

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

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**J.M., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY AGENCY,  
BOB HOPE AIRPORT, Burbank, CA, Employer**

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**Docket No. 19-1926  
Issued: March 19, 2021**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 17, 2019 appellant, through counsel, filed a timely appeal from a May 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the May 23, 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 his burden of proof to expand the acceptance of his claim to include the additional conditions of mild cognitive impairment and somatoform disorder as a consequence of his accepted employment injuries.

## **FACTUAL HISTORY**

On February 8, 2013 appellant, then a 49-year-old administrative officer, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2013 he sustained injuries to the neck, back, and buttocks when he stumbled as he was exiting a government vehicle while in the performance of duty. He explained that his arm became tangled in the seat belt which caused him to stumble into the rear passenger door of the car. Appellant stopped work on February 7, 2013. OWCP assigned the claim File No. xxxxxx038 and accepted it for temporary aggravations of lumbar sprain, neck sprain and lumbosacral radiculitis.

The record reflects that Dr. Scott Baden, a Board-certified orthopedic surgeon, followed appellant after his July 22, 2004 employment injury. Dr. Baden's treatment was largely focused on low back complaints and conservative measures to address pain.

In an April 16, 2009 report, Dr. Kevin J. Pelton, a Board-certified orthopedic surgeon, diagnosed cervical strain with radiculitis, status post lumbar fusion with residual radiculopathy. He also provided a diagnosis of status post head trauma with migraines. In a July 30, 2009 note, and in subsequent reports, Dr. Pelton attributed appellant's headaches to his prior lumbar fusion and residual radiculopathy.

In a November 9, 2011 report, Dr. Navid Farahmand, Board-certified in pain medicine, opined that migraines can be caused by cervical pathology or other intrinsic causes.

Appellant continued to be followed by Dr. Pelton. He also continued to receive pain management services as well as chiropractic care.

In a September 20, 2016 note, Dr. Shahin Sadik, Board-certified in pain medicine, reported that appellant had related that he struck his head and injured his back and neck in a nonfederal work-related injury. He reported that he continued to have headaches, memory issues and loss of smell from the head injury. Dr. Sadik opined that appellant had daily migraine headaches and was very photo and phono sensitive. He also opined that appellant has ongoing cognitive dysfunction related to the head injury. Dr. Sadik requested authorization for appellant to see Dr. Edinger, as she had experience with patients with history of traumatic brain injury.

In a May 4, 2017 report, Michelle Conover, Ph.D., a clinical psychologist, noted that appellant reported onset of migraines in 1996 following a fall. The headaches had diminished by 2000, but returned after the 2004 employment injury. Appellant attributed his headaches to his back pain, noting that he had used a cane for stability since 2000. He also acknowledged memory problems secondary to the 1996 injury, but asserted that those symptoms had improved in 2000 and then returned after the 2004 employment-related fall. Appellant indicated that after his February 1996 fall, his deteriorating cognitive faculties forced him to retire. He admitted that he was knocked unconscious in the 1996 fall and suffered cognitive symptoms thereafter, including confusion, with other deputies pointing out his difficulties to him. Appellant denied loss of

consciousness in the 2004 fall and was uncertain whether a diagnosis of concussion was ever made. He asserted, however, that he had significant cognitive difficulties thereafter. Appellant advised that he retired in 2013 as his supervisors were not supportive of his injuries and his ability to walk was at risk due to his lumbar pathology. Dr. Conover noted her examination findings and diagnosed mild neurocognitive disorder due to a traumatic head injury and unspecific somatic symptoms disorder.

On February 20, 2018 Dr. Conover's office manager requested that possible consequential conditions of mild cognitive impairment and unspecified somatoform disorder be added to appellant's claim under OWCP File No. xxxxxx038.<sup>4</sup>

In an April 26, 2018 report, Dr. Lara Edinger, a Board-certified neurologist and pain management specialist, opined that appellant's chronic neck pain and migraine headaches were secondary to work-related injury. She noted that appellant suffered head, neck, and back injury in 1996 and suffered another head injury in 2004. Dr. Edinger reported that appellant had persistent issues with memory, has lost sense of smell, and has significant photophobia in relation to his headaches. Appellant reported ongoing issues with word finding. Dr. Edinger diagnosed cervicogenic headache, obstructive sleep apnea, spondylosis without myelopathy or radiculopathy, cervical region, lumbar radiculitis, chronic post-traumatic headache, intractable, migraine aura, medication overuse headache, supraorbital neuralgia, occipital neuralgia, other long-term drug therapy, degenerative disc disease, cervical, arthropathy of lumbar facet joint, and musculoskeletal pain.

