

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

L.B., Appellant	)	
	)	
and	)	Docket No. 22-0378
	)	Issued: November 4, 2022
DEPARTMENT OF VETERANS AFFAIRS,	)	
CHARLES P. WYLIE VETERANS'	)	
OUTPATIENT CLINIC, Columbus, OH,	)	
Employer	)	
	)	

*Appearances:*  
Stanley R. Stein, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 10, 2022 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated September 14, 2021. Pursuant

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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 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.

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 over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted September 16, 2020 employment injury.

### **FACTUAL HISTORY**

On September 22, 2020 appellant, then a 44-year-old nurse practitioner, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2020 she injured her left knee and sustained a concussion when she fell when walking outside of the employing establishment facility while in the performance of duty. She stopped work on September 22, 2020 and worked intermittently thereafter.

In a series of reports dated September 23, 2020 through January 14, 2021, Dr. Elizabeth A. Patterson, a Board-certified family practitioner, noted her treatment of appellant for a head and left knee injury that occurred at work. Appellant reported tripping and falling while on work break, but did not hit her head or lose consciousness. Her symptoms included joint swelling of the left knee, headaches, and dizziness. Dr. Patterson diagnosed concussion without loss of consciousness and post-traumatic headache, nonintractable. She opined that the cause of appellant's cognitive problems related to work activities and returned her to modified-duty work. On October 7, 2020 appellant reported worsening symptoms and was taken off work for one week and then returned to modified-duty work four hours per day. On December 3 and 17, 2020 Dr. Patterson noted that appellant reported continuing memory and concentration problems that affected her ability to progress to regular-duty work.

In duty status reports (Form CA-17) dated September 30, 2020 through January 14, 2021, Dr. Patterson diagnosed concussion without loss of consciousness and post-traumatic headache, nonintractable and returned appellant to work full-time modified-duty work. On October 14, 2020 appellant was returned to part-time modified-duty work and increased to full-time work on January 14, 2021.

In attending physician's reports (Form CA-20) dated September 30, 2020 through January 14, 2021, Dr. Patterson recounted a history of left knee and head injuries sustained on September 16, 2020. She diagnosed concussion without loss of consciousness and post-traumatic

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the September 14, 2021 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.*

headache, unspecified, not intractable. Dr. Patterson checked a box marked “Yes,” indicating that the diagnosed conditions were caused or aggravated by the described employment incident.

In reports dated September 30, 2020 through January 14, 2021, Dr. Patterson treated appellant for a head and left knee injury, which occurred after a fall. She diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable and returned appellant to modified-duty work.

On November 19, 2020 Lynn Roberts, a nurse practitioner, treated appellant for a head and left knee injury that occurred at work. Appellant reported tripping and falling while on break but she did not hit her head or lose consciousness. Ms. Roberts diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable.

In a development letter dated February 5, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. By separate letter of even date, OWCP also requested additional information from the employing establishment. It afforded both appellant and the employing establishment 30 days to respond.

OWCP received additional evidence. In an incident report dated September 21, 2020, appellant noted that on September 16, 2020 she fell forward on the sidewalk and sustained left knee bruising and a headache.

On September 21, 2020 Dr. Raheela Ayub, a specialist in family medicine, treated appellant in the employing establishment clinic for left knee pain and swelling, headache, dizziness, nausea, and light sensitivity. Appellant reported falling forward and landing on her left knee and forearm. She did not lose consciousness but “saw stars.” Dr. Ayub noted left knee edema, swelling, bruising on the medial aspect of the left knee, and a headache. She diagnosed left knee pain and concussion.

In a September 22, 2020 record, Dr. Brian L. Schmidt, a Board-certified family practitioner, treated appellant for a fall that occurred at work one week prior. Appellant reported tripping and falling on her left knee and “seeing stars.” She did not recall hitting her head. Appellant reported frontal and left-sided headaches, mental slowing, and a history of concussion. Dr. Schmidt diagnosed fall, initial encounter, and nonintractable headache. He referred appellant to the emergency room for further evaluation.

