

<sup>3</sup> The Board notes that appellant submitted additional evidence to OWCP following the August 5, 2020 decision. 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.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish that OWCP should expand the acceptance of her claim to include a low back injury, pelvic or hip condition, right lower extremity pain, and a balance disorder causally related to an accepted July 23, 2019 employment injury.

## **FACTUAL HISTORY**

On July 23, 2019 appellant, then a 52-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right shin when she stepped into a hole on a customer's property while in the performance of duty. She stopped work on July 23, 2019. On August 7, 2019 OWCP accepted the claim for right ankle sprain, a right lower extremity laceration, and cellulitis of the right lower extremity.

In an August 8, 2019 report, Dr. Amy S. Beck, an osteopath Board-certified in internal medicine, noted that the right anterior shin laceration was healing poorly, with serous sanguineous fluid and mild surrounding reactive erythema. In a separate note of the same date, she held appellant off work through August 29, 2019.

OWCP paid appellant wage-loss compensation on the supplemental rolls from September 7 through 13, 2019.

In September 18, 2019 reports, Dr. David S. German, a Board-certified plastic surgeon, noted that appellant sustained a right lower leg injury with flap laceration on July 23, 2019. He diagnosed a healed chronic ulcer of the right anterior lower leg and right lower leg discomfort with activity. In a work status report of the same date, Dr. German returned appellant to light-duty work with a restriction against operating vehicles.

Appellant returned to part-time, light-duty work on or about September 18, 2019 and again stopped work on September 21, 2019.

In a September 23, 2019 prescription note, Dr. German held appellant off work through October 3, 2019. In a report dated September 27, 2019, he returned her to light-duty work for four hours a day with restrictions. Dr. German released appellant to full-duty work as of October 14, 2019.<sup>4</sup>

Appellant resumed light-duty work on October 5, 2019. She stopped shortly afterward due to right lower extremity pain.<sup>5</sup>

---

<sup>4</sup> Dr. German submitted periodic reports dated through November 6, 2019 noting appellant's continuing lumbar and right lower extremity symptoms.

<sup>5</sup> OWCP received an October 5, 2019 hospital emergency department report signed by Nichole MacLellan, a family nurse practitioner.

In a letter dated October 10, 2019, appellant requested that OWCP expand its acceptance of her claim to include a balance problem, paraspinal muscle spasms, back pain, right hip pain, coccygeal pain right lower extremity pain, right knee pain, and right-sided pelvic pain.

In an October 11, 2019 report, Dr. Mahesh Bagwe, a Board-certified orthopedic surgeon, noted appellant's complaints of back discomfort due to a slight limp. He opined that October 10, 2019 magnetic resonance imaging (MRI) scans of the right lower extremity demonstrated edema at the anterior tibia wound site, and mild tendinitis along multiple tendons of the right ankle.<sup>6</sup> Dr. Bagwe recommended physical therapy to address muscle weakness in the right lower extremity.

In a development letter dated October 22, 2019, OWCP informed appellant of the additional evidence needed to expand her claim for additional conditions causally related to the July 23, 2019 employment incident. It afforded her 30 days to submit the necessary evidence.

In response, appellant submitted an October 5, 2019 emergency department report by Dr. John P. Fortney, Board-certified in emergency medicine, who diagnosed low back pain and sequela of the accepted right lower extremity injury.

In an October 6, 2019 emergency department report, Dr. Steven Hilton, Board-certified in emergency medicine, noted appellant's complaints of back pain after lifting items and placing weight on her right leg while at work. Appellant also experienced right-sided low back spasms while pushing and pulling carts at work. Dr. Hilton opined that her back pain and spasms were due to not bearing weight on her right leg for some time and continuing to favor it.

In an October 8, 2019 report, Dr. Beck diagnosed acute right-sided low back pain, neck pain, weakness, and gait instability.

In an October 30, 2019 report, Dr. Bagwe noted slight weakness of right plantar flexion. He recommended physical therapy to address deficits in balance and strength.

