

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

G.J., Appellant

and

DEPARTMENT OF THE NAVY, NAVAL AIR
STATION PATUXENT RIVER,
Patuxent River, MD, Employer

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**Docket No. 22-1083
Issued: November 7, 2022**

Appearances:
Appellant, pro se
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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 11, 2022 appellant filed a timely appeal from a June 9, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 August 13, 2021 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 19, 2021 appellant, then a 63-year-old security guard, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2021 he injured his right quadriceps muscle, right arm, and right side of his neck when he fell on a curb at 1:45 p.m. after checking a contractor's identification badge while in the performance of duty. He stopped work on August 13, 2021.

In an emergency department (ED) report dated August 13, 2021, Dr. Chiemekwe Nwabueze, who specializes in emergency medicine, obtained a history of appellant experiencing right neck pain, right thigh pain, and a right elbow abrasion after he tripped and fell on a curb before arriving at work. She diagnosed an acute cervical myofascial strain, a right elbow abrasion, and a right thigh sprain.

X-rays of appellant's right pelvis and right femur, obtained on August 13, 2021 were negative for an acute bone injury.

An October 1, 2021 magnetic resonance imaging (MRI) scan of the right femur revealed distal quadriceps tendinopathy or strain without a definite full-thickness tear. The history provided on the report was right distal thigh pain after an August 13, 2021 quadriceps strain.

In a development letter dated March 8, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

Subsequently, appellant submitted an August 30, 2021 work status report from Dr. Richard Michael Cirillo, a Board-certified orthopedic surgeon. Dr. Cirillo found that appellant could work with restrictions. On September 10, 2021 an unidentified healthcare provider advised that appellant should not work from September 10 to October 6, 2021.

In a progress report dated September 23, 2021, Dr. Cirillo evaluated appellant for right quadriceps and anterior thigh pain after he fell onto a curb on August 13, 2021. He diagnosed a right quadriceps strain. In a work status report of even date, Dr. Cirillo found that appellant should perform sedentary or light work for two weeks. On October 5, 2021 he released appellant to resume his regular employment, effective October 8, 2021.

Appellant also submitted physical therapy reports dated December 10, 2021 through January 31, 2022.

On May 9, 2022 the employing establishment controverted the claim. It noted that the history of injury on the ED report differed from that on appellant's CA-1 form. In an accompanying report of work status (Form CA-3), the employing establishment advised that on October 8, 2021 he resumed his usual employment without restrictions.

On May 9, 2022 OWCP accepted appellant's claim for a right elbow abrasion. It noted that he had claimed additional conditions due to the employment injury and advised that it would develop this in a separate letter.

In a development letter dated May 9, 2022, OWCP indicated that it had received a request for claim expansion. It requested that appellant take its development letter to his treating physician and have him respond to a list of questions. OWCP asked that his physician address the history of injury, describe any preexisting conditions, provide all diagnoses due to the August 13, 2021 employment injury, and discuss the results of diagnostic testing. It further requested for a reasoned opinion regarding how any additional diagnosed conditions were causally related to the accepted August 13, 2021 employment injury. OWCP afforded appellant 30 days to have his physician provide the requested information.

By decision dated June 9, 2022, OWCP denied appellant's request to expand its acceptance of the claim to include additional conditions causally related to the accepted employment 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.²

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.³ 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.⁴ 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.⁵

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.⁶ The basic rule is that a subsequent injury, whether 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.⁷

² *J.R.*, Docket No. 20-0878 (issued July 26, 2021); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

³ *J.R.*, *id.*; *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁴ *N.C.*, Docket No. 21-0934 (issued February 7, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Id.*

⁶ *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

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

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to or as a consequence of the accepted August 13, 2021 employment injury.

In a report from the ED dated August 13, 2021, Dr. Nwabueze discussed appellant's complaints of pain along the right side of his neck and right thigh after he tripped and fell on a curb on his way to work. She diagnosed acute cervical myofascial strain, a right elbow abrasion, and a right thigh sprain. Dr. Nwabueze, however, provided an incorrect history of injury, that of appellant falling on a curb on his way to work. Medical reports based on an incomplete or inaccurate history are of diminished probative value.⁸ Additionally, while Dr. Nwabueze noted that she had examined appellant after a fall on a curb, she did not specifically address 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.⁹ This report, therefore, is insufficient to establish expansion of the acceptance of appellant's claim.¹⁰

On September 23, 2021 Dr. Cirillo obtained a history of appellant experiencing pain in his right quadriceps and anterior thigh on August 13, 2021 when he fell on a curb. He diagnosed a right quadriceps strain. While Dr. Cirillo provided a history of the accepted employment incident, he failed to sufficiently address the cause of the diagnosed condition.¹¹ Consequently, his report is of no probative value on the issue of causal relationship.¹²

In work status reports dated August through September 2021, Dr. Cirillo provided work restrictions. He did not, however, address causation and thus these reports are also of no probative value and are insufficient to establish expansion of the claim.¹³

Appellant submitted the results of x-rays dated August 13, 2021 and an October 1, 2021 MRI scan of the right femur. The Board has held, however, that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship

⁸ See *R.A.*, Docket No. 20-0969 (issued August 9, 2021); *L.D.*, Docket No. 19-0263 (issued June 19, 2019); *C.B.*, Docket No. 18-0633 (issued November 16, 2018).

⁹ See *S.D.*, Docket No. 21-0085 (issued August 9, 2021); *S.B.*, Docket No. 20-0088 (issued June 4, 2020); *R.Z.*, Docket No. 19-0408 (issued June 26, 2019).

¹⁰ *J.R.*, Docket No. 20-0878 (issued July 26, 2021); *K.R.*, Docket No. 20-1103 (issued January 5, 2021).

¹¹ See *B.H.*, Docket No. 21-0183 (issued December 7, 2021).

¹² See *R.P.*, Docket No. 22-0713 (issued July 26, 2022); *V.R.*, Docket No. 19-0758 (issued March 16, 2021); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ See *V.R.*, Docket No. 19-0758 (issued March 16, 2021); *L.B.*, *id.*; *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

between an employment injury and a diagnosed condition.¹⁴ Accordingly, this evidence is not sufficient to meet appellant's burden of proof.

OWCP also received reports from a physical therapist. A physical therapist, however, is not considered a physician as defined under FECA.¹⁵ Consequently, this evidence is of no probative value and insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence to expand the acceptance of his claim to include additional conditions causally related to or as a consequence of his accepted employment injury, the Board finds that he has not met his 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions as causally related to as a result of the accepted August 13, 2021 employment injury.

¹⁴ See *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

¹⁵ Section 8101(2) of FECA provides that the term 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 *supra* note 10 at 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 *P.D.*, Docket No. 21-0920 (issued January 12, 2022) (a physical therapist is not a physician under FECA).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2022
Washington, DC

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

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

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