

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

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H.M., Appellant)	
)	
and)	Docket No. 22-0097
)	Issued: October 11, 2022
DEPARTMENT OF THE AIR FORCE, TINKER)	
AIR FORCE BASE, OK, Employer)	
_____)	

Appearances:
Kelley Craig, Esq. and Tiffany D. Snead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 26, 2021 appellant, through counsel, filed a timely appeal from a July 15, 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 July 15, 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: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include neurogenic bladder causally related to her accepted October 26, 2017 employment injury; and (2) whether appellant has met her burden of proof to establish a recurrence of disability commencing January 26, 2021 causally related to her accepted October 26, 2017 employment injury.

FACTUAL HISTORY

On October 30, 2017 appellant, then a 41-year-old equipment cleaner, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2017 she strained her back and wrists and injured her tailbone when she fell while in the performance of duty. OWCP accepted the claim for lumbosacral radiculopathy. Appellant stopped work on October 26, 2017 and returned to modified employment on October 30, 2017.

In a November 6, 2017 report, Dr. Carl Martin Lindquist, an osteopath, noted that appellant had experienced urinary urgency since her injury.

In a report dated November 22, 2017, Dr. Edmond L. Hooks, an internist, evaluated appellant's back, tail bone, hips, and right wrist after a fall at work on October 26, 2017. He noted that she complained of bladder issues, particularly "urgency and bladder spasm."

In a report dated March 22, 2018, Dr. Stephen Schlinke, a gynecologist, indicated that appellant complained of a loss of bladder control after she fell at work in October 2017. He diagnosed urinary incontinence. Dr. Schlinke noted that appellant had a prior history of bladder spasms in November 2014. He referred her to a urogynecologist.

On April 6, 2018 Dr. Stephanie D. Pickett, Board-certified in obstetrics and gynecology, evaluated appellant for incontinence. She obtained a history of appellant falling in October 2017 fracturing her tailbone and subsequently experiencing incontinence and back numbness. Dr. Pickett indicated that appellant had "a history of a sling." She diagnosed mixed stress and urge urinary incontinence, unconscious urinary incontinence, muscle spasm, and muscle tenderness. Dr. Pickett related, "Due to the acute change of [appellant's] voiding issues and the nature of her fall, I am concerned that there may be a musculoskeletal component to this." She referred appellant for a magnetic resonance imaging (MRI) scan of the lumbar spine.

Appellant received treatment at the emergency department on April 24, 2018. In discharge instructions of even date, Dr. Alicia Krummel, Board-certified in emergency medicine, diagnosed urinary retention, acute cystitis without hematuria, and hypokalemia.

On April 26, 2018 Dr. Darrel L. Stout, who specializes in family medicine, discussed appellant's inability to empty her bladder completely and noted that her history was negative "for chronic urologic problems." He diagnosed bladder obstruction. In a letter of even date, Dr. Stout advised that he had treated appellant since 2008. He related, "She sustained a fall at work [on] October 26, 2017 and since that date has had an issue of bladder incontinence. Prior to the fall she has not had an issue with bladder incontinence." Dr. Stout noted that appellant received treatment in the emergency room due to bladder spasm.

On April 30, 2018 appellant filed a notice of recurrence (Form CA-2a) causally related to her accepted employment injury. She indicated that she was still working but that she had continued pain in her hip and shoulder and problems with her bladder. Appellant asserted that her bladder issues began the day after her fall.

On June 18, 2018 OWCP advised that it had accepted that appellant sustained a recurrence of the need for medical treatment based on the reports of Dr. Stout and Dr. Schilinke.

In a report dated October 31, 2018, Dr. John W. Ellis, Board-certified in family medicine, discussed appellant's history of falling on the ground on October 26, 2017 injuring her tailbone, hips, elbows, and shoulder, and experiencing a loss of bladder function. He noted that on April 26, 2018 she had urine drained from her bladder and was put on antibiotics for an infection. Dr. Ellis advised that appellant had a bladder suspension with a tape sling and vaginal hysterectomy but had no incontinence after those procedures until the October 26, 2017 injury. He related, "The bladder incontinence is a direct result of the crushing of her discs in her lumbar spine causing impingement of the sacral nerves causing compression of the nerves which control her bladder." Dr. Ellis opined that appellant's claim should be expanded to include neurogenic bladder.

