

ISSUE

The issue is whether appellant has met his burden of proof to establish that acceptance of his claim should be expanded to include additional conditions as causally related to the accepted October 19, 2015 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 decision is incorporated herein by reference. The relevant facts are as follows.

On October 21, 2015 appellant, then a 52-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that, on October 19, 2015, he was assaulted by a coworker and sustained neck, back, head, left knee, and chest injuries while in the performance of duty.

Initially, by decision dated January 13, 2016, OWCP denied appellant's claim finding that he had not established that an employment incident occurred in the performance of duty on October 19, 2015 as alleged.

Appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 3, 2016.

By decision dated December 7, 2016, an OWCP hearing representative affirmed, as modified, the January 13, 2016 decision. She found that the October 19, 2015 assault occurred in the performance of duty, as alleged. The hearing representative further found that appellant's diagnosed abrasions to the scalp, forehead, left elbow, and left knee were causally related to the accepted employment-related incident and remanded the case for OWCP to accept the claim for those medical conditions. She found, however, that the medical evidence of record was insufficiently rationalized to establish that his other diagnosed conditions, cervical strain, T4 wedge compression fracture, and traumatic brain injury with postconcussive symptoms, were causally related to the accepted work incident.

On January 19, 2017 OWCP issued a decision accepting appellant's claim for abrasions to the scalp, forehead, left elbow, and left knee.

On March 27, 2017 appellant, through counsel, requested reconsideration of the December 7, 2016 with regard to the denial of additional conditions and submitted additional evidence.

OWCP, by decision dated August 3, 2017, denied modification of the December 7, 2016 decision.

On October 14, 2017 appellant, through counsel, appealed to the Board. By decision dated August 22, 2018,⁴ the Board affirmed OWCP's August 3, 2017 decision, finding that appellant

³ Docket No. 18-0081 (issued August 22, 2018).

⁴ *Id.*

had not submitted sufficiently rationalized medical evidence to establish that he sustained additional conditions that were caused, aggravated, or a consequence of his accepted October 19, 2015 work injury.

On January 25, 2019 appellant, through counsel, requested reconsideration. He resubmitted office visit reports dated November 11 and 24, 2015 from Dr. Louis A. Ostola, an attending psychiatrist, and progress notes dated August 15 and November 14, 2016 from Julianne S. Kirkham, Ph.D., a clinical psychologist, which had been previously considered by the Board in its August 22, 2018 decision.

Appellant submitted additional medical evidence from Dr. Ostola. In office visit reports dated January 6, February 17, and July 20, 2016, Dr. Ostola assessed traumatic brain injury secondary to a personal assault, and headaches, poor memory, myofascial neck pain, and dizziness due to the traumatic brain injury.

Appellant also submitted additional medical evidence from Dr. Kirkham. In a January 5, 2016 report, February 16 and May 17, 2016 progress notes, and a November 17, 2017 employing establishment mental disorders and disability benefits questionnaire, Dr. Kirkham related a history of the accepted October 19, 2015 employment injury and test results. She initially provided impressions of postconcussive disorder and post-traumatic stress disorder. Subsequently, Dr. Kirkham diagnosed resolving postconcussion disorder, moderate-to-severe intermittently anxiety disorder, and unresolved recurrent major depressive disorder. In the February 16, 2016 progress note, she advised that appellant could not safely return to work. In the November 17, 2017 questionnaire, Dr. Kirkham indicated that appellant had been previously diagnosed with a mental disorder. She noted that he experienced sentinel events which included his daughter's severe chronic illness of major depressive disorder, being assaulted at work by a coworker, and being disabled from work due to major depression.

In office visit reports dated January 5 and August 16, 2016 and a follow-up note dated February 16, 2017, Bonita Moisio, a certified family nurse practitioner for Dr. Ostola initially provided assessments of headaches due to occipital neuritis, myofascial neck pain due to spondylosis, traumatic brain injury, and low back pain. She later provided assessments of post-concussion syndrome (disorder), intractable chronic post-traumatic headache, and traumatic brain injury (disorder) without loss of consciousness. Ms. Moisio indicated that appellant was unable to work.

Dr. Victoria Jakel, a Board-certified family practitioner, in progress notes dated March 2 through November 10, 2016, diagnosed multiple conditions including a closed head injury, chronic post-traumatic cephalgia, abdominal pain, prostatitis, compression fracture of the thoracic vertebra, irritable bowel syndrome with diarrhea, intractable post-traumatic headache, postconcussion syndrome, post-traumatic stress disorder, unspecified, tinnitus, polyuria, unspecified intracranial injury without loss of consciousness of unspecified duration, subsequent encounter, dysthymic disorder, obstructive sleep apnea, obesity, unspecified, a single episode of major depressive disorder, unspecified, stable angina pectoris, unspecified, essential (primary) hypertension, trigger finger, unspecified index finger, trigger finger, unspecified finger, and unspecified diastolic (congestive) heart failure.

In a March 7, 2016 report, Dr. Louis J. Mautone, a diagnostic radiologist, noted appellant's history of post-traumatic chronic headache with negative brain imaging. He performed a successful fluoroscopy-guided diagnostic lumbar puncture.

In reports dated April 6 through December 30, 2016, Dr. Roman E. Politi, a neurologist, related a history of the accepted October 19, 2015 employment injury and discussed examination his findings. He assessed chronic intractable migraine without aura, chronic intractable post-traumatic headache, cervicgia, postconcussion syndrome, low back pain, obstructive sleep apnea, insomnia, unspecified, and recurrent major depressive disorder, unspecified.

