

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

C.W., Appellant)	
)	
and)	Docket No. 21-0287
)	Issued: July 2, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Houston, TX, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 22, 2020 appellant, through counsel, filed a timely appeal from a November 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.³

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 November 19, 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 expand the acceptance of his claim to include additional physical and emotional conditions as causally related to the accepted August 28, 2012 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ 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 August 31, 2012 appellant, then a 51-year-old transitional city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2012 he sustained a neck injury when he was involved in a motor vehicle accident while in the performance of duty. He stopped work on August 29, 2012.⁵ OWCP accepted appellant's claim for cervical, lumbar, and left shoulder strains. It paid him wage-loss compensation on the periodic rolls, effective April 29, 2013.

Appellant received medical treatment from Dr. Louis Train, a Board-certified family practitioner. In reports dated September 29 and November 12, 2014, Dr. Train described the August 28, 2012 employment incident and noted appellant's accepted conditions of cervical and lumbar sprains. He requested that appellant's claim be expanded for the diagnoses of psychogenic pain/chronic pain syndrome, major depressive disorder, generalized anxiety disorder, and bilateral shoulder internal derangement as related to his work injury.

By decisions dated April 6 and 22, 2015, OWCP denied the expansion of appellant's claim to include bilateral shoulder internal derangement, psychogenic pain, chronic pain, chronic pain syndrome, and major depressive disorder. It found that the medical evidence of record was insufficient to establish causal relationship between the accepted August 28, 2012 employment incident and the diagnosed conditions.

On May 4, 2015 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 16, 2015. By decision dated February 1, 2016, OWCP's hearing representative affirmed the April 22, 2015 decision.

Appellant appealed to the Board. In an April 3, 2017 decision, the Board affirmed OWCP's February 1, 2016 decision. It found that appellant had not met his burden of proof to expand his claim to include the additional conditions of internal derangement of bilateral shoulders, psychogenic pain, chronic pain syndrome, and major depressive order as causally related to the accepted August 28, 2012 employment injury.⁶

⁴ Docket No. 16-0858 (issued April 3, 2017); Docket No. 19-1747 (issued September 2, 2020).

⁵ On October 18, 2012 appellant's term appointment ended.

⁶ Docket No. 16-0858, *supra* note 4.

Appellant subsequently requested reconsideration and submitted additional medical evidence.

In a July 26, 2016 report, Dr. George P. Grimes, a clinical psychologist, noted that, due to increased pain levels, appellant was having difficulty performing certain physical activities, had nightmares and sleep disturbances, and experienced nervousness, agitation, decreased appetite, weight fluctuations, and headaches. He reported that appellant suffered a work-related injury, which resulted in psychosocial stressors. Dr. Grimes diagnosed chronic pain disorder.

OWCP also received reports by Dr. Charles Reinhardt, an osteopathic physician specializing in anesthesiology. In a June 1, 2016 report, Dr. Reinhardt noted appellant's accepted conditions of lumbar and cervical spine sprains as a result of the August 28, 2012 employment incident and indicated that his claim should be expanded to include internal disc disruption. He reviewed appellant's diagnostic testing reports and provided cervical and lumbar spine examination findings. Dr. Reinhardt provided additional reports dated October 11, 2016 through February 27, 2017, regarding appellant's medical treatment for cervical spine disc disease, lumbar disc disease, and depression.

In a March 27, 2017 report, Dr. Reinhardt discussed appellant's history of injury and diagnosed cervical spine disc disease, lumbar disease with bilateral radiculopathy, and right shoulder rotator cuff. He opined that appellant developed an occupational injury due to his employment duties. Dr. Reinhardt requested that appellant's claim be expanded to include spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, and lumbar spondylosis foramen stenosis.

In reports dated May 1, 2017 through February 27, 2019, Dr. Reinhardt continued to refer to his March 2017 request to expand appellant's claim to include additional cervical and lumbar conditions. In an April 9, 2018 report, he began to request that appellant's claim be expanded to include right shoulder tear of the supraspinatus tendon.⁷

By decision dated April 3, 2019, OWCP denied modification of its prior decision.

