

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

K.M., Appellant)	
)	
and)	Docket No. 22-0763
)	Issued: November 4, 2022
)	
U.S. POSTAL SERVICE, POST OFFICE, Fremont, CA, Employer)	
)	

Appearances:
Brett E. Blumstein, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 19, 2022 appellant, through counsel, filed a timely appeal from an October 26, 2021 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 issuance of October 26, 2021 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.*

ISSUES

The issues are: (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective October 26, 2021, as she no longer had residuals or disability causally related to her accepted July 7, 2020 employment injury; and (2) whether appellant has met her burden of proof to establish that acceptance of her claim should be expanded to include the conditions of lumbar intervertebral disc disorder with radiculopathy, and presence of right artificial hip.

FACTUAL HISTORY

On July 10, 2020 appellant, then a 67-year-old postal support employee (PSE) clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 7, 2020 she injured her back as a result of pulling, lifting, throwing, and emptying sacks of mail weighing 40 to 50 pounds while in the performance of duty. She stopped work on July 8, 2020.

OWCP accepted the claim for sprain of ligaments of the lumbar spine. It paid her wage-loss compensation on the supplemental rolls as of August 24, 2020.

OWCP received medical reports dated February 22 and April 5 and 19, 2021 from Dr. Douglas J. Abeles, an attending Board-certified orthopedic surgeon. Dr. Abeles recounted a history of the July 7, 2020 employment injury and appellant's medical treatment. He noted her current complaint of back pain with sciatica into her right leg and pain in her right hip. Dr. Abeles reported his findings on physical examination and reviewed diagnostic test results. He diagnosed the accepted condition of sprain of ligaments of the lumbar spine, lumbar region intervertebral disc disorders with radiculopathy, and presence of right artificial hip joint. Dr. Abeles noted appellant's treatment plan and work restrictions.

On May 13, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, to Dr. John H. Welborn, Jr., a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant continued to have residuals or disability causally related to her July 7, 2020 employment injury.

On July 12, 2021 counsel requested that appellant's claim be expanded to include the diagnoses of lumbar intervertebral disc disorder with radiculopathy and presence of right artificial hip.

Dr. Welborn, in a July 12, 2021 report, reviewed the SOAF and appellant's medical record. He noted a history that she suffered a mild lumbar strain which was causally connected to her work injury on July 22, 2020. Dr. Welborn indicated that she had a femoral neck fracture which was nonwork related. He reported his findings on examination and provided assessments of the diagnosed sprain of ligaments of the lumbar spine, initial encounter; fracture of unspecified part of the neck of the right femur, sequela; and history of non-work-related right hip replacement. Dr. Welborn noted that appellant's physical examination was essentially normal except for right hip tenderness, and abnormal palpation-spinal tenderness and limited range of motion. He indicated that appellant had subjective low back and right hip pain and objective findings of status post right hip bipolar replacement and degenerative findings in the lumbar spine based on a magnetic resonance imaging (MRI) scan. Dr. Welborn opined that her work-related lumbar sprain

had resolved, and no further treatment was required. He noted that appellant's continued low back pain was due to her preexisting lumbar degenerative condition. Dr. Welborn concluded that she could not perform her PSE clerk position, but she could work with restrictions due to right hip pain resulting from her nonwork-related right hip replacement surgery. In an accompanying work capacity evaluation (Form OWCP-5c) of even date, he reiterated his opinion regarding appellant's inability to perform her usual job, but noted that she could work eight hours per day with specific physical restrictions.

By notice dated August 24, 2021, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Welborn's opinion that the accepted condition had ceased without residuals and that she was not disabled from work due to the accepted condition. It afforded her 30 days to submit additional evidence or argument challenging the proposed action.

