

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

V.S., Appellant	)	
	)	
and	)	<b>Docket No. 19-1370</b>
	)	<b>Issued: November 30, 2020</b>
U.S. HOUSE OF REPRESENTATIVES,	)	
Washington, DC, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On June 10, 2019 appellant filed a timely appeal from December 18, 2018 and April 19, 2019 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the April 19, 2019 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 the acceptance of her claim should be expanded to include additional conditions as causally related to her accepted December 1, 2005 employment injury.

## FACTUAL HISTORY

On December 9, 2005 appellant, then a 48-year-old photographer, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on December 1, 2005 when moving boxes while cleaning out storage rooms in the performance of duty. By decision dated March 15, 2006, OWCP accepted the claim for the conditions of cervical spondylosis with myelopathy and traumatic spondylopathy. It paid appellant wage-loss compensation on the periodic rolls effective May 14, 2006.<sup>3</sup>

In a series of reports dated April 16, 2008 through November 9, 2018, Dr. Zinon M. Pappas, a Board certified physiatrist, diagnosed lumbar radiculopathy, causing left leg weakness, foot drop, knee instability, and lumbar disc herniation.<sup>4</sup> In a report dated July 20, 2009, he reiterated that appellant had bilateral lumbar radiculopathy with severe weakness in the left leg and a complete foot drop in the left leg requiring an ankle foot orthosis. Dr. Pappas subsequently diagnosed the additional conditions of lumbar disc prolapse with radiculopathy, degeneration of lumbar or lumbosacral intervertebral disc, cervicalgia, cervical radiculopathy, lumbar spondylosis, displacement of lumbar intervertebral disc without myelopathy, thoracic or lumbosacral neuritis or radiculitis, brachial neuritis or radiculitis, osteoarthritis of knee, localized and primary osteoarthritis in the lower leg, obesity, and persistent insomnia.

In reports dated August 15, 2014 and July 5, 2016, Dr. Pappas noted his treatment of appellant since February 2006.<sup>5</sup> He reiterated that she was injured at work in December 2005 after lifting heavy boxes, which resulted in immediate pain in her neck and the pain radiated down the left upper extremity. Dr. Pappas indicated that appellant subsequently developed persistent numbness and tingling in the left arm, increasingly severe lower back pain, pain radiating to both legs, and “drop foot” bilaterally. He indicated that this weakness had persisted and she needed to wear an ankle/foot orthosis to prevent her from having frequent falls because of her drop foot. Appellant also developed two meniscal tears in her right knee and required arthroscopic surgery in the summer of 2010 for her right knee. Dr. Pappas noted that, in the spring of 2013, her lumbar

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<sup>3</sup> On February 1, 2007 Dr. Willie E. Thompson, a Board certified orthopedic surgeon serving as a district medical adviser (DMA), opined that there was no pathology at the C4-5 level that would require the need for any type of surgical procedure. Appellant subsequently underwent an unauthorized anterior cervical spine fusion on March 13, 2007.

<sup>4</sup> A magnetic resonance imaging (MRI) scan of the lumbar spine dated July 17, 2008 demonstrated a mild disc bulge at L2-3, L3-4, and L4-5. At L4-5, it favored the left side with a slight impression on the left side of the thecal sac.

<sup>5</sup> A cervical spine MRI scan dated April 23, 2014 showed a slight interval progression of a concentric disc bulge with mild-to-moderate narrowing of the right neural foramen and mild narrowing of the left neural foramen. A lumbar spine MRI scan dated August 25, 2014 revealed bilateral L4-5 facet arthropathy and a broad-based protrusion posterior on the left contributing to the left greater than the right L4-5 foraminal stenosis.

radicular pain was getting quite severe and debilitating and she underwent a series of three lumbar epidural corticosteroid injections noting mild improvement. He opined that appellant was totally disabled for work.

In a September 30, 2014 report, Dr. Jocelyn Idema, a Board certified orthopedic surgeon, diagnosed degeneration of the intervertebral disc, lumbar spondylosis, lumbar radiculopathy, and displacement of lumbar intervertebral disc without myelopathy.

On September 10, 2018 OWCP referred appellant to Dr. Robert F. Draper, a Board certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related conditions. In his October 18, 2018 report, Dr. Draper noted his review of the medical history and the SOAF and reported examination findings which included her emotional presentation and crying. He noted that appellant exhibited exaggerated loss of range of motion in her lower extremities, but with circumferential sensory deficits in both lower extremities from the knees to toes. Appellant was noted to have left the examination with orthotic devices on her lower extremities and left upper extremity, and she ambulated with assistance of a walker. Dr. Draper diagnosed cervical spondylosis and low back pain syndrome. He determined that appellant's bilateral foot drop condition was not fully clinically explained by the MRI scan findings of record. Dr. Draper opined that the accepted cervical spine injury would not have caused her to have low back pain, a foot drop condition, and neurological deficits to the extent that she claimed in the lower extremities. He explained that, although appellant's cervical conditions were related to the accepted employment injury, her lumbar spine issues could not be related to the December 1, 2005 work injury because the records showed that she had injured her neck and not her back initially and her lower back complaints did not start until 2008. Dr. Draper determined that appellant had reached maximum medical improvement (MMI) and opined that she was totally disabled for work solely due to her accepted cervical spine conditions due to the December 1, 2005 employment injury.

