

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

R.D., Appellant)	
)	
and)	
)	
DEPARTMENT OF HOMELAND SECURITY,)	Docket No. 21-0507
U.S. CUSTOMS & BORDER PROTECTION,)	Issued: October 6, 2021
JOHN F. KENNEDY INTERNATIONAL)	
AIRPORT, Jamaica, NY, Employer)	
)	

Appearances:
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 17, 2021 appellant, through counsel, filed a timely appeal from an October 15, 2020 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.³

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.*

³ The Board notes that, following the October 15, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 additional conditions as causally related to the accepted April 28, 2019 employment injury.

FACTUAL HISTORY

On April 28, 2019 appellant, then a 58-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped when pulling a postal container and injured his back, left foot, and ankle while in the performance of duty. He did not immediately stop work.

On May 13, 2019 Dr. Gus Katsigiorgis, a Board-certified orthopedist, treated appellant for a work-related injury to his back, left foot, and ankle that occurred on April 28, 2019 when he was hit by a mail postal container. Findings on examination revealed paraspinal muscle tenderness, tenderness about the Achilles, and medially about the ankle. X-rays of the left ankle, left foot, lumbar spine, and pelvis demonstrated no sign of obvious fracture. Dr. Katsigiorgis diagnosed lumbar, left ankle and left foot sprain, lumbar spine pain, pain of ligaments of lumbar spine initial encounter, sprain of other ligament of the left ankle, and left foot pain. He returned appellant to restricted duties. In an attending physician's report (Form CA-20) dated May 14, 2019, Dr. Katsigiorgis indicated that appellant was injured at work on April 28, 2019 and diagnosed lumbar pain and sprain of left foot and ankle. He affirmed that the diagnosed conditions had been caused or aggravated by the described employment incident. Dr. Katsigiorgis treated appellant again on May 24, 2019 for low back and left ankle pain. He noted tenderness of the left ankle and lumbar spine and paraspinal muscle tenderness. Dr. Katsigiorgis indicated that appellant was disabled from work. In a work excuse form of even date, he noted that appellant was treated for a back and left ankle condition and was totally disabled.

A magnetic resonance imaging (MRI) scan dated May 15, 2019 of the left ankle revealed thickening of the lateral ligaments compatible with healed partial tears, Achilles tendinopathy with low grade linear interstitial tears proximal to the superior calcaneal process with a 10-millimeter moderate grade tear at the insertion, per tendinitis, bursitis, impaction injury of the anterior central distal tibia, and marrow edema.

On June 5, 2019 Dr. Kanwarpaul Grewal, a Board-certified orthopedist, treated appellant for lower and mid back pain that developed on April 28, 2019 after a fall at work. Findings on examination revealed antalgic gait, tenderness to palpation of the thoracic spine, and limited range of motion of the lumbar spine. Dr. Grewal reviewed the MRI scan of the lumbar spine, which showed a minor slip at L4-5 and noted "nothing of concern and unrelated to issues presented by patient." He diagnosed acute lumbar strain. Dr. Grewal saw appellant in follow-up on June 10 and July 1, 2019 for low back pain attributed to a fall that occurred at work on April 28, 2019. He diagnosed acute lumbar strain. Dr. Grewal performed a trigger point injection on June 10, 2019. In work excuse forms dated June 10 and July 1, 2019, he treated appellant for thoracic and lumbar strain and advised that appellant was totally disabled.

In a July 9, 2019 development letter, OWCP advised appellant of the deficiencies of his claim and requested additional factual and medical evidence. It afforded him 30 days to respond.

On June 25, 2019 appellant underwent an MRI scan of the thoracic spine, which revealed compressive presumptive calcified thoracic disc herniation at T9-10 and thoracic degenerative disease.

Appellant was seen again by Dr. Katsigiorgis on July 10, 2019 for persistent low back and left ankle pain. He reported new left knee pain that he attributed to the way he has been walking. Findings on examination revealed paraspinal muscle tenderness, restricted range of motion, antalgic gait, and tenderness of the left ankle. Dr. Katsigiorgis diagnosed left ankle derangement, lumbar derangement, left knee tendinitis compensatory to antalgic gait, sprain of other ligament of the left ankle, sprain of ligaments of lumbar spine, and sprain of other parts of the left knee. In a July 10, 2019 work excuse note, Dr. Katsigiorgis advised that he remained totally disabled. In an attending physician's report (Form CA-20) dated July 11, 2019, he affirmed that the diagnosed conditions were caused or aggravated by the described employment incident. On August 28, 2019 Dr. Katsigiorgis released appellant to light-duty modified work on September 1, 2019 with no heavy lifting.