Appellant returned to work for four hours a day in early November 2019.

In a November 6, 2019 emergency department report, Dr. Thomas F. Wheeler, Board-certified in emergency medicine, diagnosed lumbar spasm.

In reports dated November 8 and 13, 2019, Dr. Bagwe opined that appellant had right leg weakness as she had not been physically active for months during recuperation from the July 23, 2019 employment injury. He recommended a work conditioning program.<sup>7</sup>

In a December 12, 2019 development letter, OWCP again informed appellant of the type of medical evidence needed to expand acceptance of her claim to include additional conditions causally

---

<sup>6</sup> An October 10, 2019 MRI scan of the right lower extremity demonstrated subcutaneous edema in the region of a skin wound anterior to the tibia, intramuscular edema within the tibialis anterior muscle and mild irregularity of its myotendinous junction, and possible fluid collection along the anterior margin of the tibialis anterior muscle.

<sup>7</sup> November 14, 2019 electromyography/nerve conduction velocity testing of the right lower extremity was within normal limits.

related to the July 23, 2019 employment incident. It noted that there was no deadline for her to request expansion of her claim.

In a December 13, 2019 report, Dr. Bagwe noted that appellant was able to balance easily on her right lower extremity and had run half a mile on a treadmill without difficulty. He noted that an MRI scan demonstrated an injury to the tibialis anterior musculature with soft tissue injury and a partial tear of the tibialis anterior tendon. In reports through January 15, 2020, Dr. Bagwe recommended that appellant gradually increase her work hours.

By decision dated January 29, 2020, OWCP denied expansion of the claim to include additional diagnosed conditions of the back or right knee, finding that the medical evidence of record did not diagnose a back or knee condition or support a causal relationship between any additional conditions and the July 23, 2019 employment injury.

On February 4, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review held on June 5, 2020. She submitted additional evidence.

In January 31, 2020 reports, Dr. Bagwe noted that appellant had scar tissue at the site of the accepted injury that moved with flexion of the tibialis anterior muscle. He opined that she had residual weakness in her tibialis anterior musculature that affected her balance. Dr. Bagwe permanently restricted lifting to 60 pounds.

In an April 2, 2020 report, Dr. Bagwe opined that appellant had attained maximum medical improvement (MMI) on January 31, 2020. He opined that she had sustained 15 percent permanent impairment of the right lower extremity. Dr. Bagwe noted permanent work restrictions against working more than eight hours a day and lifting more than 60 pounds. He opined that these restrictions and permanent impairment were "the result of [appellant's] loss of strength of the tibialis anterior musculature due to a partial tendon and muscular laceration." Appellant had chronic right lower extremity weakness that precipitated "early fatigue and poor balance with isolated weight bearing on [her] right lower extremity."

By decision dated August 5, 2020, the hearing representative affirmed the prior decision. She found that the medical evidence was insufficient to establish causal relationship between the July 23, 2019 employment incident and right knee, pelvis, hip, low back, or balance conditions. Additionally, appellant related her conditions to restricted duties performed following the accepted injury.

### **LEGAL PRECEDENT**

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>8</sup>

---

<sup>8</sup> *D.B.*, Docket No. 20-1280 (issued March 2, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>10</sup>

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.<sup>11</sup> 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.<sup>12</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that OWCP should expand the acceptance of her claim to include additional medical conditions as causally related to an accepted July 23, 2019 employment injury.

Dr. Fortney indicated in his October 5, 2019 report that appellant had low back pain related to sequela of the accepted right lower extremity injury. Dr. Hilton opined on October 6, 2019 that appellant's lumbar spasms were caused by not bearing weight on her right lower extremity during recuperation and continuing to favor it. Both physicians provided a conclusory opinion and did not explain, with rationale, their opinions as to how the accepted employment injury had caused or aggravated additional diagnosed 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.<sup>14</sup> Thus, their opinions are of limited probative value and insufficient to establish expansion of the claim.

