

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

_____)	
E.B., Appellant)	
)	
and)	Docket No. 17-1497
)	Issued: March 19, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Macon, GA, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 28, 2017 appellant filed a timely appeal from a June 19, 2017 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 additional left hip, right knee, and spinal conditions as causally related to the accepted February 13, 2015 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 19, 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.*

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 15, 2014 appellant, then a 40-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained neck, back, left hip, and right knee injuries when she was involved in a motor vehicle accident while delivering mail on February 13, 2014 in the performance of duty. She stopped work on the date of injury and did not return. OWCP initially accepted the claim for a head contusion. By decisions dated July 29 and August 7, 2015, it expanded acceptance of the claim to include contusions of the face, scalp, and neck, as well as right lateral collateral knee ligament sprain, hip and thigh sprain, and lumbar sprain. The record reflects that OWCP paid appellant wage-loss compensation on the supplemental rolls for the period February 14 to May 16, 2014.

On March 30, 2015 appellant was examined by Dr. Kathleen Warner, a Board-certified internist, who diagnosed lumbar radiculopathy, in addition to the accepted conditions. Dr. Warner provided a medical history and details of the employment-related February 13, 2014 motor vehicle accident. She noted that appellant had been disabled from work since February 13, 2014 and that the employing establishment had terminated her employment on March 8, 2014 based on her failure to report to work. Dr. Warner explained that acceptance of appellant's claim should be expanded to include lumbar radiculopathy as it was causally related to the accepted February 13, 2014 employment injury. In a March 30, 2015 duty status report (Form CA-17), Dr. Warner noted a February 13, 2014 history of injury, and again diagnosed lumbar radiculopathy.

Dr. Warner, in an April 29, 2015 report, requested the acceptance of appellant's claim be expanded to include additional conditions. She provided physical examination findings and noted that appellant remained symptomatic.

In reports dated June 1 and 16, 2015, Dr. Rhett Krone, an emergency medicine specialist, provided examination findings. He opined that appellant's motor vehicle accident aggravated a chronic underlying lumbosacral condition as she had no pain prior to the accident. Dr. Krone observed that appellant's symptoms were suggestive of L4-5 radiculopathy.

In an August 10, 2015 report, Dr. Krone related appellant's history of injury and examination findings. He opined that appellant might have a compressed spine fracture because she landed in a seated position during the motor vehicle accident.

In a September 14, 2015 report, Dr. Krone reviewed diagnostic studies and provided examination findings. A review of a lumbosacral magnetic resonance imaging (MRI) scan revealed some mild L4-5 and L5-S1 disc bulging.

³ Docket No. 16-1838 (issued October 17, 2017), *petition for recon. denied*, Docket No. 16-1838 (issued April 9, 2018); Docket No. 17-0875 (issued December 13, 2018); Docket No. 17-1160 (issued December 19, 2018).

On April 2, 2016 OWCP received a December 21, 2015 report from Dr. Philip Lee, a Board-certified internist. Dr. Lee indicated that appellant was seen for low back pain following a motor vehicle accident approximately one year prior. In addition to the accepted conditions he diagnosed left side sciatica.

In a June 8, 2016 report, Dr. Jeffrey T. Summers, Board-certified in pain medicine and anesthesiology, diagnosed lumbar spondylosis, and resolved lumbar radiculopathy. He provided examination findings and recommended L5-S1 facet injections.

In a June 8, 2016 report, Dr. Michael Winkelmann, a treating Board-certified physiatrist, reported that appellant related having persistent pain in the left greater trochanteric bursa distribution.

In a letter dated June 28, 2016, appellant requested that OWCP expand acceptance of her claim to include left sciatica, lumbar disc disorder, L4-5 facet arthropathy, and left greater trochanteric bursa pain as causally related to the accepted February 13, 2014 employment injury. She requested that OWCP issue a formal decision on this request.

On October 24, 2016 OWCP received a report and office notes dated October 13, 2016 from Dr. Samuel J. Chmell, Board-certified in orthopedic surgery. Dr. Chmell detailed the history of appellant's accepted February 13, 2014 employment injury and her medical history. He provided appellant's physical examination findings. Dr. Chmell indicated that appellant's medical records had been reviewed, including MRI scans, and that the records were consistent with her history. He diagnosed L4-5 and L5-S1 disc protrusions with facet arthropathy and radiculopathy, right knee torn posterior medial horn meniscus with coccydynia and chondromalacia, and left hip greater trochanteric bursitis with sprain and aggravation of osteoarthritis, which he attributed to the accepted February 13, 2014 employment injury. Dr. Chmell recommended expansion of the acceptance of appellant's claim to include the above-listed conditions.