In an attending physician's report (Form CA-20) dated July 30, 2019, Dr. Grewal referenced his July 1, 2019 report. He examined appellant on August 12, 2019 for persistent low back pain, which improved with conservative treatment. Dr. Grewal provided a history of the April 28, 2019 work injury noting that appellant had a twisting injury to the left leg leading to a fall. He opined that the left knee is likely strained from that injury since the pain persisted since that time. Dr. Grewal diagnosed acute lumbar strain improving, thoracic disc herniation with radiculopathy, and left knee pain.

In response to the development letter, on August 1, 2019 appellant indicated that at the time of the injury he was performing official duties as a custom and border patrol officer at the post office in the employing establishment. He noted that after the injury occurred he experienced immediate pain in the left ankle and back. Appellant advised that he did not sustain any other injury between the date of injury and date first reported to his supervisor. He noted that his condition had worsened prohibiting him from walking or sleeping.⁴

On September 4, 2019 the employing establishment offered appellant a temporary limited-duty position, eight hours a day, with the same pay as his current salary. The position was subject to the restrictions set forth by appellant's treating physician.

In a report dated September 14, 2019, Dr. Manoj Sadhnani, a podiatrist, treated appellant for an injury to his left foot and left ankle/heel sustained at work on April 8, 2019. He noted that an MRI scan revealed tearing of the left heel Achilles tendon and prominent bone spur on the posterior left heel. Dr. Sadhnani noted that x-rays of the left foot revealed no fracture, but calcification of posterior left heel. He diagnosed strain of left Achilles tendon and calcaneal spur,

⁴ OWCP referred appellant's case file to Dr. James Caviness, a Board-certified physiatrist and OWCP medical review physician. In a report dated August 19, 2019, Dr. Caviness noted reviewing the medical records, but not examining appellant. He indicated that he could not tell from the medical notes which muscles were being injected or the medical necessity of these procedures. Dr. Caviness advised that there was no sound medical rationale in the recent notes or on file for appellant being off work and recommended referral to a district medical adviser or second opinion physician to evaluate the work relationship, medical necessity of trigger point injections, and his capacity to work.

left foot. Dr. Sadhnani recommended surgical debridement of frail tendon, repair of Achilles tendon, and excision of spur and bony prominence left heel.

By decision dated September 18, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not established causal relationship between his diagnosed conditions and his accepted April 28, 2019 employment incident.

Appellant subsequently submitted additional evidence. Dr. Katsigiorgis continued to treat appellant through August 28, 2019 for persistent low back, left ankle, and left knee pain. He noted paraspinal muscle tenderness, tenderness about the left Achilles, antalgic gait, and positive patellofemoral femoral pain of the left knee. Dr. Katsigiorgis diagnosed sprain of the ligaments of the lumbar spine, sprain of other ligament of the left ankle, and sprain of other specified parts of the left knee. He noted that appellant could resume light-duty work.

On September 26, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By letter dated October 11, 2019, appellant withdrew his request for an oral hearing and requested OWCP proceed with adjudication of his claim for reconsideration.

In reports dated January 15, June 10, and July 15, 2020, Dr. Grewal treated appellant in follow-up for his work injury and related continued lower back pain that occasionally radiates down the right leg. Appellant reported having left knee surgery on November 1, 2019 and left Achilles surgery on December 11, 2019. He diagnosed improving acute lumbar strain, improving thoracic disc herniation with radiculopathy, left knee pain, and Achilles pain. In a report dated February 24, 2020, Dr. Grewal noted that appellant was postoperative left knee arthroscopy and left Achilles tendon debridement and had limited mobility. In an addendum dated July 21, 2020, he advised that, due to compressive disc herniation in the thoracic spine, chronic pain management needs with injections, and potential surgery, appellant was not an ideal candidate for police or correction work. Dr. Grewal opined that appellant's injury was causally related to the fall on April 28, 2019 and as a result appellant has developed significant limitations secondary to his work-related injury. He opined that his treatment and injury to the spine was associated with direct trauma associated with the fall.

