

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

M.M., Appellant)	
)	
and)	Docket No. 20-1557
)	Issued: November 3, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Mayfield Heights, OH, Employer)	
)	

Appearances:
Alan J. Shapiro, 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 August 27, 2020 appellant, through counsel, filed a timely appeal from a July 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP) under OWCP File No.

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 a 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.

xxxxxx516.² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that her claim should be expanded to include an additional condition causally related to or as a consequence of her accepted employment injury; and (2) whether appellant has met her burden of proof to establish a recurrence of disability commencing March 23, 2019 causally related to her accepted employment injury.

FACTUAL HISTORY

On January 26, 2004 appellant, then a 38-year-old letter carrier, filed a notice of recurrence of disability (Form CA-2a) on January 2, 2003 under OWCP File No. xxxxxx422.⁵ By letter dated February 17, 2004, OWCP advised her that it had converted her notice of recurrence of disability to an occupational disease claim as she had attributed her condition to carrying a mailbag. It assigned OWCP File No. xxxxxx516 and accepted the claim for an aggravation of cervical strain.⁶ OWCP paid her wage-loss compensation on the supplemental rolls from February 14, 2004 to January 20, 2006; on the periodic rolls from January 7, 2006 to January 10, 2015; and on the supplemental rolls from January 21 to May 15, 2015.⁷

² Appellant, through counsel, also appealed from a separate July 24, 2020 merit decision issued under OWCP File No. xxxxxx745. That appeal will be addressed under Docket No. 21-1342.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that, following the July 24, 2020 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.*

⁵ OWCP previously accepted that appellant sustained a cervical strain on September 1, 1995 under OWCP File No. xxxxxx422. It has administratively combined OWCP File Nos. xxxxxx422 and OWCP File No. xxxxxx516, with the latter serving as the master file.

⁶ Appellant stopped work on January 2, 2003, returned to part-time employment on September 17, 2004, and to full-time regular employment on November 10, 2004. On July 21, 2006 she began working four hours per day in a modified carrier position. Appellant accepted a position as a full-time modified carrier in December 2014.

⁷ OWCP subsequently accepted that appellant sustained a right hand abrasion on November 27, 2015 assigned OWCP File No. xxxxxx745. Appellant stopped work on January 29, 2016 and returned to part-time employment on February 24, 2016 and to her usual employment on March 3, 2016. OWCP additionally accepted that she had sustained contusions of the left wrist, hand, and forearm, left knee sprain, abrasions of the bilateral knees, right forearm, and left wrist on June 10, 2016 assigned OWCP File No. xxxxxx030. Appellant stopped work following the injury and returned to part-time modified employment on July 19, 2016 and to full-time modified employment on September 3, 2016. OWCP has not administratively combined those claims with the present claim.

A January 9, 2004 magnetic resonance imaging (MRI) scan revealed results “within normal limits except for [a] small disc/osteophyte at C6-7 level” with no evidence of a disc herniation or stenosis.

In attending physician’s reports (Form CA-20) dated February 12 and May 18, 2004, Dr. Delorise Brown, an internist, diagnosed cervical strain and cervical disc disease at C6-7. She checked a box marked “Yes” indicating that the condition was caused or aggravated by employment. On May 21, 2004 Dr. Brown noted that an MRI scan had shown a small osteophyte at C6-7 and recommended electrodiagnostic testing to evaluate radiculopathy in the arm, which she advised had been present since the injury.

In a report dated September 21, 2004, Dr. Susan E. Stephens, a Board-certified orthopedic surgeon, noted appellant’s history of a 1995 employment injury and diagnosed cervical strain. She asserted that the acceptance of appellant’s claim should be expanded to include an aggravation of cervical spondylosis and an aggravation of disc osteophytes at C6-7.