In reports dated June 21, August 15, and November 14, 2016, Tonia D. Kroll, a certified nurse practitioner, provided assessments of postconcussion syndrome, chronic intractable post-traumatic headache, cervicgia, dizziness, chronic intractable migraine without aura and with status migrainosus, low back pain, recurrent major depressive disorder, unspecified, and obstructive sleep apnea.

Reports dated April 5 through August 16, 2016 from Isabel Tollefson and Susan Flannery, licensed practical nurses, noted appellant's medication history and assessed low back pain, postconcussion syndrome, cervicgia, memory loss, and dizziness.

By decision dated June 27, 2019, OWCP denied modification of its August 22, 2018 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.⁵

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁶ A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.⁷ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.⁸

⁵ *M.B.*, Docket No. 19-0485 (issued August 22, 2019); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *Id.*

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that acceptance of his claim should be expanded to include additional conditions as causally related to the accepted October 19, 2015 employment injury.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence submitted prior to the issuance of OWCP's August 3, 2017 decision because the Board considered that evidence in its August 22, 2018 decision and found that it was insufficient to establish his claim. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.⁹ The Board will, therefore, not review the evidence addressed in the prior appeal.

Dr. Ostola's January 6, February 17, and July 20, 2016 office visit reports noted assessments of traumatic brain injury secondary to a personal assault, and headaches, poor memory, myofascial neck pain, and dizziness due to the traumatic brain injury. Although he provided an opinion on causal relationship, he provided no supporting medical rationale explaining how appellant's diagnosed conditions had been caused by the accepted October 19, 2015 employment injury. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁰ Thus, Dr. Ostola's reports are insufficient to establish that appellant sustained additional conditions due to the accepted October 19, 2015 employment injury.

Likewise, Dr. Kirkham's report, progress notes, and mental disorders and disability benefits questionnaire dated January 5, 2016 through November 17, 2017 are insufficient to establish additional employment-related conditions as she did not explain how the accepted October 19, 2015 work injury caused appellant's diagnosed conditions of resolving postconcussion disorder, moderate-to-severe intermittently anxiety disorder, and unresolved recurrent major depressive disorder and resultant disability from work.¹¹

Dr. Politi's reports dated April 6 through December 30, 2016 related appellant's history of injury and addressed his examination findings. He assessed chronic intractable migraine without aura, chronic intractable post-traumatic headache, cervicalgia, postconcussion syndrome, low back pain, obstructive sleep apnea, insomnia, unspecified, and recurrent major depressive disorder, unspecified. While Dr. Politi accurately noted the history of injury provided by appellant, he did not offer an opinion regarding the cause of appellant's conditions. 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

⁹ See *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *B.R.*, Docket No. 17-0294 (issued May 11, 2018).

¹⁰ See *S.J.*, Docket No. 19-0489 (issued January 13, 2020); *G.M.*, Docket No. 19-0933 (issued October 1, 2019); *S.O.*, Docket No. 19-0307 (issued June 18, 2019); *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

¹¹ *Id.*

causal relationship.¹² These reports, therefore, are insufficient to meet appellant's burden of proof regarding expansion of his claim.¹³

Similarly, Dr. Jakel's progress notes dated March 2 through November 10, 2016 also failed to establish appellant's claim. She diagnosed various physical and emotional conditions, but offered no opinion as to the causation of these conditions. Therefore, this evidence is insufficient to meet appellant's burden of proof.¹⁴

Dr. Mautone's March 7, 2016 report noted that he performed a successful fluoroscopy-guided diagnostic lumbar puncture. He, however, failed to provide a specific diagnosis of a medical condition, merely noting appellant's history of post-traumatic chronic headache with negative brain imaging. Moreover, Dr. Mautone failed to offer a rationalized medical opinion regarding causal relationship. The Board has held that medical reports which do not provide a firm diagnosis and render an opinion on causal relationship are of no probative value and are insufficient to establish the claim.¹⁵ For these reasons, the Board finds that Dr. Mautone's report is insufficient to meet appellant's burden of proof.

The reports of Ms. Moisio and Ms. Kröll, certified nurse practitioners, and Ms. Tollefson and Ms. Flannery, licensed practical nurses, do not constitute competent medical evidence because neither nurse practitioners nor licensed practical nurses are considered physicians as defined under FECA.¹⁶ Consequently, their medical findings and opinions will not suffice for establishing causal relationship.¹⁷ These reports, therefore, are insufficient to establish appellant's claim.

The Board finds that appellant has not submitted the necessary rationalized medical evidence to establish his claim that he sustained additional conditions causally related to the accepted October 19, 2015 employment injury. Therefore, appellant has not met his burden of proof.

On appeal counsel contends that the evidence of record clearly established the mechanism of injury and causal relationship. For the foregoing reasons, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained additional conditions

¹² See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *V.U.*, Docket No. 19-0755 (issued November 25, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, No. 17-1549 (issued July 6, 2018).

¹⁶ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *S.J.*, *supra* note 10; *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *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); 20 C.F.R. § 10.5(t).

¹⁷ *J.W.*, Docket No. 18-0520 (issued February 25, 2020) (nurse practitioners are not considered physicians under FECA); *M.M.*, Docket No. 17-1392 (issued February 9, 2018) (licensed practical nurses are not considered physicians under FECA).

causally related to the accepted October 19, 2015 employment injury. Appellant, therefore, 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 has not met his burden of proof to establish that acceptance of his claim should be expanded to include the additional diagnosed conditions as causally related to the accepted October 19, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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