

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

S.C., Appellant)	
)	
and)	Docket No. 20-0327
)	Issued: May 6, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Belmar, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
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 November 26, 2019 appellant, through counsel, filed a timely appeal from a June 4, 2019 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.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include additional conditions causally related to

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.*

the accepted June 3, 2016 employment injury; and (2) whether appellant has met her burden of proof to establish total disability from work for the period February 4 to May 26, 2017, and commencing May 27, 2017, causally related to her accepted June 3, 2016 employment injury.

FACTUAL HISTORY

On June 10, 2016 appellant, then a 50-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 3, 2016 she fell down stairs injuring her low back while in the performance of duty. OWCP accepted the claim for contusion of the lower back and pelvis. Appellant stopped work on June 3, 2016.

In reports dated January 3 and 10, 2017, Dr. Kulbir S. Walia, a Board-certified anesthesiologist, treated appellant for lower back pain, left buttock pain, and right groin pain that was the result of a work-related fall on June 3, 2016. Appellant reported working full time until January 4, 2017, when she stopped secondary to pain. Dr. Walia performed a trigger point injection into the left gluteus and diagnosed right hip pain, lumbar radiculopathy, and myofascial pain. He took appellant off work for two weeks.

A February 15, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative disc changes with ventral disc bulging at L3-4, disc protrusion at L2-3, L4-5, and L5-S1, and canal stenosis. X-rays of the right hip of even date revealed mild degenerative disease.

On February 21, 2017 Dr. Walia diagnosed lumbar disc herniation and lumbar radiculopathy and opined that appellant's current symptoms were related to a work accident on June 3, 2016. He reviewed the MRI scan results, noting lumbar disc pathology at L4-5 and L5-S1. Dr. Walia held appellant off work.

Appellant was treated by Dr. David B. Dickerson, a Board-certified orthopedist, on April 12, 2017, for significant left gluteal pain evidenced by a large hematoma and trauma to her left hip from a fall down stairs at work. Dr. Dickerson requested that appellant's case be expanded to include a left hip injury and requested authorization for an MRI scan.

Appellant subsequently submitted claims for compensation (Form CA-7) alleging total disability for the periods February 4 through April 28, 2017, April 29 through May 12, 2017, May 13 through 26, 2017, and May 27 through June 9, 2017. In development letters dated June 6 and 20, 2017, it advised her of the necessary medical evidence to support disability during the periods claimed. It afforded appellant 30 days to respond.

On March 20 and April 19, 2017 Dr. Dickerson evaluated appellant for left gluteal and lower back pain and diagnosed contusion of the left hip and pain in the left hip. He recommended an MRI scan to evaluate whether she sustained a gluteal tear or persistent hematoma. On May 31 and July 26, 2017 Dr. Dickerson treated appellant in follow-up for a left gluteal hematoma and lower back injury, which she attributed to a fall on June 3, 2016. His examination revealed significant tenderness over the left gluteal region and he diagnosed left hip pain. In an undated report, Dr. Dickerson requested that appellant's claim be expanded to include her left gluteal region.

By decision dated August 28, 2017, OWCP denied appellant's claim for wage-loss compensation for the period February 4 to May 26, 2017, and commencing May 27, 2017, finding that the medical evidence of record was insufficient to establish disability during the claimed period.

OWCP subsequently received reports from Dr. Michael G. Absatz, a Board-certified orthopedist, dated February 11 and June 23, 2004, and Dr. Steve Paragioudakis, a Board-certified orthopedist, dated April 28, 2004, who treated appellant for left leg sciatic pain. They indicated that she experienced good resolution of symptoms with physical therapy. On March 15 and June 28, 2011 appellant was treated by Dr. Bruce R. Rosenblum, a Board-certified neurosurgeon, after a motor vehicle accident that occurred on January 19, 2011. Dr. Rosenblum diagnosed post-traumatic cervical and lumbar radiculopathy.³

In notes dated January 24 to March 10, 2017, Dr. Walia advised that appellant would be off work until an MRI scan of the left hip was complete and she was seen in follow-up on March 28, 2017. On March 24, 2017 he reported that due to the nature of her injuries, which included herniated disc "at L2-3, L4-5, and L5-S1, the performance of her work duties which included walking, stair-climbing, heavy lifting, pushing/pulling heavy equipment such as a mail cart, mounting/dismounting a vehicle," were not possible. Dr. Walia advised that appellant orthopedist had placed her out of work until April 20, 2017.

