

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

W.S., Appellant	)	
	)	
and	)	Docket No. 20-0072
	)	Issued: May 6, 2021
DEPARTMENT OF HOUSING & URBAN	)	
DEVELOPMENT, Washington, DC, 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 October 10, 2019 appellant filed a timely appeal from an August 27, 2019 merit decision 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 to consider the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish an additional condition causally related to her accepted February 28, 2007 employment injury.

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

<sup>2</sup> The Board notes that, following the issuance of the August 27, 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.*

## **FACTUAL HISTORY**

On March 1, 2007 appellant, then a 52-year-old supervisory program analyst, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2007 she was involved in a rear end motor vehicle collision while in the performance of duty. She developed headaches, back, and neck pain, as well as a right hand/arm contusion and left hand pain. Appellant stopped work on March 1, 2007. On April 16, 2007 OWCP accepted the claim for right elbow and forearm sprain, contusion of the left chest wall, and sprains of the neck, right hand and lumbar and thoracic regions of the spine. It subsequently expanded the acceptance of the claim to include bilateral meniscus tear and right chondromalacia patellae. OWCP paid appellant intermittent wage-loss compensation on the supplemental rolls from March 16, 2010 until March 20, 2014.

OWCP subsequently received an April 19, 2019 report from Dr. Akash Bajaj, Board-certified in pain medicine. Dr. Bajaj related that appellant had neck pain with radiation from her shoulder to hands, and low back pain with radiation to her bilateral legs. He noted that her symptoms began following a work-related automobile accident approximately 10 years prior. Appellant had received significant benefit from physical therapy and steroid injections in the past. Dr. Bajaj further explained that a new cervical magnetic resonance imaging (MRI) scan of her cervical spine revealed degenerative disease throughout the cervical spine, causing bilateral foraminal stenosis, worse at C6-7. Appellant's diagnoses were listed as neck fascia and tendon strain, right wrist, elbow and hand sprain, lumbar spine, thoracic, and neck nerve root injuries.

In an April 26, 2019 report, Dr. Mark Ganjianpour, a Board-certified orthopedic surgeon specializing in arthroscopic and reconstructive surgery, related that appellant continued to have significant neck and back pain. He noted that she was seeing Dr. Bajaj for pain management and he had ordered an MRI scan of the cervical spine; however, she was still searching for a specialist who was willing to treat her lumbar spine condition. Dr. Ganjianpour noted appellant's physical examination findings and diagnosed cervical spine instability C1 through C5 with right-sided disc C5-6 causing right-sided arm pain, lumbar spine disc at L4-5 with neuroforaminal stenosis and some facet degeneration with axial back pain, pain radiation to the left leg, left elbow, and left wrist sprain, right knee post-traumatic arthritis, status post-Orthovisc with some improvement, left knee post-traumatic arthritis, and status post-Orthovisc with some improvement.

In a June 4, 2019 report, Dr. Bajaj noted that appellant presented with symptoms of neck pain and radiation down the arms from the shoulder to the hand and down to her bilateral legs, with the left greater than the right. He advised that her symptoms initially began following a work-related automobile accident approximately 10 years prior. Dr. Bajaj advised that appellant received significant benefits from physical therapy, cervical epidural steroid injections, and facet injections in her neck. He indicated that her most recent MRI scan revealed degenerative disc disease throughout the cervical spine causing bilateral foraminal stenosis, worst at C6-7. Dr. Bajaj diagnosed unspecified strain of right elbow, initial encounter, injury of nerve root of thoracic spine, subsequent encounter, injury of other specified nerves of neck, subsequent encounter, strain of muscle, fascia, and tendon at neck level, subsequent encounter, sprain of unspecified part of right wrist and hand, subsequent encounter sprain of ligaments of lumbar spine, subsequent encounter, unspecified sprain of right elbow, subsequent encounter, cervicgia, radiculopathy, cervical region, muscle spasm of back, other muscle spasm, low back pain, strain of muscle, fascia and tendon at neck level, initial encounter, sprain of unspecified part of right wrist and hand, initial

encounter, and sprain of ligaments of lumbar spine, and initial encounter. He recommended an epidural steroid injection at C6-7. Dr. Bajaj noted that appellant had radiculopathy and was suffering from acute/sub-acute and chronic pain syndrome, including cervical, thoracic, and lumbar pain with radiculopathy, and intervertebral disc disease (with neuritis or radiculitis) with or without myelopathy, that had failed to respond to adequate conservative management.

