

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

A.T., Appellant)
and) Docket No. 19-1608
DEPARTMENT OF HOMELAND SECURITY,) Issued: April 21, 2020
IMMIGRATION AND CUSTOMS)
ENFORCEMENT, San Diego, CA, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 23, 2019 appellant filed a timely appeal from a June 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that the acceptance of his claim should be expanded to include the additional conditions of cervical radiculitis and

¹ The Board notes that appellant submitted additional evidence on appeal. 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.*

² 5 U.S.C. § 8101 *et seq.*

aggravation of cervical spinal stenosis as causally related to the accepted June 12, 2009 employment injury.

FACTUAL HISTORY

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

On June 15, 2009 appellant, then a 52-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on June 12, 2009 he sustained injuries when a ladder he was climbing collapsed while in the performance of duty. OWCP accepted the claim for closed left radius neck fracture. It subsequently expanded acceptance of the claim to include left shoulder impingement syndrome, left carpal tunnel syndrome, and resolved cervical sprain. Appellant underwent an OWCP-authorized left carpal tunnel release on January 21, 2010 and OWCP-authorized left shoulder arthroscopic surgery with excision of the distal clavicle on September 13, 2010.

In a letter dated June 7, 2018, OWCP advised appellant of all his accepted conditions and informed him that the requested medical services of acupuncture and physical therapy could not be authorized as they did not appear causally related to the accepted conditions.

Appellant submitted evidence in response to OWCP's June 7, 2018 letter.

In a report dated May 29, 2018, Dr. Larry D. Dodge, a Board-certified orthopedic surgeon, noted appellant was seen that day for persistent neck pain complaints with intermittent paresthesias into the upper extremities due to a June 12, 2009 injury. Appellant's physical examination revealed paracervical area tenderness and spasm, moderate cervical pain at extremes of motion, pain greater in the right arm with neck extension, slight-to-moderately positive Spurling's test, and full upper extremity range of motion. Dr. Dodge opined that appellant continued to suffer from cervical radiculopathy and cervical spondylosis.

In a June 4, 2018 report, Dr. Tiffany L. Shay Alexander, a Board-certified occupational medicine physician, noted a June 12, 2009 date of injury and that appellant was currently retired. She related that his physical examination findings included cervical paraspinal and cervical spine muscles tender on palpation, limited neck range of motion slight right upper extremity weakness with finger extension, and positive bilateral wrist Tinel's sign. Dr. Shay Alexander diagnosed cervical radiculitis, cervical spinal stenosis, and bilateral carpal tunnel syndrome. She requested authorization for acupuncture and physical therapy to treat appellant's neck pain, upper extremity paresthesias, and lack of range of motion.

Dr. Shay Alexander, in a July 6, 2018 supplemental report, noted that on June 4, 2018 she had diagnosed cervical radiculitis, bilateral carpal tunnel syndrome, and cervical spinal stenosis. She again requested authorization for physical therapy and acupuncture to treat appellant's lack of

³ Docket No 16-0738 (issued May 19, 2016); Docket No. 15-0033 (issued March 2, 2015); *Order Remanding Case*, Docket No. 13-0781 (issued February 14, 2014). The Board's prior decisions reviewed whether appellant was entitled to an additional schedule award for permanent impairment of the left upper extremity.

range of motion, neck pain, and upper extremity paresthesias. Dr. Shay Alexander concluded that his June 12, 2009 employment injury, and resulting neck sprain, caused his cervical radiculitis symptoms and aggravated his cervical spinal stenosis.

In a development letter dated July 11, 2018, OWCP related appellant's accepted conditions, but informed him that the conditions of cervical radiculitis and aggravation of cervical spinal stenosis had not been accepted. It advised him of the type of evidence required to expand the acceptance of his claim and afforded him 30 days to provide the necessary evidence.

OWCP received a progress report dated July 6, 2009, from Dr. Shay Alexander who diagnosed closed left radius fracture and left arm and neck pain. Appellant's physical examination findings were detailed. Under treatment plan, Dr. Shay Alexander referred him for a cervical magnetic resonance imaging (MRI) scan to rule out a herniated nucleus pulposus and a nerve conduction velocity and electromyogram to rule out cervical radiculitis.

In progress reports dated July 31, 2009, Dr. Shay Alexander diagnosed limb pain, rule out compressive neuropathy, neck strain with possible radicular symptoms, closed left radius fracture, and left shoulder sprain, rule out rotator cuff tear. A physical examination revealed left cervical paraspinal and upper trapezius tenderness, full neck flexion and extension, Spurling maneuver caused pain radiating from neck to upper back and left shoulder.

In an August 20, 2009 report, Dr. Shay Alexander diagnosed closed left radius fracture, left shoulder sprain, rule out rotator cuff tear, left arm pain, and neck sprain with possible radicular symptoms. Appellant's physical examination revealed cervical paraspinous muscle tenderness on the left and full range of motion with discomfort at end of range of motion.

Dr. Shay Alexander, in a March 30, 2011 report, noted the history of appellant's employment injury, summarized his medical history, and provided examination findings. She reported that he continued to have persistent hand, wrist, neck, and shoulder symptoms. Dr. Shay Alexander noted that her request for an MRI scan of the cervical spine had been denied because OWCP found that appellant's cervical sprain had resolved based on a November 2, 2009 report from Dr. Thomas J. Sabourin, a second opinion Board-certified orthopedic surgeon. She diagnosed cervical sprain, left wrist radial neck fracture, left carpal tunnel syndrome, and left shoulder impingement syndrome, and attributed appellant's complaints of neck, left shoulder, elbow, and wrist pain to the June 12, 2009 employment injury.