In correspondence dated August 28, 2017, appellant, through counsel requested that her claim be expanded to include lumbar disc herniation and radiculopathy.

On September 14, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on February 27, 2018.

On March 6 and 20, 2018 Dr. Rosenblum opined that since the June 3, 2016 work-related fall, appellant experienced neck pain radiating down her left extremity. He diagnosed cervical and lumbar radiculopathy and recommended physical therapy.

On March 26, 2018 appellant was evaluated by Dr. Munir Ahmed, a Board-certified orthopedist, who diagnosed left hip pain. Dr. Ahmed related that appellant was involved in a work-related accident on June 3, 2016, when she fell down steps. He recommended physical therapy and an MRI scan of the left hip. An attending physician's report (Form CA-20) dated March 27, 2018 diagnosed tear of the gluteus muscle and pain in the left hip. Dr. Ahmed indicated by checking a box marked "Yes" that the condition was caused or aggravated by an employment activity.

Appellant was treated in follow-up by Dr. Walia on April 15, 2018, who provided a detailed summary of medical treatment for injuries sustained in a motor vehicle accident on January 19, 2011, and a fall at work on June 3, 2016. Dr. Walia diagnosed lumbar radiculitis,

³ OWCP also received diagnostic studies including an MRI scan of the lumbar spine dated April 12, 2004, which revealed multilevel disc desiccation. Similarly, an MRI scan of the lumbar spine dated June 20, 2011, revealed mild multilevel degenerative disc and facet disease, small central disc extrusion at L4-5 and L5-S1. An MRI scan of the cervical spine of even date, revealed multilevel cervical spondylosis, disc extrusion, and disc osteophyte complex at C5-6 distortion of the ventral cord.

lumbar disc herniation, and myofascial pain and indicated that within a reasonable degree of medical probability these diagnoses were directly related to the fall on June 3, 2016. He opined that the ongoing back pain radiating into the left buttocks, left hamstrings, and left gluteal was related to the June 3, 2016 work incident, because appellant was asymptomatic prior to the injury. Dr. Walia further noted that the forces suffered by the soft tissue in the lumbar region and lumbar spine when she fell down steps caused lumbar radiculitis, hematoma, and myofascial pain.

By decision dated May 14, 2018, an OWCP hearing representative affirmed the August 28, 2017 decision.

OWCP continued to receive evidence. Reports from Dr. Ahmed dated April 17, 2018 and February 19, 2019, opined that appellant was involved in a slip and fall accident at work on June 3, 2016, resulting in left hip pain, posterior thigh pain, left hamstring tendinopathy, and labral tear of the left hip. Dr. Ahmed explained that, in the fall, the impact trauma to the left hip led to the labral tear and associated tendinopathy. He opined that to a reasonable degree of medical certainty the left hip injury was causally related to the fall on June 3, 2016, and was permanent in nature.

On March 14, 2019 appellant requested reconsideration.

By decision dated June 4, 2019, OWCP denied modification of the May 14, 2018 decision.

LEGAL PRECEDENT -- ISSUE 1

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.⁴

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ 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.⁶

⁴ See *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ See *T.E.*, *id.*; *S.A.*, Docket No. 18-0399 (issued October 16, 2018).

⁶ See *M.M.*, Docket No. 19-0061 (issued November 21, 2019); *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

ANALYSIS -- ISSUE 1

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 additional conditions causally related to the accepted June 3, 2016 employment injury.

OWCP accepted appellant's claim for contusion of the lower back and pelvis. However, it denied expansion of the acceptance of her claim to include additional diagnosed conditions as her physicians had not provided sound medical rationale explaining how the June 3, 2016 employment injury caused or contributed to the additional diagnosed conditions.

Appellant submitted a series of reports from Dr. Walia dated January 3 to March 10, 2017, who diagnosed right hip pain, lumbar radiculopathy, myofascial pain, lumbar disc herniation, and lumbar radiculopathy, opining that her current symptoms were causally related to the work accident on June 3, 2016. Similarly, on March 24, 2017, Dr. Walia opined that due to appellant's injuries including herniated disc at L2-3, L4-5, and L5-S1, the performance of her work duties would worsen her ongoing lumbar radicular symptoms. While he provided affirmative opinions, which supported causal relationship, he did not offer a rationalized medical explanation in any of his reports to support his opinion. Medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷

On April 15, 2018 Dr. Walia diagnosed lumbar radiculitis, lumbar disc herniation, and myofascial pain and opined within a reasonable degree of medical probability these diagnoses were directly related to the fall on June 3, 2016 because appellant was asymptomatic prior to the injury. However, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.⁸ For these reasons, the Board finds that Dr. Walia's reports are insufficient to meet appellant's burden of proof.