OWCP undertook extensive development of the medical evidence regarding the nature and extent of appellant’s current condition and disability. In the most recent report from an impartial medical examiner, dated May 10, 2010, Dr. Ralph J. Kovach, a Board-certified orthopedic surgeon, found that she had no residuals of her accepted cervical strain. He advised that an MRI scan had shown only an osteophyte causing no impingement or stenosis and related that appellant’s subjective complaints were not supported by objective findings. Dr. Kovach opined that she could resume her usual employment.

The record contains duty status reports (Form CA-17), which provide work restrictions. In a report dated June 24, 2015, Dr. Sidney J. Stone, a Board-certified orthopedic surgeon who provided a second opinion examination, diagnosed an aggravation of neck sprain and found that appellant had no additional employment-related conditions. He opined that she could return to her usual employment and required no further medical treatment.

A March 22, 2019 MRI scan of the cervical spine showed mild multifocal degenerative changes, including a diffuse disc bulge at C6-7.

In a progress report dated May 7, 2019, Dr. Jack Rutkowski, an internist, indicated that he was evaluating appellant for an employment injury and discussed her complaints of neck pain. He diagnosed a sprain of the cervical spine ligaments and found that she should be off work for four weeks.

On August 24, 2019 appellant filed claims for compensation (Form CA-7) for intermittent disability from employment for the period March 16 to August 2, 2019. She subsequently filed CA-7 forms claiming compensation for intermittent disability from August 17 to November 22, 2019. Appellant submitted time analysis forms (Form CA-7a) setting forth the hours claimed for each period.

In a development letter dated August 27, 2019, OWCP advised appellant that the evidence was currently insufficient to establish her claim. It requested that she submit medical evidence substantiating that she missed work for the hours claimed from March 16 to August 16, 2019

causally related to her accepted employment injury. OWCP afforded appellant 30 days to submit the requested information.

Thereafter, OWCP received a May 20, 2019 report from Dr. Rutkowski, who indicated that he was evaluating appellant for an employment-related injury to the cervical spine. Dr. Rutkowski noted that she complained of neck pain radiating into her arm and numbness and tingling of the right hand with a locked-up finger. He diagnosed a sprain of the cervical spine and advised that the conditions of cervical foraminal stenosis and a herniated disc at C6-7 should also be allowed.

In a development letter dated December 3, 2019, OWCP advised appellant of the definition of a recurrence of disability and requested that she provide additional factual and medical information in support of her claim. It noted that it had not accepted her claim for a herniated disc or cervical stenosis and informed her that she should submit a reasoned report from her physician explaining how these conditions were causally related to her accepted employment injury. OWCP afforded appellant 30 days to respond to the request.

By letter dated January 6, 2020, received by OWCP on January 10, 2020, appellant, through counsel, requested that OWCP expand her claim to include bilateral carpal tunnel syndrome as causally related to the accepted employment injury.

In support thereof, appellant submitted a December 19, 2019 report, wherein Dr. Rutkowski indicated that he was treating appellant for bilateral carpal tunnel syndrome that had “developed while working for [the employing establishment].” Dr. Rutkowski related that on examination he had found a positive Phalen’s test and Tinel’s sign bilaterally, atrophy of the palmar muscles at the base of the thumbs, and weakness of thumb opposition. He opined that an electromyogram (EMG) had shown carpal tunnel syndrome and recommended a carpal tunnel release. Dr. Rutkowski asserted that, based on appellant’s work history, symptoms, and physical findings, it was his opinion that her claim “should be approved for additional allowance of bilateral carpal tunnel syndrome which is a direct and proximate result of [appellant’s] work....” By decision dated February 6, 2020, OWCP found that appellant had not established a recurrence of disability beginning March 23, 2019 causally related to her accepted employment injury. It noted that her physician had not explained how she sustained bilateral carpal tunnel syndrome due to work factors from January 2, 2003.

On February 12, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

OWCP continued to receive medical evidence. In duty status reports (Form CA-17) dated February 19 and April 15, 2020, a physician provided work restrictions.⁸

A telephonic hearing was held on June 5, 2020. Appellant related that she injured her neck in 2003. In March 2019, she began working reduced hours due to nerve damage in her neck. Appellant advised that carrying mail on her shoulder had aggravated her neck condition. Counsel asserted that she had sustained bilateral carpal tunnel syndrome as a consequential injury.

