

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

C.M., Appellant	)	
	)	
and	)	<b>Docket No. 21-0004</b>
	)	<b>Issued: May 24, 2021</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bellmawr, NJ, Employer	)	
	)	

*Appearances:*  
Michael D. Overman, 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  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

**JURISDICTION**

On October 2, 2020 appellant, through counsel, filed a timely appeal from a May 19, 2020 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 to consider the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish a recurrence of total disability commencing April 17, 2019 causally related to her accepted January 7, 2017

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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.*

employment injury; and (2) whether appellant has met her burden of proof to expand the acceptance of her claim to include a right hip condition causally related to the accepted January 7, 2017 employment injury.

### **FACTUAL HISTORY**

On January 8, 2017 appellant, then a 47-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 7, 2017 she injured her right knee when she descended stairs while in the performance of duty.<sup>3</sup> She stopped work on January 9, 2017 and returned to full-duty work on May 18, 2017.<sup>4</sup>

OWCP accepted appellant's claim for complex tear of the medial meniscus of the right knee, sprain of the MCL of the right knee, and sprain of the right knee. It paid her wage-loss compensation for temporary total disability on the supplemental rolls for the period February 22 through May 17, 2017.

In a March 14, 2019 medical report, Dr. Laura E. Ross, an attending Board-certified orthopedic surgeon, noted a history of the January 7, 2017 employment injury. She reported physical examination findings and reviewed a right hip x-ray which revealed degenerative changes. Dr. Ross diagnosed the accepted conditions of sprain of unspecified site of right knee, subsequent encounter, sprain of the MCL of right knee, subsequent encounter, and complex tear of the medial meniscus, current injury, right knee, subsequent encounter. She recommended a cortisone injection under fluoroscopy for appellant's right hip and reinjection of Gelsyn for her right knee. Dr. Ross related that the recommended treatment was medically necessary and causally related to the January 7, 2017 employment injury. She noted that appellant performed full-time, full-duty work.

On March 28, 2019 Dr. Ross reported that appellant was scheduled for surgery on April 17, 2019 for right hip injection under fluoroscopy.

Dr. Ross submitted an April 17, 2019 general medical and surgical authorization request for a Gelsyn-3 injection and drainage and injection of the joint/bursa. She reiterated her prior right knee diagnoses.

Dr. Ross submitted a September 20, 2017 bilateral knee x-ray report by Dr. Craig L. Taylor, a diagnostic radiologist. Dr. Taylor noted an impression of moderate right and mild left degenerative joint disease (DJD).

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<sup>3</sup> Appellant has prior claims, including a July 20, 2000 traumatic injury under OWCP File No. xxxxxx296, November 16, 2000 traumatic injury under OWCP File No. xxxxxx055, January 28, 2016 traumatic injury under OWCP File No. xxxxxx663, October 30, 2017 traumatic injury under OWCP File No. xxxxxx947, and June 5, 2019 traumatic injury under OWCP File No. xxxxxx140. Appellant's claims have not been administratively combined.

<sup>4</sup> On October 30, 2017 appellant stopped work related to her claim assigned OWCP File No. xxxxxx947 and returned to limited-duty work on February 2, 2018.

On April 24, 2019 OWCP denied Dr. Ross' authorization requests. In a letter of even date, it requested additional medical evidence to support authorization.

In an April 17, 2019 report, Dr. Ross related preoperative and postoperative diagnoses of arthrosis of the right hip. She explained that appellant had received an injection in her right hip under sedation with cortisone.

On April 28, 2019 appellant filed a claim for wage-loss compensation (Form CA-7) for leave without pay (LWOP) from April 13 to 26, 2019 due to her April 17, 2019 surgical procedure.

OWCP, in a May 8, 2019 development letter, requested that appellant submit additional information to support her claim for disability commencing April 17, 2019, including medical evidence establishing that her disability during this period, medical treatment, and additional medical conditions were due to her January 7, 2017 employment injury.