By decision dated December 18, 2018, OWCP denied appellant's claim finding that Dr. Draper's October 18, 2018 second opinion report was well rationalized and supported a finding that the claim should not be expanded to include additional conditions.

On January 24, 2019 appellant requested reconsideration.

In support of her request, she submitted a February 8, 2019 report from Dr. Pappas who reiterated his diagnoses and indicated that she continued to have severe back pain radiating down both legs, as well as pain in her neck radiating to the left upper extremity. Appellant also submitted a March 27, 2019 report from Dr. Surmeet Chhina, a Board certified anesthesiologist, who diagnosed lumbar radiculitis, chronic pain syndrome, and cervical post laminectomy syndrome. Dr. Chhina indicated that appellant's chief complaint was chronic pain, involving the L4-5 disc, which had resulted from an injury at work on December 1, 2005 and noted that this was a degenerative condition that had been present for years.

By decision dated April 19, 2019, OWCP denied modification of the December 18, 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.<sup>6</sup>

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.<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>

## 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 her accepted December 1, 2005 employment injury.

In support of her claim, appellant submitted a series of reports by Dr. Pappas who indicated that he had been treating her since February 2006. Dr. Pappas diagnosed several lumbar spine conditions. Although he opined that appellant's conditions were a direct result of the December 1, 2005 employment injury, his reports do not contain rationale explaining how or why additional lumbar conditions had developed approximately three years after the workplace injury. The Board has held that a medical opinion must provide an explanation as to how the accepted employment injury had physiologically caused or aggravated the additional diagnosed medical conditions.<sup>9</sup> While the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or a condition to an absolute certainty, the opinion must be one of reasonable medical certainty and not speculative or equivocal in character.<sup>10</sup> As Dr. Pappas's opinions regarding causal relationship between the accepted injury and the additional claimed conditions were conclusory and unrationalized, the Board finds that they are insufficient to meet appellant's burden of proof to establish that the additional conditions should be accepted in her claim.<sup>11</sup>

Appellant was also examined by Dr. Idema who diagnosed degeneration of the intervertebral disc, lumbar spondylosis, lumbar radiculopathy, and displacement of lumbar intervertebral disc without myelopathy on September 30, 2014. However, Dr. Idema did not

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<sup>6</sup> *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>8</sup> *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *A.H.*, Docket No. 19-0270 (issued June 25, 2019); *M.W.*, Docket No. 18-1624 (issued April 3, 2019).

<sup>10</sup> *C.H.*, Docket No 19-0409 (issued August 5, 2019).

<sup>11</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020).

provide an opinion on the issue of causal relationship between the accepted December 1, 2005 employment injury and the diagnosed lumbar conditions. Likewise, the February 1, 2007 report of Dr. Thompson also does not provide an opinion on the issue of causal relationship or discuss lumbar spine 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.<sup>12</sup> These reports, therefore, are insufficient to establish appellant's request to expand the acceptance of her claim.

Appellant also submitted MRI scans and accompanying reports dated from July 17, 2008 to August 25, 2014. The Board has long held that diagnostic studies, standing alone, are of limited probative value on the issue of causal relationship as they do not address whether the employment injury caused any of the diagnosed conditions.<sup>13</sup> These reports are, therefore, insufficient to establish appellant's request to expand the acceptance of her claim.

OWCP properly referred appellant to Dr. Draper for a second opinion evaluation to determine the nature and extent of her employment-related conditions, including whether the acceptance of her claim should be expanded to include additional conditions as work related. In his October 18, 2018 report, Dr. Draper found that her bilateral foot drop was not clinically explained by the MRI scan findings of record. He opined that the accepted cervical spine injury would not have caused appellant to have low back pain, foot drop conditions, and neurological deficits in the lower extremities to the extent that she claimed. Dr. Draper explained that, although appellant's cervical conditions were related to the accepted employment injury, her lumbar spine issues could not be related to the December 1, 2005 work injury because the records showed that she had injured only her neck and that her lower back complaints had not developed until 2008. The Board finds that Dr. Draper's second opinion report is well rationalized and provides a supportive explanation in support of his finding that appellant's claim should not be expanded to include additional conditions. Therefore, OWCP properly afforded him the weight of the evidence. Appellant has not submitted sufficient rationalized medical evidence to meet her burden of proof to establish causal relationship between her December 1, 2005 employment injury and her diagnosed medical conditions or to overcome the opinion of Dr. Draper. Thus, the Board finds that she has not met her 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 her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions as causally related to her accepted December 1, 2005 employment injury.

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

<sup>13</sup> *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 19, 2019 and December 18, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 30, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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