An MRI scan of the lumbar spine dated October 31, 2018 showed a small disc bulge and annular tear at L4-5 and small disc bulge at L5-S1 with no significant central or foraminal stenosis.

On November 28, 2018 Dr. Ellis again reviewed the history of injury and provided findings on examination. He diagnosed lumbosacral radiculopathy and neurogenic bladder. Dr. Ellis attributed appellant's bladder incontinence to the crushing of her discs and the compression of the nerves linked to her bladder. He requested that OWCP upgrade the acceptance to include neurogenic bladder.⁴

An electromyogram (EMG) and nerve conduction study (NCS) performed on January 8, 2019 revealed findings suggestive of left L5 radiculopathy. Dr. Aaron McGuire, an osteopath, interpreted the study and related, "Given [appellant's] history of urinary incontinence issues following her work-related accident, I would strongly recommend evaluation by a urologist, which may include a urodynamic study to evaluate whether there is a functional deficit of her sacral innervation of her bladder."

On November 12, 2019 Dr. Martin J. Lopez, a Board-certified anesthesiologist, discussed appellant's history of injury and complaints of low back pain and urinary bladder dysfunction and incontinence. He diagnosed low back pain with bilateral lumbar radiculopathy, worse on the left, and recommended steroid injections as treatment. Dr. Lopez related, "I would further advocate that [appellant's] bladder issue be included in her [workers' compensation] claim. There is a direct temporal relationship in terms of timing of the onset of her symptomatology with her previously described on-the-job accident."

Dr. Ellis continued to submit reports requesting that OWCP expand its acceptance of appellant's claim to include neurogenic bladder.

⁴ Dr. Ellis submitted similar reports on January 17 and April 24, 2019.

An MRI scan of the lumbar spine dated February 10, 2020 revealed a small disc bulge and right paramedian annular tear superimposed on degenerative anterolisthesis causing mild central spinal stenosis and mild left foraminal stenosis with slight impingement of the L4 nerve root, and a small disc bulge at L5-S1 with mild facet joint hypertrophy.

In a report dated March 9, 2020, Dr. Joseph B. Cox, a neurosurgeon, discussed appellant's complaints of pain in her left hip and back radiating into her left leg and moving into her right side "causing terrible bladder issues." He noted that she had symptoms of urinary incontinence that sometimes required a catheter. Dr. Cox diagnosed lumbar disc bulges with low back pain.

An EMG performed on April 30, 2020 showed mild prolongation of the left H-reflex and findings consistent with irritation of the left S1 nerve root and left L5 radiculopathy.

In an unsigned report dated May 4, 2020, Dr. Cox reviewed an EMG study showing radicular findings at S1 and L5. He advised that appellant had chronic nerve damage that was affecting "both her left leg and her bladder."

In a work status report dated January 26, 2021, Dr. Ellis found that appellant was temporarily totally disabled from employment.⁵

On February 18, 2021 appellant filed a claim for compensation (Form CA-7) due to disability from employment for the period January 26 through February 9, 2021.

In a development letter dated February 22, 2021, OWCP advised appellant of the definition of a recurrence of disability and requested that she provide additional factual and medical information supporting that her accepted condition had worsened such that she was disabled from employment. It afforded her 30 days to respond to the request.

In a work status report dated February 23, 2021, Dr. Ellis found that appellant remained totally disabled.

On March 3, 2021 appellant filed CA-7 forms requesting wage-loss compensation due to disability from February 10 to March 13, 2021. In a development letter dated March 5, 2021, OWCP again advised her of the definition of a recurrence of disability and requested supporting factual and medical evidence.

In a report dated March 23, 2021, Dr. Ellis diagnosed neurogenic bladder causally related to the accepted employment injury. He found that appellant had bladder incontinence due to the compression of the nerves linked to her bladder. Dr. Ellis opined that she was disabled as her "neurogenic bladder has declined to the point that she is having to wear Depends and be near a bathroom at all times. It is not feasible for appellant to be at work in these circumstances. Therefore, it is my medical opinion she was taken off work as a direct result of her work[-]related injuries." In a work status report of even date, Dr. Ellis indicated that appellant was totally disabled.