OWCP subsequently received additional primary treating physician's progress reports dated June 15, 29, July 27, and August 24, 2021 and a letter and Form OWCP-5c dated July 7, 2021 from Dr. Abeles. Dr. Abeles continued to diagnose the accepted condition of sprain of ligaments of the lumbar spine, initial encounter, as well as lumbar radiculopathy. He provided appellant's work restrictions and recommended a functional capacity evaluation to determine her long-term work capacity.

In a July 10, 2020 report, Dr. John Giddens, an internist, noted a history of the July 20, 2020 employment injury and provided findings on his examination. He diagnosed the accepted condition of sprain of ligaments of the lumbar spine, initial encounter, active; and strain of muscle, fascia, and tendon of the lower back, initial encounter, active. Dr. Giddens noted that appellant was in severe pain and was off work.

In a July 10, 2020 report, Dr. Ronald Pritchard, a Board-certified diagnostic radiologist, reviewed x-rays of the lumbosacral spine and right hip and, noted no acute process was demonstrated.

OWCP received reports dated July 7 through August 11, 2021 from Acupuncturist Minzhan Gao.

Dr. Jalal-Arman Daryale, a chiropractor, in reports dated July 19 through August 9, 2021, addressed the treatment of appellant's accepted condition of sprain of ligaments of lumbar spine, initial encounter, and diagnosed intervertebral disc disorders with radiculopathy, lumbar region; and presence of right artificial hip joint.

In a September 24, 2021 lumbar spine MRI scan report, Dr. Ravi Alagappan, a Board-certified diagnostic radiologist, provided impressions of no significant change in lumbar spondylosis compared to the prior examination; reactive marrow edema in the posterior elements at L4-5 bilaterally, left greater than right compatible with stress response.

By decision dated October 26, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, finding that Dr. Welborn's opinion was entitled to the weight of the medical evidence.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective October 26, 2021, as she no longer had residuals or disability causally related to her accepted July 7, 2020 employment injury.

Dr. Welborn, the second opinion physician, in a July 12, 2021 report and Form OWCP-5c, opined that appellant's work-related lumbar sprain had resolved and no further treatment was required. He reasoned that an MRI scan study, as well as her essentially normal examination findings with the exception of right hip tenderness, abnormal palpation-spinal tenderness and limited range of motion, revealed no objective residuals of the accepted condition. Dr. Welborn further explained that appellant's continued low back pain was due to her preexisting lumbar degenerative condition. He concluded that she could not perform her PSE clerk position, but she could work with restrictions due to right hip pain resulting from her nonwork-related right hip replacement surgery.

The Board finds that Dr. Welborn's opinion represents the weight of the medical evidence in this case. Dr. Welborn provided a detailed medical report reviewing the medical record, unequivocally opined that appellant did not have residuals or disability from the accepted employment-related condition and supported his opinion with medical rationale (objective

⁴ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁶ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁸ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

findings).⁹ Accordingly, OWCP properly relied on Dr. Welborn's second opinion report in terminating appellant's wage-loss compensation and medical benefits.¹⁰

Subsequent to Dr. Welborn's evaluation, OWCP received continuing reports from Dr. Abeles. In his July 27 and August 24, 2021 reports, Dr. Abeles diagnosed the accepted condition of sprain of ligaments of the lumbar spine, initial encounter, as well as lumbar radiculopathy, and he provided appellant's work restrictions. However, he did not provide a well-reasoned explanation as to why she continued to have residuals due to the July 20, 2020 employment injury. The Board has held that a medical report is of limited probative value on a given medical issue if it contains a medical opinion which is unsupported by medical rationale.¹¹

Similarly, Dr. Giddens' July 10, 2020 report did not provide a rationalized medical opinion. He diagnosed active lumbar spine sprain and strain of muscle, fascia, and tendon of the lower back, and noted that appellant was off work, but he did not explain why she continued to suffer from residuals and disability due to the accepted employment injury.¹²

The record also contains the reports dated July 7 through August 11, 2021 from Dr. Daryale, a chiropractor, who diagnosed the accepted condition of sprain of ligaments of lumbar spine, initial encounter; intervertebral disc disorders with radiculopathy, lumbar region; and presence of right artificial hip joint. Dr. Daryale is only considered to be a qualified physician under FECA to the extent he diagnoses a subluxation demonstrated by x-ray.¹³ Consequently, he is not considered a physician under FECA and his opinions do not constitute probative medical evidence.¹⁴

⁹ *B.T.*, Docket No. 19-1505 (issued April 2, 2021); *T.W.*, Docket No. 18-1573 (issued July 19, 2019); *A.G.*, Docket No. 18-0749 (issued November 7, 2018).

