United States Department of Labor
Employees' Compensation Appeals Board

H.T., Appellant	)	
	)	
and	)	**Docket No. 20-1238**
	)	**Issued: July 12, 2021**
DEPARTMENT OF VETERANS AFFAIRS, HUNTER HOLMES MCGUIRE VETERANS AFFAIRS MEDICAL CENTER, Richmond, VA, Employer	)	

Appearances:
Alan J. Shapiro, *Esq*., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 3, 2020 appellant, through counsel, filed a timely appeal from an April 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

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[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the April 27, 2020 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 complex regional pain syndrome (CRPS).

FACTUAL HISTORY

This case has previously been before the Board.[4] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 20, 2010 appellant, then a 51-year-old laundry worker, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral upper extremity symptoms while in the performance of duty. She explained that she transported heavy carts throughout the entire hospital several times a day. Appellant noted that she first became aware of her condition on June 1, 2009 and realized its relation to her federal employment on January 19, 2010. OWCP accepted the claim for bilateral carpal tunnel syndrome. Appellant underwent OWCP-authorized right carpal tunnel release on September 9, 2013 and left carpal tunnel release on October 7, 2013. She returned to work for approximately three weeks in November 2013. OWCP paid compensation for temporary total disability on the supplemental rolls as of November 12, 2013 and on the periodic rolls as of February 9, 2014.

In a May 28, 2014 report, Dr. Jawad Bhatti, a Board-certified physiatrist, first diagnosed appellant with CRPS. He also started prescribing medication for her chronic pain. In attending physician's reports (Form CA-20) dated May 28, 2014 through December 21, 2017, Dr. Bhatti diagnosed CRPS Type 2, which he opined by checking a box marked "Yes" was caused or aggravated by the employment activity. Corresponding progress notes were provided which diagnosed reflex sympathetic dystrophy of the upper limb. Dr. Bhatti also continued to prescribe narcotic medications.

In a July 7, 2015 electromyography (EMG) report, Dr. Karen Steidle, a Board-certified physiatrist, compared appellant's current EMG against her previous EMG of August 8, 2013. She found evidence of mild right sensory median neuropathy at the wrist without associated denervation, appeared approved since prior study, evidence of mild left sensory median neuropathy at the wrist without associated denervation, unchanged since prior study, and new evidence of borderline to very mild bilateral ulnar demyelinative slowing at the elbows without any sign of axonal loss.

In a March 19, 2016 report, Dr. James Schwartz, an orthopedic surgeon and second opinion physician, reviewed a statement of accepted facts (SOAF) and noted examination findings. In relevant part, he opined that appellant's "physical examination is far too bizarre to relate to carpal tunnel syndrome or to [CRPS] II" and opined that her marked nonphysiologic pain behavior was not "CRPS II." Dr. Schwartz indicated that she had nonphysiologic behavior and her examination was not explicable by any known pathologic condition.

In reports dated September 7, 2017 and February 15, 2018, Dr. Bhatti upgraded appellant's diagnosis to CRPS I of the bilateral upper limb and possible CRPS Type 2 secondary to carpal

[4] *Order Dismissing Appeal*, Docket No. 19-0944 (issued December 18, 2019); Docket No. 18-0979 (issued February 4, 2019).

tunnel surgery. He indicated that she experienced constant, excessive, severe pain with little or no stimuli, and her bilateral surgical release did not resolve her symptoms, noting that the July 7, 2015 EMG study and October 21, 2016 nerve conduction velocity (NCV) studies showed severe neuropathy in bilateral median nerves in both wrists and arms after surgery. Dr. Bhatti indicated that the above diagnostic tests, blood tests, and Sudomotor Axon Reflex Tests confirmed the diagnosis. He indicated that the criteria to determine CRPS was based on appellant's history, physical examination, and nerve conduction blocks. Dr. Bhatti also noted that she had objective positive findings for pain on palpation, a withdrawal response and abnormal NCV testing, which revealed severe C8 nerve injury.

On March 29, 2019 OWCP referred appellant, along with a March 14, 2019 SOAF, the medical record, and a series of questions to Dr. Norman Marcus, a Board-certified orthopedic surgeon, for a second opinion evaluation. The SOAF indicated that the case was accepted for bilateral carpal tunnel syndrome. The questions, in pertinent part, included the causal relation of the CRPS.

In an April 25, 2019 report, Dr. Marcus noted his review of the case record and physical examination findings. He opined that appellant's pain did not meet the criteria of carpal tunnel syndrome and never did. Dr. Marcus further opined that he was unable to ascertain whether she has a regional pain syndrome or was "acting out" those complaints.

In May 23, June 21, and July 23, 2019 CA-20 forms, Rebecca Beecroft, a nurse practitioner, opined by checking a box marked "Yes" that appellant's CRPS Type 2 was caused or aggravated by the employment activity.

In an August 23, 2019 Form CA-20, Dr. Bhatti continued to opine with a check box marked "Yes" that appellant's CRPS Type 2 was caused or aggravated by the employment activity.

On September 18, 2019 OWCP referred appellant to Dr. Chester DiLallo, a Board-certified orthopedic surgeon, for a second opinion examination. A copy of the March 14, 2019 SOAF and a list of questions were provided.

Ms. Beecroft continued to opine, in a September 23, 2019 Form CA-20, that appellant's CRPS Type 2 was caused or aggravated by the employment activity.