In an April 29, 2019 report, Dr. Ross indicated that appellant presented for further evaluation of her right hip and right knee. She noted that she was doing great and had no complaints. Dr. Ross indicated that appellant was currently off work. She provided examination findings and diagnosed right hip unilateral primary osteoarthritis and right hip cortisone injection under fluoroscopy.

By decision dated June 12, 2019, OWCP denied appellant's claim for wage-loss compensation for LWOP, finding that the medical evidence submitted was insufficient to establish that she sustained a recurrence of disability commencing April 17, 2019 or a right hip condition causally related to her January 7, 2017 employment injury.

On June 21, 2019 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

An April 17, 2019 form report from an unidentifiable healthcare worker noted that appellant received an injection under fluoroscopy for right hip DJD.

Dr. Ross, in an October 1, 2019 report, reiterated her diagnoses of the accepted right knee conditions. She recommended cortisone injections for her right knee and hip. Dr. Ross advised that the medical treatment was medically necessary and causally related to the January 7, 2017 employment injury.

A February 19, 2019 right hip and pelvis x-ray report by Dr. Jeffrey Hung, a Board-certified diagnostic radiologist, revealed impressions of advanced DJD and findings raising the possibility of femoral acetabular impingement on the right.

On October 4, 2019 appellant, through counsel, requested a review of the written record in lieu of an oral hearing regarding the June 12, 2019 decision.

By decision issued on November 21, 2019, a second OWCP hearing representative affirmed the June 12, 2019 decision, finding that the medical evidence submitted was insufficient to establish that appellant was totally disabled commencing April 17, 2019 or had a right hip condition causally related to her January 7, 2017 employment.

OWCP subsequently received a November 20, 2019 preoperative anesthesia summary of even date from a medical provider which indicated that appellant received a cortisone injection to treat her right hip arthrosis.

On May 11, 2020 appellant, through counsel, requested reconsideration of the November 21, 2019 decision and submitted an additional report from Dr. Ross. In a May 7, 2020 report, Dr. Ross again diagnosed appellant's accepted conditions of medial meniscus tear and MCL sprain of the right knee. She also diagnosed status post right knee arthroscopy, partial medial meniscectomy, shaving chondroplasty and general synovectomy performed on March 27, 2017 with post-traumatic exacerbation of arthrosis; post-traumatic osteoarthritis of the right hip; and status post cortisone injections into the right hip under fluoroscopy on April 17 and November 20, 2019. Dr. Ross opined that appellant's right knee and right hip diagnoses were a direct result of her January 7, 2017 work-related injury. Regarding appellant's right hip condition, she explained that stepping down from a step while delivering mail on January 7, 2017 exacerbated her underlying right hip osteoarthritis, which was formerly a non-bothersome condition. Dr. Ross related that this was objectively demonstrated by a right hip x-ray, and she had correlated this clinically and intraoperatively. She opined that appellant's post-traumatic exacerbation of her right hip osteoarthritis was directly and causally related to the January 7, 2017 employment injury.

By decision issued on May 19, 2020, OWCP denied modification of its November 21, 2019 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>5</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an

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<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> See *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>7</sup> *Id.*

intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing April 17, 2019 causally related to her accepted January 7, 2017 employment injury.

The evidence of record establishes that on April 17 and November 20, 2019 appellant received a cortisone injection in her right hip under sedation to treat her arthrosis. She stopped work on April 13, 2019 and filed a Form CA-7 claim for LWOP compensation for the period April 13 through 26, 2019.

In support of her recurrence claim, appellant submitted reports dated March 14, 2019 through May 7, 2020 from Dr. Ross. Dr. Ross diagnosed the accepted conditions of a complex tear of the medial meniscus of the right knee, sprain of the MCL of the right knee, and sprain of the right knee. She also diagnosed right hip arthrosis, unilateral primary osteoarthritis, and post-traumatic exacerbation of right hip osteoarthritis, which were not conditions accepted by OWCP in appellant's claim. Dr. Ross opined that appellant's right hip conditions and the cortisone injections she received on April 17 and November 20, 2019 were causally related to the January 7, 2017 employment injury. She did not, however, explain how appellant's disability commencing April 17, 2019 was causally related to the accepted employment injury. The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition is insufficient to meet a claimant's burden of proof.<sup>9</sup> 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 an employee to self-certify their disability and entitlement to compensation.<sup>10</sup> For this reason, the Board finds that Dr. Ross' reports are insufficient to establish appellant's burden of proof.<sup>11</sup>

Appellant also submitted Dr. Hung's February 19, 2019 x-ray report which addressed her right hip and pelvis conditions. The Board has held that diagnostic studies, standing alone, are of

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *D.T.*, Docket No. 19-1064 (issued February 20, 2020).