On April 22, 2019 appellant, through counsel, requested reconsideration. He submitted additional reports by Dr. Reinhardt dated April 15, May 20, and June 17, 2019 regarding medical treatment for appellant's cervical, thoracic, and lumbar spine, and shoulder conditions.

By decision dated July 10, 2019, OWCP denied modification of its prior decision.

Appellant appealed to the Board. By decision dated September 2, 2020, the Board affirmed the July 10, 2019 decision, finding that the medical evidence of record was insufficient to establish

⁷ Appellant also underwent diagnostic examination testing on March 13, 2017. A March 13, 2017 lumbar spine magnetic resonance imaging (MRI) scan revealed lumbar spondylosis resulting in mild spinal canal and mild bilateral neural foramen stenosis at L2-3 and L3-4 and mild bilateral neural foramen stenosis at L4-5. A cervical spine MRI scan revealed disc protrusion at C2-3, C3-4, C4-5, and C5-6 and multilevel foraminal stenosis with severe contact on bilateral C4 and bilateral C5 nerve roots.

that appellant's claim should be expanded to include additional cervical, lumbar, and shoulder conditions causally related to his accepted August 28, 2012 employment injury.⁸

Following the Board's decision, appellant, through counsel, requested reconsideration and submitted additional medical evidence.⁹

Appellant submitted reports dated August 19, 2019 through November 2, 2020 from Dr. Reinhardt who recounted that appellant was seen for complaints of pain in his neck, lumbar spine, and right knee. He noted a date of injury of August 28, 2012. Dr. Reinhardt indicated that diagnostic studies of appellant's cervical and lumbar spine had revealed cervical disc herniation at C3-4, C5-6, and C6-7 and left central, left subarticular, and left foramen disc herniation at L4-5. Examination of appellant's right knee demonstrated intact medial and lateral ligaments and marked crepitus. Dr. Reinhardt reported that he had requested to expand appellant's claim to include spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, and lumbar spondylosis for foramen stenosis. He diagnosed cervical spine disc disease, depression, lumbar disc disease with bilateral radiculopathy, and right shoulder rotator cuff.

By decision dated November 19, 2020, OWCP denied modification of its prior 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.¹⁰

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹¹ 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.¹² 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.¹³

⁸ Docket No. 19-1747, *supra* note 4.

⁹ Although appellant claimed to be filing a request for reconsideration from the Board's September 2, 2020 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). Although the September 2, 2020 Board decision was the last merit decision, the July 10, 2019 decision is the appropriate subject of possible modification by OWCP.

¹⁰ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹¹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *Id.*

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional physical and emotional conditions as causally related to the accepted August 28, 2012 employment injury.

Preliminary, the Board notes that findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁴ It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's July 10, 2019 decision because the Board considered that evidence in its September 2, 2020 decision.¹⁵

Along with his most recent reconsideration request, appellant submitted reports dated August 19, 2019 through November 2, 2020 from Dr. Reinhart. Dr. Reinhart noted the August 28, 2012 date of injury, discussed appellant's cervical and lumbar diagnostic studies, and provided lumbar, cervical, and right shoulder examination findings. He referred to his previous requests to expand appellant's claim to include spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, and lumbar spondylosis for foramen stenosis. Although he continued to request that OWCP expand appellant's claim to include additional cervical and lumbar conditions, Dr. Reinhart did not provide medical rationale explaining how, physiologically, appellant's involvement in a motor vehicle accident on August 28, 2012 would cause the diagnosed conditions.¹⁶ Medical form reports and narrative statements merely asserting causal relationship cannot discharge appellant's burden of proof.¹⁷ The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.¹⁸

As the medical evidence of record is insufficient to establish causal relationship between appellant's claimed additional conditions and the accepted August 28, 2012 employment injury, the Board finds that he has not met his burden of proof.¹⁹

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.

¹⁴ *G.B.*, Docket No. 19-1448 (issued August 21, 2020); *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁵ Docket No. 19-1747, *supra* note 4.

¹⁶ *See L.K.*, Docket No. 20-1117 (issued February 9, 2021).

¹⁷ *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹⁸ *B.B.*, Docket No. 19-1102 (issued November 7, 2019); *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁹ *L.M.*, Docket No. 20-1038 (issued March 10, 2021)

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions as causally related to the accepted August 28, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 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