In a May 29, 2018 development letter, OWCP advised appellant that the evidence of record, including the most recent medical report in file dated April 26, 2018, was insufficient to establish possible consequential conditions of mild cognitive impairment and unspecified somatoform disorder. It noted the type of evidence necessary to establish his claim, including a comprehensive, narrative medical report from a qualified physician that included a diagnosis of the consequential conditions and an opinion, supported by medical rationale, addressing how the claimed conditions were related to the accepted 2004 and/or 2013 employment injuries or the accepted medical conditions. OWCP afforded appellant 30 days to submit the necessary evidence.<sup>5</sup> No additional evidence was received.

By decision dated July 23, 2018, OWCP denied expansion of the acceptance of appellant's claim to include a consequential injury of mild cognitive impairment and somatoform disorder. It found no reasoned medical opinion relating either condition to the accepted employment injuries.

On July 30, 2018 appellant, through his counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on December 13, 2018.

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<sup>4</sup> The request was not for treatment, but to discern appellant's cognitive, emotional and behavior functioning to figure out if he suffered with any mental health condition.

<sup>5</sup> A July 12, 2018 statement of accepted facts (SOAF) noted appellant's accepted employment injuries of February 7, 2013 and July 22, 2004 and his 1996 nonindustrial spinal fusion at the L2-3 level.

OWCP received copies of ongoing pain management services dated August 13, 2018 onward relating to, facet nerve blocks for treatment of cervical facet arthropathy, and trigger injections for myofascial pain syndrome.

By decision dated February 27, 2019, OWCP's hearing representative affirmed OWCP's July 23, 2018 decision, finding that the medical evidence of record was insufficient to establish that the claimed cognitive and somatoform disorders were related to his accepted employment injuries of 2004 or 2013 by either direct causation or consequential injury.

On April 30, 2019 appellant, through counsel, requested reconsideration. He requested that OWCP review Dr. Edinger's March 28, 2019 report.

OWCP received medical reports from Dr. Edinger, which were also coauthored with Dr. Sadik, dated March 28 and May 2, 2019. In the March 28, 2019 report, Drs. Edinger and Sadik provided a history of chronic neck pain, and migraine headaches secondary to work-related injuries. Dr. Edinger noted that appellant had a head, neck, and back injury in 1996 and another head injury in 2004. Diagnoses of lumbar back sprain, lumbosacral radiculopathy, spondylosis without myelopathy or radiculopathy, cervical region, chronic post-traumatic headache, intractable, migraine aura, persistent, medication overuse headache, suborbital neuralgia and occipital neuralgia were provided. Drs. Edinger and Sadik reported that appellant's headaches began when he fell back onto a bookshelf in 2004. Dr. Edinger noted that appellant was positive for loss of consciousness, slurred speech, dizziness, nausea, vomiting, photophobia and an immediate headache. Appellant reported a history of nausea for a week, vomiting for three days, speech problems for two to three days, difficulty with memory and concentration, headaches, and photophobia. Drs. Edinger and Sadik opined that appellant met the criteria for concussion after this incident, which has led to chronic post-traumatic headaches. This also has resulted in prolonged memory and concentration issues. On May 2, 2019 Drs. Edinger and Sadik related that she had provided a supraorbital nerve block.

Medical reports regarding appellant's pain management progress dated March 11, April 22 and May 3, 2019 from Dr. Edinger and Dr. Sadik were also received. They continued to diagnose lumbar back sprain, lumbosacral radiculopathy, spondylosis without myelopathy or radiculopathy, cervical region, chronic post-traumatic headache, intractable, migraine aura, persistent, medication overuse headache, suborbital neuralgia and occipital neuralgia.

By decision dated May 23, 2019, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

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 the claimant's own intentional misconduct.<sup>6</sup> Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>7</sup>

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<sup>6</sup> See *I.S.*, Docket No. 19-1461 (issued April 30, 2020); see *Charles W. Downey*, 54 ECAB 421 (2003).

<sup>7</sup> *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

The claimant bears the burden of proof to establish a claim for a consequential injury.<sup>8</sup> As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>9</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include the additional conditions of mild cognitive impairment and somatoform disorder as a consequence of his accepted employment injuries.

The record reflects that prior to appellant's federal employment he suffered injuries to his head, back, and neck in 1996 while working as a sheriff's deputy. Appellant also underwent a lumbar fusion at L2-3 in 1996. As noted, an employee claiming a consequential injury has the burden to provide rationalized medical evidence showing how the subsequently-acquired medical condition is a consequence of the prior employment injury.<sup>12</sup>

Appellant has claimed consequential cognitive dysfunction and somatoform disorder. However, there is no rationalized medical opinion evidence relating the cause of such conditions as a consequence of either of his accepted employment injuries in 2004 or 2013.

