



employment injury; and (2) whether appellant has met her burden of proof to establish a permanent impairment of the right lower extremity causally related to her accepted November 13, 2004 employment injury.

### **FACTUAL HISTORY**

On November 13, 2004 appellant, then a 45-year-old part-time flexible letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained low back pain and a spinal contusion when a dog pounced on her knocking her to the ground while in the performance of duty. She stopped work on November 13, 2004 and returned to limited-duty work on March 21, 2005. OWCP accepted the claim, assigned OWCP File No. xxxxxx373, for a back contusion. It subsequently expanded its acceptance of appellant's claim to include a compression fracture at L2 and the temporary aggravation of osteoporosis and degenerative disc disease of the spine. OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent disability from work from December 29, 2004 to February 9, 2007.

OWCP additionally accepted that appellant sustained a crush injury to her left foot and left ankle sprain on February 25, 2002, assigned OWCP File No. xxxxxx757; right ankle and wrist sprain on September 15, 2004, assigned OWCP File No. xxxxxx345; acute lumbosacral strain on February 12, 2008, assigned OWCP File No. xxxxxx941; and a right hip contusion and lumbosacral sprain on April 16, 2013, assigned OWCP File No. xxxxxx519. It administratively combined these claims with the current claim, OWCP File No. xxxxxx373, with the latter serving as the master file.

By decision dated November 26, 2007, OWCP terminated appellant's wage-loss compensation and medical benefits, effective November 26, 2007, as she had no further disability or residuals of her accepted back contusion, compression fracture at L2, and temporary aggravation of osteoporosis and degenerative disc disease of the spine.

A May 4, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine revealed interval worsening of anterolisthesis of L5 over S1 with new narrowing of the left lateral recess and slight worsening of foraminal stenosis.

An electromyogram (EMG) of the lower extremities, performed on May 11, 2017, revealed chronic to remote right lumbar radiculopathy.

In an impairment rating dated April 11, 2018, Dr. Sami E. Moufawad, a Board-certified physiatrist, discussed appellant's history of a fracture at her L2 vertebra after a dog jumped on her and she fell backward onto the ground. He reviewed her current complaints of low back pain and muscle spasms radiating into the lower limbs bilaterally. Dr. Moufawad diagnosed a back contusion, stress fracture, osteomalacia, degeneration of a lumbar or lumbosacral intervertebral disc, and bilateral lumbar radiculopathy at L5. He attributed the diagnoses to the November 13, 2004 employment injury. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>3</sup> and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The*

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<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

*Guides Newsletter*), Dr. Moufawad determined that appellant had 11 percent permanent impairment of each lower extremity due to sensory and motor deficits at L5.

On November 15, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On November 20, 2019 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), concurred with Dr. Moufawad's finding that appellant had 11 percent permanent impairment of each lower extremity due to lumbar radiculopathy.

By decision dated February 10, 2020, OWCP denied appellant's schedule award claim. It found that the evidence failed to support a permanent impairment causally related to the accepted employment injury.

On February 19, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on June 8, 2020. By decision dated August 24, 2020, OWCP's hearing representative vacated the February 10, 2020 decision. He noted that Dr. Moufawad had provided an impairment rating based on the diagnosis of L5 radiculopathy, which had not been an accepted condition. The hearing representative found that Dr. Moufawad's opinion that the bilateral L5 radiculopathy was causally related to the accepted employment injury was sufficient to warrant further development of the evidence. He instructed OWCP to refer appellant for a second opinion examination to determine if the acceptance of appellant's claim should be expanded to include lumbar radiculopathy and for a current impairment evaluation.

On September 9, 2020 OWCP referred appellant to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated October 9, 2020, Dr. Obianwu discussed appellant's history of multiple employment injuries and current complaints of low back pain. He noted that, after straining her back in 2008, she had performed predominately sedentary work until her retirement in 2015. Dr. Obianwu listed the accepted conditions in appellant's claims as a back contusion, compression fracture at L2, a temporary aggravation of osteoporosis and lumbar degenerative disc disease, a left foot crush injury and sprain of the left ankle, a right ankle and wrist sprain, acute lumbosacral strain, and a right hip contusion and lumbosacral sprain. He provided his review of the medical records. On examination Dr. Obianwu observed a negative straight leg raising test bilaterally and a "slight diminution of sensation over L5 dermatomes on the left lower extremity when compared to the right." He diagnosed L5 sensory radiculopathy of the left lower extremity and a permanent aggravation of lumbar degenerative disc disease. Dr. Obianwu noted that the June 1, 2017 MRI scan had shown progression of degenerative disease and compression of the L5 nerve root on the left side. He attributed the L5 radiculopathy to appellant's employment injury. Dr. Obianwu opined that, pursuant to *The Guides Newsletter*, appellant had four percent permanent impairment of the left lower extremity due to her sensory deficit at L5. He disagreed with Dr. Moufawad's finding of right lower extremity radiculopathy based on appellant's intact strength and sensation.