In a July 7, 2015 report, Dr. Dodge, a Board-certified orthopedic surgeon, noted that appellant was seen for neck pain and occasional pain, numbness, and tingling into his arms. Appellant's history of injury and medical history were detailed. Dr. Dodge diagnosed cervical strain, C4-5 moderate cervical stenosis with persistence of neck pain and bilateral upper extremity radiculopathy and left shoulder contusion and strain with presumptive impingement syndrome status post left shoulder arthroscopy. He concluded that, within a reasonable degree of medical probability, appellant's current symptoms appeared to be causally related to his employment injury.

By decision dated April 3, 2019, OWCP denied appellant's request to expand acceptance of his claim to include the conditions of cervical radiculitis and aggravation of cervical spinal stenosis as causally related to the accepted June 12, 2009 employment injury.

On April 30, 2019 appellant requested reconsideration. In support of his request, he resubmitted reports from Dr. Shay Alexander dated July 31 and August 20, 2009, and March 30, 2011 and a report from Dr. Dodge dated July 7, 2015. Appellant also submitted a statement dated July 17, 2018 in response to OWCP asserting that Dr. Shay Alexander, in her reports, addressed causation and that his claim should be expanded to include cervical radiculitis and aggravation of cervical spinal stenosis.

By decision dated June 10, 2019, OWCP denied modification. It found the evidence submitted by appellant, which was duplicative, was insufficient to warrant expansion of his claim to include cervical stenosis and cervical radiculitis.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable time limitation period of FECA,⁵ 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.⁶

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.⁷

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit 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 *Supra* note 2.

⁵ *L.C.*, Docket No. 19-0724 (issued September 5, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that acceptance of the claim should be expanded to include the additional conditions of cervical radiculitis and aggravation of cervical spinal stenosis as causally related to the accepted June 12, 2009 employment injury.

In support of expansion of the accepted conditions, appellant submitted number of medical reports from attending physicians, Drs. Shay Alexander and Dodge.

Reports from Dr. Shay Alexander dated June 4, 2018, July 6, July 31, and August 20, 2009 noted various diagnoses including neck sprain with possible radicular symptom, cervical radiculitis, and cervical spinal stenosis, but offered no opinion as to the cause of these diagnosed conditions. An opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ As Dr. Shay Alexander does not offer an opinion on causal relationship, these reports are of no probative value and, thus, insufficient to establish the expansion of the acceptance of appellant's claim.

In a March 30, 2011 report, Dr. Shay Alexander diagnosed cervical strain, left wrist radial neck fracture, left carpal tunnel syndrome, and left shoulder impingement syndrome and she attributed the pain appellant experienced in his neck, left shoulder, elbow, and wrist to the June 12, 2009 employment injury. This report did not address his alleged cervical radiculitis and cervical spinal stenosis conditions. The Board notes that pain is a symptom and not a compensable medical diagnosis.¹¹

Dr. Shay Alexander, in a July 6, 2018 report, diagnosed a number of conditions including cervical radiculitis, and cervical spinal stenosis. She opined that appellant's June 12, 2009 employment injury, and resulting neck sprain, aggravated his cervical spinal stenosis and caused his cervical radiculitis. Dr. Shay Alexander made conclusory statements that appellant's cervical spinal stenosis and cervical radiculitis and pain were due to the accepted June 12, 2009 employment injury. While she provided a conclusory opinion, she did not explain how the accepted employment injury had caused or aggravated additional cervical conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was causally related to employment factors.¹² Also, while Dr. Shay Alexander opined that appellant's cervical stenosis

⁹ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *S.H.*, *supra* note 7; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

¹² *A.L.*, Docket No. 18-1706 (issued May 20, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

aggravation and cervical radiculitis had been caused or aggravated by the employment injury of June 12, 2009, she did not provide a reasoned explanation of the biomechanical mechanism of injury.¹³ Her reports, therefore, are insufficient to establish expansion of the acceptance of his claim.

In a report dated July 7, 2015, Dr. Dodge diagnosed various conditions including C4-5 moderate cervical stenosis with persistence of neck pain and bilateral upper extremity radiculopathy. In the May 29, 2018 report, he diagnosed cervical radiculopathy and cervical spondylosis, and opined that appellant's symptoms appeared to be causally related to the accepted employment injury. However, Dr. Dodge offered no opinion as to whether appellant's cervical stenosis and radiculopathy were causally related to the accepted June 12, 2009 employment injury in either report. 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.¹⁴ As Dr. Dodge did not offer an opinion regarding the cause of appellant's cervical radiculitis and aggravation of cervical spinal stenosis, his reports are of no probative value and, thus, insufficient to establish the expansion of the acceptance of appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met his 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant not met his burden of proof to establish that acceptance of his claim should be expanded to include the additional conditions of cervical radiculitis and aggravation of cervical spinal stenosis as causally related to the accepted June 12, 2009 employment injury.

¹³ *P.J.*, Docket No. 18-1738 (issued May 17, 2019); *S.F.*, Docket No. 18-0444 (issued October 4, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *L.B.*, Docket No. 14-1687 (issued June 10, 2015).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT June 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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