In a development letter dated July 25, 2019, OWCP advised appellant of the evidence required to support expansion of her claim, including a rationalized report from a physician explaining the cause of her newly diagnosed conditions. It afforded her 30 days to submit the necessary evidence.

OWCP received additional evidence which included a July 15, 2019 report. Dr. Bajaj noted that appellant's chief complaint was sharp, dull, aching pain on the neck and lower back radiating to the upper and lower extremities. He advised that she related neck pain described as "heaviness and pressure" with additional radiation down the arms from the shoulder to the hand. Dr. Bajaj indicated the right side of the neck was worse than the left, appellant's neck pain was most severe, but she also had a secondary pain generator in her lower back with radiation down her bilateral legs, left greater than right. He related that her symptoms began following a work-related automobile accident approximately 10 years prior. Dr. Bajaj noted that appellant had received significant benefit from physical therapy and a cervical epidural injection and facet injection in her neck, which was beneficial, and a recent cervical MRI scan revealed degenerative disc disease throughout the cervical spine, causing bilateral foraminal stenosis, worst at C6-7. He repeated his previous diagnoses. Dr. Bajaj performed a bilateral cervical paraspinous trigger point injection. He noted that radiculopathy was present and appellant was suffering from acute/sub-acute and chronic pain syndrome, including cervical, thoracic, and lumbar pain with radiculopathy and intervertebral disc disease (with neuritis or radiculitis) with or without myelopathy, that had failed to respond to adequate conservative management.

In a July 16, 2019 report, Dr. Ganjianpour noted that appellant was seen again on July 9, 2019 regarding multiple concerns. He indicated that she still had bilateral knee weakness, stiffness and pain; however, she had not received a response regarding a request for physical therapy, and he noted that lumbar spine injections had not been approved. Dr. Ganjianpour related that on physical examination of the cervical spine appellant had muscle spasm and tenderness and decreased cervical spine range of motion (ROM). Regarding the lumbar spine, he found decreased lumbar ROM, significant stiffness and tenderness in the lumbar spine with pain radiating down to the left leg with numbness, tingling in L4-5 and L5-S1 dermatomal distribution, and decreased lumbar flexion to 30 degrees, extension to 10 degrees. Dr. Ganjianpour repeated his previous diagnoses. He indicated that appellant was waiting approval for physical therapy.

By decision dated August 27, 2019, OWCP denied appellant's request to expand her claim. It found that neither Dr. Bajaj nor Dr. Ganjianpour provided a well-rationalized medical opinion explaining how any of the additional conditions were causally related to the motor vehicle accident on February 28, 2007.

## 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.<sup>3</sup>

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.<sup>4</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the employment must be based on a complete factual and medical background.<sup>5</sup> Additionally, the opinion of the physician 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 the specific employment incident identified by the claimant.<sup>6</sup>

## ANALYSIS

The Board finds that appellant has not met her burden of proof to expand acceptance of her claim.

In support of her claim, appellant submitted reports dated April 19, June 4, and July 15, 2019 from Dr. Bajaj and reports dated April 26, May 28, and July 16, 2019 from Dr. Ganjianpour. Both physicians provided new diagnoses; however, neither physician provided any discussion of how or why these additional diagnoses were related to the original employment injury on February 28, 2007, which occurred more than 12 years prior to the new diagnoses. 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>7</sup> These reports, therefore, are insufficient to expand appellant's claim.<sup>8</sup>

The Board finds that the medical evidence of record is insufficient to establish causal relationship between the additional diagnosed conditions and the accepted February 28, 2007 employment injury and, thus, appellant has not met her burden of proof to expand acceptance of

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<sup>3</sup> *L.F.*, Docket No. 20-0459 (issued January 27, 2021); *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).

<sup>4</sup> *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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

<sup>6</sup> *See M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *See T.T.*, Docket No. 20-0687 (issued December 11, 2020); *B.P.*, Docket No. 19-0777 (issued October 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>8</sup> *See G.V.*, Docket No. 20-0055 (issued April 21, 2020).

her claim to include additional conditions causally related to the accepted February 28, 2007 employment injury.<sup>9</sup>

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 expand acceptance of her claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 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

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<sup>9</sup> See *S.J.*, Docket No. 19-0489 (issued January 13, 2020); *E.B.*, Docket No. 17-1497 (issued March 19, 2019).