Also on September 22, 2020, Dr. Andrew P. Jacques, Board-certified in emergency medicine, treated appellant in the emergency room for a head injury after a fall nearly one week prior. Appellant reported falling to the ground “and seeing stars” but she did not pass out. Dr. Jacques noted findings of occasional headaches, difficulty concentrating, and dizziness. He diagnosed concussion without loss of consciousness, post-concussion headache, and elevated blood pressure.

An x-ray of the left knee dated September 24, 2020 revealed degenerative changes of the patellofemoral joint.

In response to the development letter, appellant indicated that on September 16, 2020 she was walking outside on her lunch break, lost her footing, and fell forward onto the sidewalk hitting her left knee. She reported no history of fainting spells, heart condition, or seizure history. Appellant indicated that immediately after the injury she “saw stars” and had left knee pain but she was able to walk back to her office unassisted. She did not sustain any other injuries from September 16 through 21, 2020 when she reported the injury. Appellant did not immediately seek medical attention because she only had mild knee pain and did not think she was seriously injured. She returned to work on September 17 and 18, 2020 and reported becoming foggy and slow in the afternoons and developed a headache on September 19, 2020.

Dr. Patterson treated appellant on February 4, 2021 for a head and left knee injury that occurred at work on September 16, 2020. She diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable. Dr. Patterson continued her work restrictions with a gradual increase to full-duty work on February 25, 2021. On February 26, 2021 she indicated that appellant sustained a concussion from the employment injury on September 16, 2020, in which she fell and injured her head and left knee. Dr. Patterson diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable. She noted that appellant’s neurological examination was normal, she did not have any deficits and was deemed permitted to drive and practice medicine in a limited manner. Dr. Patterson advised that appellant made a slow transition back to full-duty work.

OWCP received a report from Dr. Primrose Sedmak dated February 11, 2021, who noted at the time of the injury appellant was on the employing establishment premises during her lunch break.

A witness statement from D.L., a licensed practical nurse, dated February 22, 2021, indicated that on September 16, 2020 appellant informed her that she was going to take a walk outside at lunch time. Appellant reported that she fell outside and “saw stars” and had an abrasion on her left knee. D.L. noted that appellant complained of headaches, dizziness and a “brain fog” in the afternoons.

By decision dated March 15, 2021, OWCP accepted that the September 16, 2020 employment incident occurred, as alleged. However, it denied appellant’s traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

Dr. Patterson treated appellant on March 18, 2021 and diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable. She noted appellant’s symptoms had resolved with the exception of tinnitus. Dr. Patterson advised that appellant reached maximum medical improvement (MMI) and could return to full-duty work. On July 13, 2021 she opined to a reasonable degree of medical certainty that appellant sustained a concussion from the employment injury on September 16, 2020, when she fell and injured her head and left knee. Dr. Patterson explained that the force from the fall caused a sudden deceleration to her force or motion, resulting in a whiplash injury and concussion. She referenced a medical text defining a concussion as a trauma-induced pathophysiological process affecting the brain by direct blow or a blow to the body that transmits force to the head causing a brain disturbance.

On March 27, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 8, 2021.

By decision dated September 14, 2021, OWCP's hearing representative accepted appellant's claim for left knee bruise, but denied expansion of the acceptance of appellant's claim to include concussion without loss of consciousness, post-concussion headache, and nonintractable headache as causally related to the accepted employment 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.<sup>4</sup>

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.<sup>5</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>6</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted September 16, 2020 employment injury.

Appellant was treated by Dr. Patterson from September 23, 2020 through March 18, 2021, for joint swelling of the left knee, headaches, and dizziness after a fall at work. Dr. Patterson diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable. She opined that the cause of appellant's conditions related to work activities. Dr. Patterson, however, did not provide rationale explaining how appellant's diagnosed conditions were caused or aggravated by the September 16, 2020 accepted employment incident. She did not explain how the mechanism of injury would have physiologically caused or aggravated the additional diagnosed conditions.<sup>7</sup> As Dr. Patterson failed to provide medical rationale in support of causal relationship between additional diagnosed conditions and the accepted employment

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<sup>4</sup> *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>5</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>6</sup> *T.K., id.; I.J.*, 59 ECAB 408 (2008).