Reports from Dr. Dickerson dated March 20 to July 26, 2017, diagnosed contusion of the left hip and left hip pain caused by a fall down stairs at work on June 3, 2016. Likewise, reports from Dr. Rosenblum dated March 6 and 20, 2018, diagnosed cervical and lumbar radiculopathy and opined that since the June 3, 2016 work-related fall, appellant experienced neck pain down her left extremity. However, both physicians failed to offer medical rationale explaining how appellant's diagnosed conditions were caused or aggravated by the June 3, 2016 accepted employment injury. As noted, the failure to provide medical rationale in support of a causation finding, results in the determination that Drs. Dickerson and Rosenblum's reports are insufficient to establish appellant's burden of proof.⁹

⁷ *C.V.*, Docket No. 18-1106 (issued March 20, 2019); *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *A.D.*, 58 ECAB 149 (2006).

⁸ *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

⁹ *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

Reports from Dr. Ahmed dated March 26 and April 17, 2018, diagnosed left hip pain and possible tear of the gluteus muscle, and bursitis of the left hip related to a work-related fall on June 3, 2016. Similarly, on February 19, 2019, Dr. Ahmed diagnosed left hip pain, left hamstring tendinopathy, and labral tear of the left hip and opined to a reasonable degree of medical certainty the left hip injury was causally related to the fall on June 3, 2016. However, no supporting medical rationale was given explaining Dr. Ahmed's conclusory opinion regarding the relationship between the diagnosed conditions and the accepted June 3, 2016 employment injury.¹⁰ Dr. Ahmed did not explain how specific employment factors physiologically caused any of the diagnosed conditions. Without explaining how, physiologically, the movements involved in appellant's June 3, 2016 employment injury, caused or contributed to her additional diagnosed conditions, his opinion on causal relationship is insufficiently rationalized and is of limited probative value.¹¹ In an attending physician's report (Form CA-20) dated March 27, 2018, Dr. Ahmed diagnosed tear of the gluteus muscle and pain in the left hip and indicated by checking a box marked "Yes" that the condition was caused or aggravated by an employment activity. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹²

Other medical records from Dr. Absatz and Dr. Paragioudakis from 2004 are of no value in establishing the claimed conditions since they predate the time of the claimed incident on June 3, 2016.

Appellant submitted multiple diagnostic testing reports. The Board has held that diagnostic studies standing alone are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹³

Appellant also submitted reports signed solely by a physical therapist. These reports do not constitute competent medical evidence because a physical therapist is not considered a "physician" as defined under FECA.¹⁴ Consequently, the medical findings and/or opinions of a

¹⁰ See *V.P.*, Docket No. 17-1925 (issued March 1, 2018); *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ See *V.P.*, *id.*; *M.C.*, Docket No. 17-1579 (issued November 28, 2017).

¹² See *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹³ *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁴ Section 8102(2) of FECA provides as follows: (2) 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 also *J.R.*, Docket No. 20-0496 (issued August 13, 2020) (physical therapists are not considered physicians under FECA); *J.D.*, Docket No. 16-1752 (issued March 1, 2017).

physical therapist will not suffice for purposes of establishing entitlement to compensation benefits.¹⁵

As the medical evidence of record is insufficient to establish that the acceptance of the claim should be expanded to include additional conditions, the Board finds that appellant has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹⁷

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.¹⁹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.²⁰ The opinion of the physician 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 employee.²¹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish total disability for the period February 4 to May 26, 2017 and commencing May 27, 2017, causally related to her accepted June 3, 2016 employment injury.

¹⁵ *Id.*

¹⁶ *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁷ *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

¹⁸ *Id.* at § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

¹⁹ *See G.T.*, Docket No. 18-1369 (issued March 13, 2019); *Merle J. Marceau*, 53 ECAB 197 (2001).