In a letter dated October 21, 2016, appellant again requested that OWCP expand the acceptance of her claim to include L4-5 and L5-S1 disc protrusions with facet arthropathy and radiculopathy, right knee torn posterior medial horn meniscus with coccydynia and chondromalacia, and left hip greater trochanteric bursitis with sprain and aggravation of osteoarthritis. She asserted that the medical reports from Dr. Chmell warranted the acceptance of these additional conditions as causally related to her accepted February 13, 2014 employment injury.

In a December 8, 2016 report, Dr. Chmell noted that appellant had been evaluated on October 13, 2016 for multiple injuries sustained as the result of a February 13, 2014 work-related motor vehicle accident. He concluded that as a result of the employment injury, appellant had sustained right torn medial meniscus, left hip traumatic arthritis, L4-5 and L5-S1 disc herniations with radiculopathy, and coccydynia.

By decision dated December 16, 2016, OWCP denied appellant's request to expand the acceptance of her claim to include additional conditions.

In a letter dated December 29, 2016, appellant requested a review of the written record by an OWCP hearing representative. In support of her request, she resubmitted evidence previously considered including reports dated February 10, April 6, and May 4, 2016 by Dr. Winkelmann.

By decision dated June 19, 2017, OWCP's hearing representative affirmed the December 16, 2016 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.⁴

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁶ 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.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional left hip, right knee, and spinal conditions as causally related to the accepted February 13, 2014 employment injury.

In support of her request to expand the acceptance of her claim to include additional conditions, appellant submitted reports from Dr. Warner, Dr. Krone, Dr. Lee, Dr. Summers, Dr. Chmell, and Dr. Winkelmann.

Preliminarily, the Board notes that it is unnecessary to consider the reports of Dr. Chmell and Dr. Winkelmann because the Board considered their reports and opinions regarding the issue of causal relationship concerning the additional conditions at issue in its October 17 and December 13 and 19, 2018 decisions. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.⁸

⁴ See *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *L.R.*, Docket No. 18-0671 (issued August 2, 2018); *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁷ *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁸ See *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

Dr. Warner, in reports covering the period March 30 to April 29, 2015 diagnosed lumbar radiculopathy, which she attributed to the accepted February 13, 2014 employment injury. However, she provided no supporting medical rationale explaining how this diagnosed condition had been caused or aggravated by the accepted February 13, 2014 employment injury. A medical opinion must provide an explanation of how the accepted employment injury physiologically caused or aggravated the diagnosed conditions.⁹ Without medical reasoning explaining how the February 13, 2014 employment injury caused or contributed to the diagnosed condition, Dr. Warner's reports are insufficient to meet appellant's burden of proof regarding expansion of the acceptance of her claim.¹⁰

Dr. Krone, in reports covering the period June 1 to August 10, 2015 opined that the accepted February 13, 2014 employment injury aggravated a chronic underlying lumbosacral condition. In support of this conclusion he observed that appellant had been pain free prior to the accident. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury, without adequate rationale, is insufficient to establish causal relationship.¹¹ Dr. Krone, in an August 10, 2015 report, opined that the February 13, 2014 work injury may have caused a compressed spine fracture based on appellant's history of landing in a seated position during the motor vehicle accident. The Board further finds that his mention that the automobile accident "may have caused" a compressed spine fracture is speculative and equivocal in nature and of little probative value.¹² Thus, the reports from Dr. Krone are insufficient for appellant to meet her burden of proof regarding expansion of the acceptance of her claim.

Appellant also submitted reports from Dr. Lee diagnosing left side sciatica and Dr. Summers diagnosing lumbar spondylosis and radiculopathy. Neither Dr. Lee nor Dr. Summers offered an opinion as to the cause of the conditions they had diagnosed. Medical evidence that does not offer an opinion on the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ Thus, these reports are insufficient to meet appellant's burden of proof regarding expansion of her claim.¹⁴

The Board finds that appellant has not met her burden of proof because the medical opinion evidence of record is insufficient to establish the critical element of causal relationship between

⁹ See *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

¹⁰ See *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

¹¹ *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

¹² Medical opinions that are speculative or equivocal in character are of little probative value. See *M.W.*, Docket No. 17-0097 (issued April 11, 2017); *Kathy A. Kelley*, 55 ECAB 206 (2004); *Willie M. Miller*, 53 ECAB 697 (2002).

¹³ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ See *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

appellant's additional diagnosed conditions and the accepted February 13, 2014 employment injury.¹⁵

On appeal appellant disagrees with OWCP's refusal to expand the acceptance of her claim to include additional conditions. She argues that Dr. Winkelmann's reports were sufficient to warrant expansion of the acceptance of additional conditions in her claim. As discussed above, none of medical reports appellant submitted are sufficiently rationalized explaining causal relationship between the additional diagnosed conditions and the accepted 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds appellant has not met her burden of proof to expand the acceptance of her claim to include additional left hip, right knee, and spinal conditions causally related to the accepted February 13, 2014 employment injury

¹⁵ See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); see also *G.M.*, Docket No. 16-1764 (issued March 16, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2019
Washington, DC

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

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

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