with restrictions. He continued to examine appellant on a monthly basis and diagnosed cervical neck sprain and lumbar muscle sprain.

In a September 8, 2014 report, Dr. Nambiar provided an assessment of cervicalgia, cervical disc disease, lumbago, lumbosacral neuritis, and spasmodic torticollis.

On October 8, 2014 Dr. Checo diagnosed lumbar spondylosis, degenerative disc disease, and cervical spondylosis. On January 7, 2015 he diagnosed lumbar spondylosis, cervical spondylosis, degenerative disc disease, cervical neck sprain, and lumbar muscle sprain.

In his February 11 and March 30, 2015 reports, Dr. Checo diagnosed cervical neck sprain and lumbar muscle sprain. In his May 20, 2015 report, he diagnosed cervical neck sprain, lumbar muscle sprain, cervical spondylosis, and lumbar spondylosis. In his July 1, 2015 report, Dr. Checo diagnosed lumbar muscle sprain and cervical neck sprain. In his August 12 and September 22, 2015 reports, he again repeated his earlier referenced diagnoses.

On February 22, 2016 appellant, through counsel, requested that the acceptance of her claim be expanded to include additional diagnoses of C4-5, C5-6, and C6-7 disc bulge and L4-S1 disc herniation.

On February 23, 2016 OWCP received an April 8, 2014 report from Dr. Checo. Dr. Checo noted the history of the August 22, 2013 work injury and his treatment of appellant. He indicated that on appellant's April 7, 2014 visit, her diagnoses were cervical sprain, lumbar sprain, C4-5, C5-6, and C6-7 disc bulge, and L5-S1 disc herniation.

OWCP also received numerous physical therapy and acupuncture reports and referral forms along with progress reports from Dr. Checo dated April 21, 2016 through July 27, 2017. In his October 10, 2016 report, Dr. Checo diagnosed cervical and lumbar spondylosis, cervical and

lumbar radiculopathy, cervical and lumbar muscle sprain, and multilevel degenerative disc disease. In his December 9, 2016 and February 3 and March 31, 2017 reports, he diagnosed cervical and lumbar radiculopathy, cervical and lumbar spondylosis, and cervical and lumbar spinal stenosis. In his May 26, 2017 report, Dr. Checo added the diagnosis of cervical and lumbar muscle sprain.

In an August 3, 2017 development letter, OWCP advised appellant of the deficiencies of her request to expand the acceptance of her claim to include additional accepted conditions and afforded her 30 days to submit additional evidence.

In response, appellant submitted further reports from Dr. Checo dated May 26 and July 27, 2017 who reiterated the diagnoses of cervical and lumbar muscle sprain, cervical and lumbar spondylosis, cervical and lumbar radiculopathy, and cervical and lumbar spinal stenosis.

By decision dated October 12, 2017, OWCP denied appellant's request to expand the acceptance of her claim, finding that the medical evidence of record was insufficient to establish a causal relationship between her additional diagnosed conditions of C4-5, C5-6, and C6-7 disc bulge and L5-S1 disc herniation and the August 22, 2013 employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

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.[5] 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.[6]

To establish causal relationship between a condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[7] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] 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

[4] *See T.H.,* 59 ECAB 388 (2008).

[5] *See C.W.*, Docket No. 17-1636 (issued April 25, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *See C.W., id.; see also John D. Jackson,* 55 ECAB 465 (2004).

[7] *J.I., id., I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 465 (2005).

[8] *L.D.,* Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions as causally related to the accepted August 22, 2013 employment injury.

Appellant submitted a series of reports from Dr. Checo, her attending physician. In his initial August 26, 2013 report, Dr. Checo diagnosed lumbar muscle sprain and cervical neck sprain due to the accepted employment injury. He first diagnosed C4-5, C5-6, C6-7 degenerative changes and an L5-S1 herniated disc in his October 28, 2013 report after reviewing the results of the October 23 and 25, 2013 diagnostic studies. However, Dr. Checo did not provide a medical opinion that the employment injury caused or aggravated the additional spinal conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] As such, this report is insufficient to establish appellant's claim.

Although Dr. Checo checked a box marked "yes" on a November 1, 2013 form report as to whether the diagnosis was work related, he failed to explain how appellant's C4-5, C5-6, and C6-7 degenerative changes and L5-S1 herniated disc and work restrictions were caused or aggravated by the August 22, 2013 employment injury. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[12]

In Dr. Checo's remaining reports from December 11, 2013 through July 27, 2017, he provided varied diagnoses of lumbar and cervical spondylosis, multilevel degenerative disc disease, disc bulges at C4-5, C5-6, and C6-7, and L5-S1 disc herniation, cervical and lumbar radiculopathy, and cervical and lumbar spinal stenosis. However, he alternated these diagnoses with reports wherein he merely diagnosed cervical neck sprain and lumbar muscle sprain. The Board has held that medical evidence of record is of limited probative value if it is inconsistent as to a diagnosis and the nature of any pathology.[13] The Board further finds that these reports are of limited probative value because Dr. Checo, again, did not provide a rationalized opinion

[9] *L.D., id.; see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *A.C.*, Docket No. 17-1869 (issued March 1, 2018); *see also Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[13] *See Jerry L. Johnson*, Docket No. 05-0050 (issued April 13, 2005).

explaining how physiologically the accepted employment incident caused or aggravated these additionally diagnosed conditions.[14]

Appellant also submitted a series of reports from Dr. Nambiar. In an October 22, 2013 report, Dr. Nambiar provided an assessment of cervicalgia, myofascial pain, lumbago, and myalgia. In a December 3, 2014 report, she also provided an assessment of lumbar disc disease. In a September 8, 2014 report, Dr. Nambiar provided an additional assessment of cervical disc disease, lumbosacral neuritis, and spasmodic torticollis. The only valid diagnoses offered by Dr. Nambiar are her assessments of lumbar and cervical disc disease and spasmodic torticollis disease. The Board notes that the assessments of cervicalgia, myofascial pain, lumbago, and myalgia are not considered valid diagnoses as they refer to symptoms of an underlying condition.[15] Furthermore, as the Board noted in reviewing Dr. Checo's reports, Dr. Nambiar's reports merely reported findings and varied diagnoses, but did not provide an opinion regarding the cause of any reported condition. As previously noted, the Board has held that medical evidence that does not support a firm diagnosis and offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16]

The other medical evidence of record, including diagnostic test reports, are also of limited probative value. The diagnostic studies of record did not provide a cause of diagnosed conditions, and medical evidence that does not offer an opinion regarding the cause of an employee's condition lack probative value on the issue of causal relationship.[17]

As previously noted, to meet her burden of proof appellant must submit medical evidence based on a complete factual and medical background, supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[18]

The Board finds that appellant has not submitted rationalized medical evidence sufficient to establish that she sustained additional conditions causally related to the August 22, 2013 employment injury. As such, she has not met her burden of proof.

On appeal, counsel argues that OWCP erred in denying the expansion of the acceptance of appellant's claim as the evidence submitted demonstrated that appellant sustained conditions in addition to those accepted by OWCP including lumbar disc herniation. For the reasons set forth above, appellant failed to submit any rationalized medical evidence to support that she sustained an additional spinal injury causally related to the August 22, 2013 employment injury.

[14] *See supra* note 9.

[15] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[16] *See J.P.*, Docket No. 14-0087 (issued March 14, 2014).

[17] *See J.S.*, Docket No. 17-1039 (issued October 6, 2017). .

[18] *Supra* note 7.

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 her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions as causally related to the accepted August 22, 2013 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2018
Washington, DC

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

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

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