In an August 8, 2019 reports, Dr. Beck held appellant off work noting that her right anterior shin laceration was healing poorly. She observed objective right leg weakness and acute right-sided lumbar pain, as noted in her October 8, 2019 report. Dr. Wheeler diagnosed gait instability and right lower extremity weakness in his November 6, 2019 report. However, these medical reports

---

<sup>9</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *Id.*

<sup>11</sup> *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>12</sup> *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K., id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

<sup>14</sup> *D.S.*, Docket No. 21-0673 (issued October 10, 2021); *A.L.*, Docket No. 18-1706 (issued May 20, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

do not offer an opinion as to whether these diagnosed conditions were causally related to the accepted employment injury. 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.<sup>15</sup> These reports are, therefore, of no probative value on the issue of causal relationship and are insufficient to meet appellant's burden of proof.

In an October 11, 2019 report, Dr. Bagwe noted appellant's complaints of back discomfort due to a slight limp. In an October 30, 2019 report, he noted slight weakness of right plantar flexion. In November 8 and 13, 2019 reports, Dr. Bagwe attributed this weakness to physical inactivity during recuperation from the July 23, 2019 employment injury. He opined in January 31, 2020 reports that residual weakness in the tibialis anterior musculature affected appellant's balance. Dr. Bagwe noted in an April 2, 2020 report that the accepted laceration caused weakness of the tibialis anterior musculature that precipitated poor balance with isolated weight bearing on appellant's right lower extremity. Although Dr. Bagwe indicated that the accepted injury could cause or contribute to the additional conditions, he did not specify the objective clinical findings that established causation. The Board has held that a medical opinion must provide an explanation of how the specific employment incident or employment factors physiologically caused or aggravated the additional diagnosed conditions.<sup>16</sup> Therefore, the Board finds that Dr. Bagwe's reports are of limited probative value and insufficient to establish appellant's burden of proof.

In September 18, 2019 reports, Dr. German noted that appellant sustained a right lower leg injury with flap laceration on July 23, 2019 and diagnosed a healed chronic ulcer of the right anterior lower leg and right lower leg discomfort with activity. In a work status report of the same date, he returned appellant to light-duty work with a restriction against driving vehicles. In a September 23, 2019 prescription note, Dr. German held appellant off work through October 3, 2019. In a report dated September 27, 2019, he returned her to light-duty work for four hours a day with restrictions, releasing appellant to full-duty work as of October 14, 2019. Dr. German also submitted periodic reports through November 6, 2019, noting appellant's continuing lumbar and right lower extremity symptoms. In none of those reports, however, did Dr. German provide an opinion regarding causal relationship between appellant's additional diagnosed conditions and the accepted July 23, 2019 employment injury. 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.<sup>17</sup> Thus, the Board finds that the reports of Drs. German are of no probative value on the issue of causal relationship and are insufficient to meet appellant's burden of proof.

---

<sup>15</sup> *S.S.*, Docket No. 21-0837 (issued November 23, 2021); *see J.M.*, Docket No. 19-1926 (issued March 19, 2021); *L.D.*, Docket No. 20-0894 (issued January 26, 2021); *T.F.*, Docket No. 18-0447 (issued February 5, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>16</sup> *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

<sup>17</sup> *Id.*

Appellant also submitted diagnostic studies that addressed her right lower extremity. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.<sup>18</sup>

As the medical evidence of record is insufficient to establish expansion of the acceptance of the claim to include additional conditions causally related to or as a consequence of her accepted employment injury, 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 OWCP should expand the acceptance of her claim to include a low back injury, pelvic or hip condition, right lower extremity pain, and a balance disorder causally related to an accepted July 23, 2019 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 5, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 2022  
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

---

<sup>18</sup> *S.S., id.*; *C.H.*, Docket No. 20-0228 (issued October 7, 2020); *E.G.*, Docket No. 17-1955 (issued September 10, 2018).