On December 23, 2020 OWCP expanded its acceptance of the claim to include left L5 sensory radiculopathy and a permanent aggravation of lumbar degenerative disc disease.

By decision dated December 23, 2020, OWCP denied appellant's request to expand the acceptance of her claim to include right lumbar radiculopathy causally related to her accepted employment injury.

On December 29, 2020 Dr. Harris found that appellant had no ratable impairment of the right lower extremity due to radiculopathy. He concurred with Dr. Obianwu's finding of four percent permanent impairment of the left lower extremity.

On January 8, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 10, 2021, OWCP granted appellant a schedule award for four percent permanent impairment of the left lower extremity. It further found that she had no impairment of the right lower extremity.

Following a preliminary review, by decision dated March 5, 2021, OWCP's hearing representative vacated the December 23, 2020 decision. The hearing representative found that a conflict existed between Dr. Obianwu and Dr. Moufawad regarding whether appellant had right radiculopathy at L5 and remanded the case for OWCP to refer her for an impartial medical examination.

On April 8, 2021 OWCP referred appellant to Dr. Jeffrey Lawley, an osteopath who is Board-certified in orthopedic surgery, for an impartial medical examination.

In a report dated May 14, 2021, Dr. Lawley discussed appellant's history of injury and provided his review of the medical evidence. On examination he found a negative straight leg raise and intact sensation and motor findings. Dr. Lawley further found no swelling, bruising, or atrophy of the lower extremity, full range of motion of the hips, and no back spasm. He determined that appellant had some reduced motion of the lumbar spine. Dr. Lawley diagnosed a healed L2 vertebral body compression fracture without neurological deficit and mild lumbar spondylosis unrelated to appellant's employment. He attributed the degenerative changes in her back to the normal aging process rather than her employment injuries or work duties. Dr. Lawley opined that appellant had not sustained right radiculopathy at L5 causally related to the accepted employment injury. He asserted that her EMG had not found lumbar radiculopathy and that she had an "intact normal neurological examination to both lower limbs."

By decision dated December 16, 2021, OWCP denied expansion of the acceptance of appellant's claim to include right L5 radiculopathy causally related to her accepted November 13, 2004 employment injury. It further noted that she had not established an impairment of the right lower extremity.

On December 28, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on April 13, 2022.

By decision dated June 28, 2022, OWCP's hearing representative affirmed the December 16, 2021 decision.

## LEGAL PRECEDENT -- ISSUE 1

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>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

Section 8123(a) of FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>8</sup> When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>9</sup>

## ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP determined that a conflict existed between Dr. Moufawad, appellant's physician, and Dr. Obianwu, an OWCP referral physician, regarding whether the acceptance of appellant's claim should be expanded to include right radiculopathy at L5. It referred her to Dr. Lawley, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination.

In a report dated May 14, 2021, Dr. Lawley diagnosed a healed vertebral body compression fracture at L2 without neurological deficit. He further found nonemployment-related mild lumbar spondylosis. Dr. Lawley attributed the degenerative changes in appellant's spine to the aging

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<sup>4</sup> *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).

<sup>5</sup> *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *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).

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. § 8123(a); *see also* 20 C.F.R. § 10.321.

<sup>9</sup> *See K.D.*, Docket No. 19-0281 (issued June 30, 2020); *Y.A.*, 59 ECAB 701 (2008).

process rather than to her employment injuries or duties. He concluded that she had not sustained right L5 radiculopathy.

The Board finds that Dr. Lawley's opinion is inconsistent with the SOAF. OWCP accepted that appellant sustained a permanent aggravation of lumbar degenerative disc disease causally related to her accepted November 13, 2004 employment injury. It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.<sup>10</sup>

OWCP procedures and Board precedent dictate that when an OWCP medical adviser, second opinion specialist, or IME renders a medical opinion based on a SOAF, which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>11</sup> Dr. Lawley, however, found that appellant did not have a permanent aggravation of degenerative disc disease of the lumbar spine due to her accepted employment injury and, thus, did not rely on the SOAF as a framework in reaching his conclusions. The Board, thus, finds that his report is of diminished probative value and insufficient to resolve the conflict in medical opinion.<sup>12</sup>

The Board, therefore, finds that the case must be remanded to OWCP for further development. On remand, OWCP should refer appellant and a SOAF to a physician in the appropriate field of medicine to resolve the existing conflict. After this and such other development as OWCP deems necessary, it shall issue a *de novo* decision.<sup>13</sup>

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>10</sup> *G.B.*, Docket No. 20-0750 (issued October 27, 2020); *T.P.*, 58 ECAB 524 (2007).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see also D.C.*, Docket No. 21-0780 (issued December 22, 2021); *Paul King*, 54 ECAB 356 (2003).

<sup>12</sup> *See M.H.*, Docket No. 21-1014 (issued July 8, 2022); *F.H.*, Docket No. 21-0579 (issued December 9, 2021); *P.C.*, Docket No. 19-1468 (issued September 9, 2020).

<sup>13</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 8, 2022  
Washington, DC

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

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

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