In an April 20, 2020 report, Dr. Craig S. Radnay, a Board-certified orthopedist, noted treating appellant since February 15, 2017 for left posterior ankle pain. Appellant reported being an active runner who would run four to five times a week around six to seven miles. He noted x-rays of the left foot and left ankle at that time revealed evidence of a small Achilles insertional spur with Haglund's deformity. Dr. Radnay diagnosed left Achilles insertional tendinopathy with gastrocnemius contracture. He treated appellant again on September 25, 2019 for left Achilles tendon pain and left knee pain. Appellant reported pulling something heavy at work and he slipped and fell. Dr. Radnay reviewed the MRI scan of the left ankle dated May 15, 2019 and opined that appellant's recent work injury exacerbated appellant's condition. He recommended a left Achilles tendon debridement, repair with resection of Haglund's deformity, and gastrocnemius recession and bursectomy. Dr. Radnay indicated that the Achilles tendinopathy pain occurred secondary to appellant's work as a police officer, the recent fall in April 2019, and after a cart that rolled over posterior left ankle at work causing appellant to fall. He reviewed an MRI scan of the left knee from October 2, 2019, which revealed a medial meniscus tear along the inferior articular surface with a flap tear of the body and posterior horn from the inferior articular surface. Dr. Radnay indicated that since appellant's injury in April 28, 2019 appellant remained very tender with

limited mobility. On October 29, 2019 he performed a left knee arthroscopic partial medial meniscectomy with arthroscopic partial synovectomy, arthroscopic excision of the medial plica, arthroscopic debridement, chondroplasty of the medial femoral condyle, medial tibial plateau, and femoral trochlea. On December 11, 2019 Dr. Radnay performed a left Achilles tendon debridement with repair of chronic Achilles insertional tendinopathy with left Achilles gastrocnemius recession and a left calcaneus exostectomy and saucerization. Appellant developed a deep vein thrombosis after surgery. Dr. Radnay treated appellant on January 29 and March 11, 2020 and noted that he transitioned into a weight-bearing shoe, but experienced neuritis symptoms consistent with decreased sensation along the sural nerve.

By decision dated October 15, 2020, OWCP accepted appellant's claim for lumbar sprain, lumbar strain, thoracic strain, left ankle sprain, left knee sprain, and left Achilles strain.

By separate decision dated October 15, 2020, OWCP vacated the decision dated September 18, 2019 in part, accepting that the conditions of lumbar sprain, lumbar strain, thoracic strain, left knee sprain, left ankle sprain, and left Achilles strain were caused by the work injury on April 28, 2019. However, it found that the evidence of record was insufficient to establish that the remaining orthopedic conditions including thoracic disc herniation with radiculopathy, compressive disc herniation of the thoracic spine, left Achilles insertional tendinopathy, left knee tear, left foot calcaneal spur, left ankle internal derangement, lumbar derangement, and left knee tendinitis were caused by the April 28, 2019 work injury.

LEGAL PRECEDENT

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.⁵

To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.⁶ 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.⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish the expansion of the acceptance of his claim to include additional conditions as causally related to the accepted April 28, 2019 employment injury.

OWCP accepted appellant's claim for lumbar sprain, lumbar strain, thoracic strain, left ankle sprain, left knee sprain, and left Achilles strain. However, it denied expansion of the

⁵ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁷ *T.K., id.; I.J.*, 59 ECAB 408 (2008).

acceptance of his claim to include additional diagnosed conditions as his physicians had not provided sufficient medical rationale explaining how the April 28, 2019 employment injury caused or contributed to the additional diagnosed conditions.

Appellant was treated by Dr. Katsigiorgis on May 13 and August 28, 2019 for a work-related injury to his back, left foot, and ankle that occurred on April 28, 2019 when he was hit by a mail postal container. Dr. Katsigiorgis diagnosed lumbar, left ankle and left foot sprain, lumbar spine pain, sprain of ligaments of lumbar spine initial encounter, sprain of other ligament of the left ankle, and left foot pain. Similarly, Dr. Grewal saw appellant in follow-up on June 10 and July 1, 2019 for low back pain attributed to a fall that occurred at work on April 28, 2019. He diagnosed acute lumbar strain and performed a trigger point injection. In reports dated January 15, February 24, June 10, and July 15, 2020, Dr. Grewal treated appellant in follow-up for his work injury. Appellant reported having left knee surgery on November 1, 2019 and left Achilles surgery on December 11, 2019. Dr. Grewal diagnosed acute lumbar strain, thoracic disc herniation with radiculopathy, left knee pain, and Achilles pain. These reports are of no probative value as to whether acceptance of the claim should be expanded as they do not address the additional diagnosed conditions. 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.⁸

Dr. Katsigiorgis treated appellant on May 24 and July 10, 2019 for low back and left ankle pain and noted that appellant was totally disabled from work. Appellant was seen again by Dr. Katsigiorgis on July 10, 2019 for persistent low back and left ankle pain and new left knee pain. Dr. Katsigiorgis diagnosed left ankle derangement, lumbar derangement, left knee tendinitis compensatory to antalgic gait, sprain of other ligament of the left ankle, sprain of ligaments of lumbar spine, and sprain of other parts of the left knee, but offered no opinion as to the cause of these diagnosed conditions. Similarly, in work excuse forms dated June 10 and July 1, 2019, Dr. Grewal treated appellant for thoracic and lumbar strain and advised that he was totally disabled. An opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹ As the reports of Drs. Katsigiorgis and Grewal do not offer an opinion on causal relationship, they are of no probative value and, thus, insufficient to establish the expansion of the acceptance of appellant's claim.