⁵ Dr. Ellis also provided progress reports substantially similar to his prior reports of record.

On April 1, 2021 counsel requested that OWCP expand the acceptance of the claim to include neurogenic bladder.

By decision dated April 13, 2021, OWCP found that appellant had not established a recurrence of disability on January 26, 2021 causally related to her accepted employment injury.

Appellant continued to submit CA-7 forms requesting wage-loss compensation due to disability from employment.

On April 20, 2021 Dr. Ellis found appellant disabled from employment.

An MRI scan of the lumbar spine, obtained on April 15, 2021, revealed a disc bulge and tiny mid-posterior annular tear superimposed on degenerative anterolisthesis and a small circumferential disc bulge at L5-S1.

In a report dated April 27, 2021, Dr. Ellis related that based on his multiple examinations, appellant had “developed worsening [of] the lumbar spinal nerves that go into her legs and bladder.” He advised that she had progressive leg pain and weakness, which was “common in lumbar radiculopathy wherein the spinal nerves continue to degenerative due to the pressure on the nerves....” Dr. Ellis found that appellant was totally disabled beginning January 26, 2021 due to a worsening of her lumbar spinal nerve impairment. He maintained that sitting, standing, and lifting even small weights caused flexion of the lumbar spine and increased pressure resulting in increased pain and weakness. Dr. Ellis indicated that appellant was not disabled due to her bladder issues. He noted that she had a history of bladder suspension surgery but not incontinence issues. Dr. Ellis related, “The accepted lumbar radiculopathy includes the spinal nerves that go through the lumbar spinal canal and then into the legs and also the spinal nerves that go to the bladder and urethra.” He advised that appellant’s incontinence was “medically objective evidence of worsening lumbar radiculopathy to the spinal nerves to her bladder.” Dr. Ellis opined that her prior bladder wall dysfunction made her prone to impingement causing the “inability for her urethra smooth muscles to maintain muscle tone thus causing her to involuntarily urinate on herself.”

On May 27, 2021 appellant, through counsel, requested reconsideration. Counsel asserted that the opinion of Dr. Ellis was sufficient to show that appellant’s condition had worsened such that she was disabled from employment commencing January 26, 2021. She further maintained that OWCP should expand its acceptance of the claim to include neurogenic bladder causally related to appellant’s October 26, 2017 employment injury.

By decision dated July 15, 2021, OWCP denied modification of its April 13, 2021 decision. It found that Dr. Ellis had not sufficiently explained why appellant’s bladder condition resulted from her fall.

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.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ 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.⁸ 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.⁹

ANALYSIS -- ISSUE 1

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

On November 6, 2017 Dr. Lindquist discussed appellant's complaints of urinary urgency since her injury. Dr. Hooks, on November 22, 2017, noted that since her fall at work on October 26, 2017 she had experienced urgency and bladder spasm. Dr. Pickett, on April 6, 2018, noted that appellant had a fall at work with subsequent symptoms of incontinence. She indicated that appellant had a history of a sling. Dr. Pickett diagnosed mixed stress and urge urinary incontinence, unconscious urinary incontinence, muscle spasms, and muscle tenderness. She advised that appellant might have a musculoskeletal issue due to her fall. In a report dated April 26, 2018, Dr. Stout found that appellant had bladder incontinence after a fall on October 26, 2017 and noted that she had received treatment at the emergency room for bladder spasm.

On October 31, 2018 Dr. Ellis reviewed the history of the October 26, 2017 employment injury and appellant's subsequent complaints of loss of bladder function. He advised that she had a history of a bladder suspension and hysterectomy but had not experienced incontinence until her accepted employment injury. Dr. Ellis attributed appellant's incontinence to her lumbar discs impinging on the sacral nerves and the nerves that control the bladder. He opined that acceptance of her claim should be expanded to include neurogenic bladder. Dr. Ellis submitted similar reports through 2021.

⁶ *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).

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

⁸ *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).

