

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

_____)	
J.R., Appellant)	
)	
and)	Docket No. 20-0878
)	Issued: July 26, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
Panama City, FL, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 13, 2020 appellant filed a timely appeal from a January 24, 2020 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the January 24, 2020 decision, appellant submitted additional evidence to OWCP. 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 his burden of proof to establish that the acceptance of his claim should be expanded to include additional left arm, lower back, neck, and left knee and leg conditions causally related to his accepted May 28, 2019 employment injury.

FACTUAL HISTORY

On May 28, 2019 appellant, then a 47-year-old law enforcement officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained injuries to his arms and experienced pain in his lower back, neck, and left knee and shin when he was involved in a motor vehicle accident while in the performance of duty. He stopped work on May 28, 2019.

In a June 12, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence.

Appellant submitted diagnostic testing reports dated May 28, 2019. A cervical computerized tomography (CT) scan demonstrated mild degenerative disease at the C5-6 level. A lumbar spine CT scan revealed postoperative changes at L5-S1 level and annular disc bulge without disc herniation or stenosis at L4-5. A head and brain CT scan showed no acute intracranial process and evidence of prior sinus surgery. A right hand x-ray film report of appellant's right hand revealed no acute process.

By decision dated July 16, 2019, OWCP accepted that the May 28, 2019 employment incident occurred, as alleged, but denied appellant's traumatic injury claim as the evidence of record was insufficient to establish a diagnosis in connection with the accepted employment incident.

OWCP subsequently received an emergency room discharge instruction sheet dated May 28, 2019, which indicated that he was treated by Paul J. Oenick, a certified physician assistant, and Dr. Christopher Singley, a Board-certified family practitioner. Dr. Singley reported that back pain was usually caused by an injury to the muscles or ligaments of the spine and may appear after a sudden twisting or bending force (such as in a car accident). He also noted that appellant was treated for a hand contusion, neck pain, and sprained finger.

A May 28, 2019 left hand x-ray film report showed fractures in the middle phalanx of the third and fourth digits.

On August 1, 2019 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted a May 28, 2019 emergency room examination report signed by Dr. Singley who recounted that appellant was seen for complaints of neck and lumbar pain, left thumb pain, hand pain, and right hand abrasion following a motor vehicle collision. Upon examination of appellant's neck, Dr. Singley observed full range of motion and lower neck tenderness to palpation. He noted lumbar examination findings of full range of motion and bilateral lower lumbar muscle spasms to palpation. Examination of appellant's bilateral hands

revealed tenderness and swelling. Dr. Singley reported that neurological examination showed no motor or sensory deficits. He diagnosed neck, back, finger, and hand pain.

On November 12, 2019 a telephonic hearing was held. Appellant testified that he had previously undergone back surgery on the L5-S1 level. He explained that he did not look at his medical records until after his claim was denied and then noticed that he had bulging at C5-6 and fractures in his left hand.

OWCP subsequently received a motor vehicle accident report about the May 28, 2019 employment incident.

By decision dated January 24, 2020, the hearing representative affirmed the July 16, 2019 decision in part and vacated it in part. He determined that the medical evidence of record was sufficient to establish that appellant sustained a diagnosis of right hand abrasion causally related to the accepted May 28, 2019 employment incident. The hearing representative also found that the medical evidence of record did not establish any other diagnosed condition causally related to the accepted incident. He noted that the emergency room diagnostic imaging reports were negative for any acute injuries.³

LEGAL PRECEDENT

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.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.⁷

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.⁸ Thus, a subsequent

³ OWCP subsequently issued a February 10, 2020 decision, which accepted appellant's claim for right hand abrasion.

⁴ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional left arm, lower back, neck, and left knee and leg conditions causally related to his accepted May 28, 2019 employment injury.

In support of his claim for expansion, appellant submitted a May 28, 2019 emergency room examination report and discharge instructions sheet, which indicated that he was treated by Dr. Singley. Dr. Singley recounted appellant's complaints of neck and lumbar pain, left thumb pain, hand pain, and right hand abrasion following a motor vehicle collision at work. He provided examination findings of appellant's neck, back, and bilateral hands. Dr. Singley diagnosed neck, back, finger, and hand pain, hand contusion, and sprained finger.¹⁰ While he noted that appellant was examined following a motor vehicle accident, he did not specifically address the cause of appellant's conditions. The Board has found 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 This report, therefore, is insufficient to establish expansion of the acceptance of his claim.¹²

Appellant submitted CT scan and x-ray film reports, which showed mild degenerative disease at the C5-6 level, annular disc bulge without disc herniation or stenosis at L4-5, and fractures in the middle phalanx of the third and fourth digits. The Board has held, however, that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions. Accordingly, this evidence is not sufficient to meet his burden of proof.¹³

As the medical evidence of record is insufficient to establish causal relationship between additional left arm, lower back, neck, and left knee and leg conditions and the accepted May 28, 2019 employment injury, the Board finds appellant has not met his burden of proof to establish his claim.

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 and 20 C.F.R. §§ 10.605 through 10.607.

⁹ *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

¹⁰ Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

¹¹ *M.G.*, Docket No. 19-1863 (issued December 15, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² *See K.R.*, Docket No. 20-1103 (issued January 5, 2021); *L.D.*, Docket No. 19-0350 (issued October 22, 2019).

¹³ *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include additional left arm, lower back, neck, and left knee and leg conditions causally related to his accepted May 28, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2021
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