<sup>9</sup> *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019).

<sup>10</sup> *R.J.*, *id.*; *D.P.*, Docket No. 18-1439 (issued April 20, 2020); *Y.A.*, Docket No. 16-0258 (April 13, 2016); *William A. Archer*, 55 ECAB 674 (2004).

<sup>11</sup> *K.E.*, Docket No. 19-1922 (issued July 10, 2020).

limited probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.<sup>12</sup>

As appellant has not submitted rationalized medical evidence establishing a recurrence of total disability for the period commencing April 17, 2019 causally related to the accepted January 7, 2017 employment injury, the Board finds that she has not met her burden of proof.

### **LEGAL PRECEDENT -- ISSUE 2**

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.<sup>13</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>14</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.<sup>15</sup> 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.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a right hip condition causally related to the accepted January 7, 2017 employment injury.

In support of her claim, appellant submitted reports dated March 14, 2019 through May 7, 2020 by Dr. Ross. Dr. Ross diagnosed the accepted conditions of medial meniscus tear and MCL sprain of the right knee. She also diagnosed right hip arthrosis, unilateral primary osteoarthritis, and post-traumatic exacerbation of right hip osteoarthritis, which were not conditions accepted by OWCP in appellant's claim. Dr. Ross opined that appellant's right hip conditions and April 17 and November 20, 2019 cortisone injections were causally related to the January 7, 2017 employment injury. In her May 7, 2020 report, she explained that appellant had underlying right hip osteoarthritis which was exacerbated when she stepped down from a step while delivering mail on January 7, 2017. Dr. Ross maintained that her opinion was supported by her clinical examination and right hip diagnostic test results. While she provided an opinion on causal relationship, she did not sufficiently explain why examination findings and diagnostic testing led

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<sup>12</sup> *O.C., Jr.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, *supra* note 9.

<sup>13</sup> *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>14</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>15</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

her to conclude that the January 7, 2017 employment injury caused or contributed to the diagnosed conditions. Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.<sup>17</sup> Thus, the Board finds that Dr. Ross' reports are insufficient to meet appellant's burden of proof.

Appellant also submitted Dr. Hung's February 19, 2019 x-ray report which addressed her right hip and pelvis conditions. However, diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether an employment incident caused the diagnosed condition.<sup>18</sup>

An April 17, 2019 ambulatory care form from an unidentifiable healthcare provider noted that appellant received an injection under fluoroscopy for right hip DJD.<sup>19</sup> The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.<sup>20</sup>

As the medical evidence of record is insufficient to establish causal relationship between the additional right hip condition and the accepted January 7, 2017 employment injury, the Board finds that appellant has not met her burden of proof.

On appeal counsel contends that Dr. Ross' May 7, 2020 opinion is sufficiently rationalized to establish causal relationship. As noted above, Dr. Ross did not sufficiently explain how or why the accepted employment injury caused or aggravated the diagnosed right hip conditions.

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 establish a recurrence of total disability commencing April 17, 2019 causally related to her accepted January 7, 2017 employment injury. The Board further finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a right hip condition causally related to the accepted January 7, 2017 employment injury.

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<sup>17</sup> *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>18</sup> *K.R.*, Docket No. 20-1103 (issued January 5, 2021); *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>19</sup> 20 C.F.R. § 10.331(a) provides that use of medical report forms is not required; however, the report should bear the physician's signature or signature stamp; *see C.S.*, Docket No. 20-1354 (issued January 29, 2021).

<sup>20</sup> *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

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

Issued: May 24, 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