In a September 24, 2019 report, Dr. DiLallo noted his review of the medical records and the SOAF. He noted appellant's complaints and presented examination findings of the bilateral upper extremities, noting questionable effort or little resistance in response to testing. Dr. DiLallo noted that she had worked just one day since the carpal tunnel surgeries and reported little improvement in symptoms. He opined that the subjective complaints did not correspond with the objective examination findings. Dr. DiLallo noted that most of the objective examination findings were tempered by the fact that appellant's interpretation of sensations was subjective. Subjective findings included principally tingling in both hands, and pain radiating from the hands to the shoulders, left worse than right. Objective findings were restricted to the presence of intact reflexes. Appellant failed to identify two-point discrimination in any area of either hand, but had good capillary refill. The absence of sweating and sudomotor changes was significant. Dr. DiLallo opined that the accepted diagnosis of bilateral carpal tunnel syndrome had not resolved, noting that the objective findings were limited to the EMG and NCV studies as all other findings on physical examination were nonphysiologic. He opined that appellant's condition had reached maximum medical improvement and restrictions/limitations were medically warranted. Dr. DiLallo further opined that there was a need for further medical treatment, including intense

psychological evaluation and testing and referral to a neurologist and/or rheumatologist, because of the duration of symptoms, the character of the symptoms, and her dependence on opioids. Additionally, he opined that there was no evidence of CRPS on evaluation or on history and thus the question as to whether or not it was due to the work injury was moot. Dr. DiLallo indicated that the appellation of CRPS supplied by appellant's treating physicians had no basis in fact.

By decision dated October 8, 2019, OWCP denied the expansion of appellant's claim to include the additional condition of CRPS. It found that the weight of the medical evidence rested with Dr. DiLallo's September 24, 2019 opinion.

On October 28, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, held March 5, 2020.

OWCP continued to receive additional evidence. In CA-20 forms dated October 23 and November 22, 2019, Ms. Beecroft continued to opine that appellant's CRPS Type 2 was caused or aggravated by the employment activity.

In a November 27, 2019 prescription note, Dr. Bhatti diagnosed CRPS Type 2 and referred appellant for a functional capacity evaluation.

Ms. Beecroft, in January 23, February 21, and March 23, 2020 Forms CA-20, and Dr. Bhatti, in an April 20, 2020 Form CA-20, continued to opine that appellant's CRPS Type 2 was caused or aggravated by her employment activity.

By decision dated April 27, 2020, the hearing representative affirmed OWCP's October 8, 2019 decision.

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.[5]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[6] 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.[7] The weight of medical evidence is determined by its reliability, its probative value, its convincing

[5] *See L.C.*, Docket No. 20-0866 (issued February 26, 2021); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[6] *See S.L.*, Docket No. 19-0603 (issued January 28, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Kenneth R. Love*, 50 ECAB 276 (1999).

[7] *See J.T.*, Docket No. 19-1723 (issued August 24, 2020); *P.M.*, Docket No. 18-0287 (issued October 11, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

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 CRPS.

On May 28, 2014 Dr. Bhatti diagnosed CRPS, but offered no opinion on causal relationship. 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.[9] This report is therefore insufficient to establish expansion of the claim.

In Form CA-20 reports dated May 28, 2014 through April 21, 2020, Dr. Bhatti opined, by checking a box marked "Yes" that appellant's CRPS Type 2 was caused or aggravated by the employment activity, but offered no medial rationale to support his opinion. 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 related to employment factors.[10] These reports are therefore of limited probative value and insufficient to establish expansion of the claim.[11]

While Dr. Bhatti offered some objective findings to support a diagnosis of CRPS 1 and possible CRPS Type 2 secondary to carpal tunnel surgery in his reports dated September 7, 2017 and February 15, 2018, no medical rationale was provided to support his causation opinion. The Board has held that medical opinion evidence should offer a medically-sound explanation of how the specific employment factors physiologically caused the injury.[12] Thus, these reports are also insufficient to establish expansion of the claim.

OWCP also received a number of reports wherein Ms. Beecroft, a nurse practitioner, opined that appellant's CRPS Type 2 was caused or aggravated by the employment activity. The Board has held that medical reports signed solely by nurse practitioners are of no probative value as nurse practitioners are not considered physicians as defined under FECA.[13] These reports are therefore insufficient to establish expansion of appellant's claim.

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[8] *See H.H.*, Docket No. 16-0897 (issued September 21, 2016); *James Mack*, 43 ECAB 321 (1991).

[9] *See D.W.*, Docket No. 18-1139 (issued May 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[10] *See D.W.*, *id.*; *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[11] *Id.*

[12] *See H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

[13] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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). *See M.C.*, Docket No. 19-1074 (issued June 12, 2020); *S.L.*, Docket No. 19-0607 (issued January 28, 2020) (nurse practitioners are not considered physicians under FECA).

In a September 24, 2019 report, Dr. DiLallo, a second opinion physician, affirmed the diagnosis of bilateral carpal tunnel syndrome and unequivocally rejected the diagnosis of CRPS. He noted that there was no evidence of CRPS on evaluation or on history and explained the absence of CRPS in arriving at his conclusion. The Board finds that Dr. DiLallo's opinion, which is well rationalized and based upon a proper factual and medical history, constitutes the weight of the medical evidence on the issue of whether appellant's CRPS is causally related to the accepted June 1, 2009 employment injury.[14]

As the medical evidence of record is insufficient to establish that appellant's CRPS is causally related to her accepted June 1, 2009 employment injury, the Board finds that she has not met her burden of proof to establish expansion of the acceptance of her 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.

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 CRPS.

[14] *See L.C.*, Docket No. 18-1759 (issued June 26, 2019); *D.M.*, Docket No. 17-1052 (issued January 24, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 12, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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