<sup>7</sup> *See F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

injury, these reports are of limited probative value and are insufficient to meet appellant's burden of proof.<sup>8</sup>

On February 26, 2021 Dr. Patterson indicated that appellant sustained a concussion from the employment injury on September 16, 2020, in which she fell and injured her head and left knee. She diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, nonintractable. Similarly, on July 13, 2021, Dr. Patterson opined, to a reasonable degree of medical certainty, that appellant sustained a concussion from the work-related fall on September 16, 2020. She explained that the force from the fall caused a sudden deceleration to her force or motion, resulting in a whiplash injury and concussion. While she provided a conclusory opinion, Dr. Patterson did not explain with rationale how the accepted employment injury had caused or aggravated additional diagnosed conditions. The Board has held that the 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>9</sup> Thus Dr. Patterson's opinion is also of limited probative value and insufficient to establish expansion of the claim.

In Form CA-17 reports dated September 30, 2020 through January 14, 2021, Dr. Patterson noted that the diagnosis due to injury was concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable. Similarly, in employer discharge summaries dated September 30, 2020 through January 14, 2021, she treated appellant for a head and left knee injury that occurred after a fall. Dr. Patterson diagnosed concussion without loss of consciousness and post-traumatic headache, unspecified, not intractable. The Board, however, has held that a medical opinion must provide an explanation of how the specific employment injury physiologically caused or aggravated the additional diagnosed conditions.<sup>10</sup> Therefore, the Board finds that these reports are of limited probative value and insufficient to meet appellant's burden of proof.

In Form CA-20 reports dated September 30, 2020 through January 14, 2021, Dr. Patterson diagnosed concussion without loss of consciousness and post-traumatic headache, nonintractable and checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment incident. The Board has held that an opinion on causal relationship which consists only of a physician checking a box marked "Yes" in response to a form report question regarding whether the claimant's condition or disability is related to the history given, without more by way of medical rationale, is of little probative value.<sup>11</sup> Dr. Patterson did

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<sup>8</sup> *M.C.*, Docket No. 18-0361 (issued August 15, 2018).

<sup>9</sup> *A.L.*, Docket No. 18-1706 (issued May 20, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>10</sup> *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

<sup>11</sup> *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *M.R.*, Docket No. 17-1388 (issued November 2, 2017); *Gary J. Watling*, 52 ECAB 278 (2001).

not provide any rationale for her opinion. This report is, therefore, of diminished probative value and insufficient to establish that additional conditions should be accepted as employment related.<sup>12</sup>

On September 21, 2020 Dr. Ayub treated appellant for left knee pain, swelling and bruising as well as a headache, dizziness, nausea, and light sensitivity after she fell at work. He diagnosed left knee pain and concussion. Similarly, Dr. Schmidt treated appellant on September 22, 2020 for frontal and left-sided headaches, and mental slowing. He diagnosed fall, initial encounter, and nonintractable headache. Likewise, Dr. Jacques also treated appellant on September 22, 2020 for occasional headaches, difficulty concentrating, and dizziness after a fall at work. He diagnosed concussion without loss of consciousness, post-concussion headache, and elevated blood pressure. However, these reports are of no probative value as they did not provide an opinion regarding causal relationship. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.<sup>13</sup> Thus Drs. Ayub, Schmidt, and Jacques opinions are also of limited probative value and insufficient to establish expansion of the claim.

Appellant submitted notes from Ms. Roberts, a nurse practitioner. Certain healthcare providers such as nurse practitioners<sup>14</sup> are not considered a physician as defined under FECA.<sup>15</sup> Consequently, these notes will not suffice for purposes of establishing appellant's claim.<sup>16</sup>

Appellant also submitted diagnostic testing reports. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused or aggravated any of the additional diagnosed conditions.<sup>17</sup>

As the medical evidence of record is insufficient to establish causal relationship between additional diagnosed conditions and the 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.

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<sup>12</sup> *Id.*

<sup>13</sup> *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA).

<sup>15</sup> 5 U.S.C. § 8101(2) of FECA provides that 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* 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.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

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

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

**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 as causally related to the accepted September 16, 2020 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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