⁸ The signature of the physician is not legible.

By decision dated July 24, 2020, OWCP's hearing representative affirmed the February 6, 2020 decision, finding that the evidence of record was insufficient to establish a recurrence of disability commencing March 23, 2019. The hearing representative further found that the medical evidence of record was insufficient to establish that appellant sustained bilateral carpal tunnel syndrome as a consequence of the accepted employment factors of 2003.

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.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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.¹¹ 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.¹²

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.¹³ 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.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish that her claim should be expanded to include an additional condition causally related to or as a consequence of her accepted employment injury.

In a December 19, 2019 report, Dr. Rutkowski diagnosed bilateral carpal tunnel syndrome based on a positive EMG study and findings on examination, including a positive Phalen's test

⁹ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *Id.*

¹³ *See I.S.*, Docket No. 19-1461 (issued April 30, 2020); *Charles W. Downey*, 54 ECAB 421 (2003).

¹⁴ *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

and Tinel's sign bilaterally. He attributed the bilateral carpal tunnel syndrome to appellant's work duties. The report, however, fails to provide rationale explaining causal relationship between appellant's bilateral carpal tunnel syndrome and either the accepted employment factors of 2003 or as a consequence of the accepted aggravation of cervical strain. Dr. Rutkowski's opinion is therefore of limited probative value and insufficient to establish expansion of the claim.

OWCP also received Form CA-17 duty status reports dated February 19 and April 15, 2020, wherein a physician provided work restrictions. These reports, however, are of no probative value as they do not provide an opinion on causal relationship between any additional conditions and the accepted 2003 employment factors.¹⁵

As the medical evidence of record is insufficient to establish expansion of the acceptance of the claim to include an additional condition causally related to or as a consequence of her accepted employment injury, the Board finds that appellant has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means 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 compensable injury or illness and without an intervening injury or new exposure in the work environment.¹⁶ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.¹⁷

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 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.¹⁸

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

¹⁵ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

¹⁷ *Id.*

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

injury, and supports that conclusion with medical reasoning.¹⁹ Where no such rationale is present, the medical evidence is of diminished probative value.²⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing March 23, 2019 causally related to her accepted employment injury.

In support of her claim, appellant submitted a May 7, 2019 report from Dr. Rutkowski. Dr. Rutkowski evaluated her for neck pain after an employment injury. He diagnosed a sprain of the ligaments of the cervical spine and opined that appellant should be off work for four weeks. Dr. Rutkowski, however, failed to provide any rationale for his disability determination. A report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition or level of disability has an employment-related cause.²¹ Therefore, this report is insufficient to establish appellant's disability claim.

The record contains a March 22, 2019 cervical MRI scan; however, as noted, the Board has held that diagnostic testing, standing alone, lacks probative value, as it does not address whether a given medical condition or period of disability was caused by the employment.²²

Appellant further submitted Form CA-17 duty status reports, which provided work restrictions. These reports, however, do not provide an opinion of whether appellant's condition worsened such that she was disabled from work commencing March 23, 2019.²³

As the medical evidence of record is insufficient to establish a recurrence of disability commencing March 23, 2019, the Board finds that appellant has not met her burden of proof.

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 that her claim should be expanded to include an additional condition causally related to or as a consequence of her accepted employment injury. The Board further finds that she has not met her burden of proof to establish a recurrence of disability beginning March 23, 2019 causally related to her accepted employment injury.

¹⁹ *L.O.*, Docket No. 19-0953 (issued October 7, 2019); *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

²⁰ *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

²¹ *See S.C.*, Docket No. 21-0263 (issued August 24, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

²² *See T.G.*, Docket No. 20-0032 (issued November 10, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

²³ *See 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 July 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 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