²⁰ *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

²¹ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

Dr. Walia, in reports dated January 3, 2017 to April 15, 2018, opined that appellant was totally disabled due to nonaccepted conditions, which included right hip pain, lumbar radiculopathy, myofascial pain, and disc herniations at L2-3, L4-5, and L5-S1. He failed to explain why she was disabled during this time period due to objective medical findings related to her accepted conditions. To establish a period of disability the medical evidence must provide a discussion of how objective medical findings attributable to the accepted conditions support a finding that appellant could not perform her employment duties.²² These reports are, therefore, insufficient to establish appellant's disability claims. Reports from Dr. Walia dated January 24 to March 10, 2017, advised that appellant would be off work until she underwent an MRI scan and was seen in follow-up on March 28, 2017. While Dr. Walia opined that appellant was totally disabled from work, he did not provide medical rationale explaining why her disability was due to the accepted employment injury.²³ Thus, these reports are insufficient to establish appellant's disability claims.

In reports dated March 20 to April 19, 2017, Dr. Dickerson diagnosed contusion of the left hip and left hip pain caused by a fall at work on June 3, 2016. Similarly, in reports dated March 6 and 20, 2018, Dr. Rosenblum diagnosed cervical and lumbar radiculopathy and attributed the radiating neck pain to the June 3, 2016 work-related fall. However, the Board notes that appellant's condition was not accepted for cervical and lumbar radiculopathy. Drs. Dickerson and Rosenblum did not otherwise provide an opinion on whether appellant was disabled from work during the claimed period due to her accepted employment injury. Accordingly, their reports are of no probative value and are insufficient to establish appellant's claim for compensation.²⁴

Reports from Dr. Ahmed dated March 26, 2018 to February 19, 2019, diagnosed left hamstring tendinopathy, labral tear of the left hip, bursitis of the left hip, and pain in the left hip and opined that to a reasonable degree of medical certainty the left hip injury was causally related to the fall on June 3, 2016. However, he did not address whether she was disabled causally related to the accepted employment conditions of contusion of the lower back and pelvis due to the accepted June 3, 2016 employment injury.²⁵ Thus these reports are of no probative value and are insufficient to establish appellant's claim for compensation.²⁶

An attending physician's report (Form CA-20) dated March 27, 2018, diagnosed tear of the gluteus muscle and pain in the left hip. Dr. Ahmed indicated by checking a box marked "Yes" that the condition was caused or aggravated by an employment activity. This report does not provide an opinion on whether the claimed disability is causally related to the accepted employment injury.²⁷ Therefore it is of no probative value and insufficient to establish the claim.

²² See *W.E.*, Docket No. 17-0451 (issued November 20, 2017).

²³ See *E.B.*, Docket No. 17-0875 (issued December 13, 2018); *C.L.*, Docket No. 16-0004 (issued June 14, 2016).

²⁴ See *M.M.*, Docket No. 18-0817 (issued May 17, 2019); *M.C.*, Docket No. 16-1238 (issued January 26, 2017).

²⁵ *J.M.*, Docket No. 18-0847 (issued December 5, 2019).

²⁶ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁷ See *L.B.*, *id.*

Other reports from Dr. Absatz dated February 11 and June 23, 2004, Dr. Paragioudakis dated April 28, 2004, and Dr. Rosenblum dated March 15 and June 28, 2011, predate the claimed period of disability and thus are not relevant to the specific period of disability claimed. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.²⁸ Thus, these reports are also insufficient to establish appellant's disability claims.

The Board, therefore, finds that the medical evidence of record is insufficient to establish appellant's claim of total disability for the period February 4 to May 26, 2017, and commencing May 27, 2017 causally related to her accepted June 3, 2016 employment injury.²⁹

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 additional conditions causally related to the accepted June 3, 2016 employment injury. The Board further finds that she has not met her burden of proof to establish total disability from work for the period February 4 to May 26, 2017, and commencing May 27, 2017 causally related to her accepted June 3, 2016 employment injury.

²⁸ See *E.B.*, Docket No. 17-0875 (issued December 13, 2018); *C.L.*, Docket No. 16-0004 (issued June 14, 2016).

²⁹ The Board notes that on March 12, 2018 appellant filed a recurrence of disability claim (Form CA-2a) asserting that on December 19, 2016, she had a recurrence of stabbing pain in the left buttock region while walking her mail route. She stopped work on January 4, 2017. The record reflects that OWCP has not adjudicated that claim.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 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