In attending physician's reports (Form CA-20) dated May 14 and July 11, 2019, Dr. Katsigiorgis affirmed that the condition was caused or aggravated by an employment activity. However, the Board has held that an affirmative opinion on causal relationship, without more by way of medical rationale, is insufficient to establish the claim.¹⁰ Therefore, the Board finds that these reports are insufficient to establish appellant's burden of proof.

On June 5, 2019 Dr. Grewal treated appellant for lower and mid back pain that developed on April 28, 2019 after a fall at work while pulling a mail cart. He reviewed an MRI scan of the lumbar spine and stated the findings were "nothing of concern and unrelated to issues presented

⁸ See *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *Id.*

¹⁰ See *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *C.S.*, Docket No. 18-1633 (issued December 30, 2019); *Donald W. Long*, 41 ECAB 142 (1989); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

by patient.” This report is insufficient to establish the expansion of the acceptance of appellant’s claim for additional lumbar conditions as he does not attribute the conditions to the April 28, 2019 work injury, rather he opined that the “minor slip at L4-5” was unrelated to the issues presented by appellant.

Dr. Grewel examined appellant on August 12, 2019 and provided a history of the April 28, 2019 work injury. He opined that the left knee was likely strained from that injury since the pain was persistent since that time. 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 supporting rationale, to support a causal relationship.¹¹

In an addendum report dated July 21, 2020, Dr. Grewel opined that appellant’s injury was causally related to the fall on April 28, 2019. He opined that appellant’s treatment and injury to the spine was associated with direct trauma associated with the fall. While Dr. Grewel provided a conclusory opinion, he did not explain, with rationale, how the accepted employment injury had caused or aggravated additional lumbar conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was causally related to employment factors.¹²

In a report dated September 14, 2019, Dr. Sadhnani treated appellant for an injury to appellant’s left foot and left ankle/heel sustained at work on April 8, 2019; however, appellant’s injury occurred on April 28, 2019. The Board has held that medical opinions based on an incomplete or inaccurate history are of limited probative value.¹³ Therefore, this report is insufficient to meet appellant’s burden of proof.

In an April 20, 2020 report, Dr. Radnay noted treating appellant since February 15, 2017 for left posterior ankle pain attributed to being an active runner. He diagnosed left Achilles insertional tendinopathy with gastrocnemius contracture. Dr. Radnay treated appellant again on September 25, 2019 and opined that appellant’s recent work injury exacerbated his condition. He indicated that the Achilles tendinopathy pain occurred secondary to appellant’s work as a police officer, the recent fall in April 2019, and after a cart that rolled over posterior left ankle at work causing appellant to fall. While his opinion is supportive of causal relationship, Dr. Radnay did not provide sufficient medical rationale explaining the basis of his opinion on causal relationship.¹⁴ He did not explain how the mechanism of injury would have physiologically caused or aggravated the additional diagnosed conditions.¹⁵ As noted, the failure to provide medical rationale in support of a causation finding, results in the determination that Dr. Radnay’s report is insufficient to establish appellant’s burden of proof.¹⁶

¹¹ *J.F.*, Docket No. 19-1694 (issued March 18, 2020); *Kimper Lee*, 45 ECAB 565 (1994).

¹² *A.L.*, Docket No. 18-1706 (issued May 20, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *G.E.*, Docket No. 19-1190 (issued November 26, 2019); *T.O.*, Docket No. 17-0093 (issued March 22, 2018).

¹⁴ *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).

¹⁵ *See J.B.*, Docket No. 19-1042 (issued November 8, 2019); *J.K.*, Docket No. 19-0462 (issued August 5, 2019).

¹⁶ *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

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 injury caused any of the diagnosed conditions.¹⁷

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met his burden of proof to establish that his claim should be expanded to accept the additional medical conditions.¹⁸

On appeal appellant asserts that he submitted sufficient evidence to support expansion of his claim. As explained above, the medical evidence of record is insufficient to establish that the acceptance of the claim should be expanded to include additional 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 his burden of proof to establish that the acceptance of his claim should be expanded to include additional conditions causally related to the accepted April 28, 2019 employment injury.

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

¹⁸ *A.T.*, Docket No. 19-1608 (issued April 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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