With regard to the claimed cognitive impairment as a consequence of his accepted employment injuries, Dr. Pelton, in an April 16, 2009 report, diagnosed status post head trauma with migraines. However, his report is of no probative value regarding appellant's consequential claim as he did not provide an opinion regarding the cause of appellant's post head trauma. 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>13</sup>

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<sup>8</sup> See *C.H.*, Docket No. 20-0228 (issued October 7, 2020); *P.P.*, Docket No. 19-1359 (issued April 30, 2020).

<sup>9</sup> *K.W.*, Docket No. 18-0991 (issued December 11, 2018); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

<sup>10</sup> *P.M.*, *id.*

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

<sup>12</sup> *C.H.*, *supra* note 8.

<sup>13</sup> See *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

On November 9, 2011 Dr. Farahmand related that migraines can be caused by cervical pathology or other intrinsic causes. His speculative opinion did not causally relate appellant's claimed cognitive impairment to the accepted employment injuries and is therefore insufficient to establish the claim.<sup>14</sup>

In a September 20, 2016 note, Dr. Sadik opined that appellant's daily migraine headaches and ongoing cognitive dysfunction related to the head injury he sustained while working. However, he related appellant's symptomology to the 1996 nonindustrial employment injury. Thus, Dr. Sadik's report is of little probative value regarding appellant's consequential claim.

In a May 4, 2017 report, Dr. Conover reported that appellant admitted to memory problems secondary to the 1996 injury, but asserted that those symptoms had improved in 2000 and then returned after the 2004 employment-related fall. Appellant denied loss of consciousness in the 2004 fall, but asserted that he had significant cognitive difficulties thereafter. While Dr. Conover diagnosed mild neurocognitive disorder due to a traumatic head injury and unspecific somatic symptoms disorder, no opinion regarding the cause of appellant's conditions were provided. As previously noted, 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>15</sup> Thus, Dr. Conover's report is insufficient to establish appellant's consequential claim.

OWCP also received multiple progress reports from Dr. Edinger which related appellant's pain management progress. The reports noted that appellant suffered head, neck, and back injury in 1996 and had another head injury in 2004. Dr. Edinger diagnosed lumbar back sprain, lumbosacral radiculopathy, spondylosis without myelopathy or radiculopathy, cervical region, chronic post-traumatic headache, intractable, migraine aura, persistent, medication overuse headache, suborbital neuralgia and occipital neuralgia. However, Dr. Edinger did not provide an opinion linking either a somatoform disorder or a cognitive disorder to the accepted employment injuries.<sup>16</sup>

In March 28 and May 2, 2019 reports, coauthored by Dr. Sadik, and Dr. Edinger reported that appellant's headaches began when he fell back onto a bookshelf in 2004. Dr. Edinger noted appellant's symptoms following such event as reported by appellant and that he was positive for loss of consciousness, slurred speech, dizziness, nausea, vomiting, photophobia and an immediate headache. Drs. Edinger and Sadik collectively opined that appellant met the criteria for concussion after this incident, which has led to chronic post-traumatic headaches and also resulted in prolonged memory and concentration issues. While the physicians provided an affirmative opinion that appellant's chronic post-traumatic headaches resulted in prolonged memory and concentration issues, their opinion regarding a consequential injury is of little probative value because her report is based on an incomplete factual and medical background. Drs. Edinger and Sadik did not mention or describe the prior head injury that appellant suffered in 1996. Further, the record is devoid of a positive showing that appellant lost consciousness in the 2004 employment incident; rather, it was only accepted that he struck his head on a bookshelf in 2004. The Board has held that medical reports must be based on a complete and accurate factual and

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<sup>14</sup> See *M.B.*, Docket No. 19-0882 (issued November 6, 2019).

<sup>15</sup> See *supra* note 15.

<sup>16</sup> *Id.*

medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>17</sup> As previously noted, in any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>18</sup> As the record reveals that the 1996 nonindustrial injury resulted in severe cognitive issues by appellant's own account, a well-rationalized opinion is needed to explain if and how the accepted 2004 head strike could have resulted in or aggravated appellant's chronic post-traumatic headaches with resulting prolonged memory and concentration issues.<sup>19</sup> Dr. Sadik and Dr. Edinger's reports therefore are insufficient to establish appellant's consequential claim.

On appeal counsel argues that OWCP failed to use the proper standard of causation and failed to give due deference to the attending physician. For the reasons explained above, however, the medical reports on file are insufficient to establish a consequential injury 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(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 expand the acceptance of his claim to include the additional conditions of mild cognitive impairment and somatoform disorder as a consequence of his accepted employment injuries.

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<sup>17</sup> See *S.B.*, Docket No. 20-0643 (issued January 27, 2021); *A.W.*, Docket No. 17-0285 (issued May 25, 2018); *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>18</sup> See *supra* note 13.

<sup>19</sup> See *C.H.*, *supra* note 8; *D.J.*, Docket No. 16-0663 (issued October 20, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2021  
Washington, DC

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

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

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