⁹ *Id.*

On November 12, 2019 Dr. Lopez recommended that OWCP expand the acceptance of appellant's claim to include bladder issues, noting the temporal relationship between the onset of her symptoms and her injury.

In a report dated April 27, 2021, Dr. Ellis advised that appellant's accepted condition of lumbar radiculopathy had affected the spinal nerves that traveled to the bladder and urethra causing incontinence. He noted that her history of bladder wall dysfunction made her prone to impingement and the inability to the urethra to maintain muscle tone causing involuntary urination.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁰ OWCP has an obligation to see that justice is done.¹¹

Dr. Ellis relied upon a proper history of injury and provided a pathophysiological explanation regarding how the accepted employment injury caused the condition of neurogenic bladder. Accordingly, the Board finds that his opinion, while insufficiently rationalized to meet appellant's burden of proof, is sufficient to require further development of the medical record to determine whether appellant sustained neurogenic bladder causally related to the accepted employment injury.¹² On remand, OWCP shall prepare a statement of accepted facts and refer appellant to a specialist in the appropriate field of medicine and obtain a second opinion examination to determine whether the October 26, 2017 employment injury caused a bladder condition.¹³ If the second opinion physician disagrees with the explanations provided by Dr. Ellis, he or she must provide a fully-rationalized explanation regarding why the accepted employment injury was insufficient to have caused appellant's neurogenic bladder condition.¹⁴ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.¹⁵ This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the

¹⁰ *N.K.*, Docket No. 20-1634 (issued September 10, 2021); *A.V.*, Docket No. 20-1251 (issued January 28, 2021).

¹¹ *Id.*

¹² *See C.L.*, Docket No. 20-0213 (issued September 15, 2021); *J.S.*, Docket No. 19-0892 (issued November 4, 2020); *John J. Carlone*, 41 ECAB 354, 360 (1989).

¹³ *See N.K.*, Docket No. 20-1634 (issued September 10, 2021); *M.H.*, Docket No. 18-1068 (issued June 2, 2020).

¹⁴ *N.K.*, *id.*

¹⁵ 20 C.F.R. § 10.5(x); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

employee's physical limitations. A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force.¹⁶

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.¹⁷

ANALYSIS -- ISSUE 2

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

In a report dated March 23, 2021, Dr. Ellis found that appellant was disabled due to her urinary incontinence because she had to remain near a bathroom. On April 27, 2021, however, he indicated that she was not disabled due to her bladder. Dr. Ellis found that appellant's accepted lumbar radiculopathy had worsened such that she was disabled. He advised that she had progressively increasing pain and weakness in her legs and noted that sitting, standing, and lifting caused flexion of the lumbar spine and increased pressure, pain, and weakness. Dr. Ellis found that appellant was totally disabled from work commencing January 26, 2021 due to a worsening of her lumbar spinal nerve impairment.

As discussed, proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹⁸ While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹⁹ The Board finds that, while the April 27, 2021 report from Dr. Ellis is not fully rationalized, it raises an uncontroverted inference between appellant's inability to work commencing January 26, 2021 and the accepted employment injury. Further development of appellant's claim is therefore required.²⁰

On remand OWCP shall refer appellant to a physician in the appropriate field of medicine, along with the case record and a SOAF, for an examination and a rationalized medical opinion as to whether the accepted employment injury caused a recurrence of disability beginning January 26, 2021.²¹ If the second opinion physician disagrees with Dr. Ellis, he or she must provide rationale explaining why the accepted employment injury was insufficient to have caused

¹⁶ *Id.*

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

¹⁸ *See C.F.*, Docket No. 20-1572 (issued November 10, 2021); *Vanessa Young*, 56 ECAB 575 (2004).

¹⁹ *Id.*

²⁰ *See D.V.*, Docket No. 21-0383 (issued October 4, 2021).

²¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see also K.B.*, Docket No. 20-1001 (issued June 23, 2021).

the claimed recurrence of disability. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to expand the acceptance of her claim to include neurogenic bladder causally related to the accepted October 26, 2017 employment injury and whether she has met her burden of proof to establish a recurrence of disability commencing January 26, 2021 causally related to her accepted October 26, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2021 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: October 11, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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