¹⁰ *See B.T., id.*; *T.C.*, Docket No. 19-1383 (issued March 27, 2020); *K.W.*, Docket No. 19-1224 (issued November 15, 2019); *see N.G.*, Docket No. 18-1340 (issued March 6, 2019); *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

¹¹ *See D.V.*, Docket No. 19-0868 (issued March 21, 2022); *L.S.*, *supra* note 8; *M.H.*, Docket No. 17-0210 (issued June 3, 2018).

¹² *Id.*

¹³ Section 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *B.K.*, Docket No. 19-0829 (issued September 25, 2019); *T.C.*, Docket No. 19-0227 (issued July 11, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law).

¹⁴ *S.S.*, Docket No. 19-1516 (issued October 21, 2021); *R.D.*, Docket No. 19-1528 (issued January 17, 2020); *see Jay K. Tomokiyo*, 51 ECAB 361 (2000).

OWCP also received reports from Acupuncturist Gao. These reports are of no probative value, however, because an acupuncturist is not considered a physician as defined by FECA.¹⁵

While the July 10, 2020 x-ray reports from Dr. Pritchard and September 24, 2021 lumbar MRI scan report from Dr. Alagappan revealed lumbosacral spine and right hip conditions, the Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment injury caused any of the diagnosed conditions.¹⁶

As the evidence of record is insufficient to overcome the weight of the medical evidence accorded to Dr. Welborn, the Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective October 26, 2021.

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.¹⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁸ 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.¹⁹ 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.²⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that acceptance of her claim should be expanded to include intervertebral disc disorders with radiculopathy, and presence of right artificial hip joint.

¹⁵ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also David P. Sawchuk, supra* note 13 (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant); *James A. White*, 34 ECAB 515, 518 (1983) (physical therapist); *Nemat M. Amer*, Docket No. 03-338 (issued April 7, 2005) (acupuncturist).

¹⁶ *Y.J.*, Docket No. 20-1123 (issued September 27, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

¹⁷ *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).

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

¹⁹ *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).

²⁰ *Id.*

Counsel requested expansion of the claim based upon the reports from Dr. Abeles. In a series of reports, Dr. Abeles related a history of appellant's July 7, 2020 employment injury. He also noted her current complaint of back pain with sciatica into her right leg and pain in her right hip, as well as her findings on physical examination and diagnostic tests. Dr. Abeles diagnosed lumbar region intervertebral disc disorders with radiculopathy, and presence of right artificial hip joint. However, he did not provide an opinion on the cause of the diagnosed conditions. The Board has held that medical evidence offering no opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.²¹ As Dr. Abeles did not offer an opinion regarding the cause of appellant's diagnosed conditions, his reports are of no probative value on the issue of causal relationship.

The Board finds that appellant has not submitted reasoned evidence supporting that she sustained additional conditions causally related to her accepted July 7, 2020 employment injury. As such, appellant has not met her burden of proof.²²

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 OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits, effective October 26, 2021, as she no longer had residuals or disability causally related to her accepted July 7, 2020 employment injury. The Board also finds that appellant has not met her burden of proof to establish that acceptance of her claim should be expanded to include intervertebral disc disorders with radiculopathy, and presence of right artificial hip joint.

²¹ See *R.G.*, Docket No. 18-0792 (issued March 11, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²² *G.M.*, Docket No. 19-0933 (issued October 1, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 26, 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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board