

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional medical conditions causally related to the accepted October 24, 2019 employment injury; and (2) whether appellant has met her burden of proof to establish disability from work for the period commencing January 6, 2020 causally related to her accepted employment injury.

FACTUAL HISTORY

On October 29, 2019 appellant, then a 49-year-old supervisory economist, filed a traumatic injury claim (Form CA-1) alleging that on October 24, 2019 she experienced abdominal pain as she lifted and moved 20 case file bundles while in the performance of duty. She noted that she had undergone an umbilical hernia repair on September 18, 2019 and had been following her physician's order not to lift more than 20 pounds at the time of injury.

OWCP subsequently received medical evidence. An October 29, 2019 work note from Dr. Alan Ansher, Board-certified in gastroenterology and internal medicine, indicated a history of appellant's September 18, 2019 open umbilical hernia repair and her current complaint of abdominal muscle strain. He noted that she had no recurrent hernia.

In medical reports dated October 30, 2019, Dr. Irene Odigie, Board-certified in emergency medicine, noted a history of appellant's injury on October 24, 2019. She diagnosed strain of muscle, fascia, and tendon of the abdomen, initial encounter. Dr. Odigie provided appellant's light-duty restrictions commencing October 30, 2019 and indicated that her anticipated full-duty release date was November 4, 2019.

Dr. Nino Gelenidze, a Board-certified family practitioner, in a November 4, 2019 report, noted a history of the October 24, 2019 incident. He diagnosed strain of muscle, fascia, and tendon of the abdomen, subsequent encounter. Dr. Gelenidze provided appellant's light-duty restrictions commencing November 5, 2019 and indicated that her anticipated full-duty release date was November 11, 2019.

In a November 15, 2019 diagnostic addendum, Catherine Cameron, a physician assistant, related lumbar spine x-ray findings.

A November 21, 2019 lumbar spine magnetic resonance imaging (MRI) scan interpreted by Dr. Oluwatoyin T. Idowu, a Board-certified diagnostic radiologist and neuroradiologist, was normal.

In a November 25, 2019 thoracic spine MRI scan report, Dr. Brian Choi, a Board-certified diagnostic radiologist and neuroradiologist, provided impressions of normal cord signal and no significant disc bulge or protrusion, and was otherwise unremarkable.

OWCP, in a November 21, 2019 development letter, informed appellant of the factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response to OWCP's development letter, Dr. Ehsan Jazini, an attending orthopedic surgeon, submitted a letter and report dated November 26, 2019. He noted a history of the claimed October 24, 2019 incident and provided findings on physical examination and diagnostic test results. Dr. Jazini diagnosed lumbar intervertebral disc disorders (annular tears), sacroiliitis, not elsewhere classified, greater trochanteric bursitis of the left hip, myalgia, unspecified site, and left groin and abdominal pain. He noted appellant's previous medical treatment and advised that she could work with restrictions, four hours per day, five days per week. In the November 26, 2019 letter, Dr. Jazini opined that repetitive lifting of multiple files over several hours directly led to her lumbar symptoms, which included pain in the low back, lower extremity, left groin, thoracic spine, and abdomen. He advised that appellant's symptoms were consistent with pain/sacroiliac dysfunction and sacroiliitis, left greater trochanteric bursitis, lumbar paraspinal musculature, and lumbar discs. Dr. Jazini noted that there may be some involvement of the intraarticular structures of the left hip and recommended further imaging to address this condition.

In a report of even date, Tracey Perkins, a physician assistant, provided assessments of other intervertebral disc disorders, lumbar region, sacroiliitis, not elsewhere classified, greater trochanteric bursitis of the left hip, myalgia, unspecified site, abdominal pain, unspecified abdominal location, and left groin pain.

Dr. Thomas T. Nguyen, an anesthesiologist, in a December 3, 2019 report, provided assessments of sacroiliitis and other bursitis, not elsewhere classified, low back pain, and segmental and somatic dysfunction of sacral region. He performed injections in the left SI joint and left greater trochanter bursa.

OWCP, by decision dated December 19, 2019, accepted appellant's claim for strain of muscle, fascia, and tendon of the abdomen. However, it denied expansion of the acceptance of the claim, finding that the medical evidence of record was insufficient to establish that her diagnosed conditions of other specified dorsopathies, radiculopathy, myalgia, and other intervertebral disc disorders of the lumbar region were causally related to the accepted October 24, 2019 employment injury.

OWCP subsequently received additional reports dated December 10, 2019 from Dr. Nguyen who continued to provide examination findings. Dr. Nguyen provided assessments of other spondylosis and other specified dorsopathies of the lumbar region. He advised that appellant sustained a work-related injury. Dr. Nguyen performed injections in the lumbar/sacral levels.

In reports dated November 15, 2019 through January 14, 2020, Dr. Jazini reiterated his prior diagnosis of abdominal and left groin pain, greater trochanteric bursitis of the left hip, other intervertebral disc disorders of the lumbar region, and myalgia. He further diagnosed other specified dorsopathies, radiculopathy, and other spondylosis of the lumbar region, myalgia, unspecified site, and left groin pain.

In a January 6, 2020 letter, Vincenta Tran, a physician assistant, noted that appellant could work with temporary restrictions three to four hours per day, five days per weeks, due to her current symptomatology.

Dr. Sommer Gbdlahad, a neurologist and pain management specialist, reported that an electromyogram/nerve conduction velocity study performed on January 8, 2020 was normal. He noted that there was no electrodiagnostic evidence of a lumbosacral radiculopathy, lumbosacral

plexopathy, focal neuropathy, diffuse polyneuropathy, or myopathy affecting the lower extremities. In a report of even date, Dr. Gbdlahad provided an assessment of spondylosis, lumbar region.

In a January 15, 2019 letter, Ms. Cameron indicated that appellant could work with temporary restrictions, three to four hours per day, five days per week, due to her current symptomatology.

In a November 7, 2019 report, Tara C. Villano, a physician assistant, diagnosed the accepted conditions of strain of muscle, fascia, and tendon of abdomen, subsequent encounter. She also diagnosed unspecified abdominal pain.

On January 17, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period January 6 through 17, 2020. In a time analysis form (Form CA-7a), she claimed one hour of leave without pay (LWOP) on January 6, 9, 13, and 15, 2020 and two hours of LWOP on January 8, 2020 due to a physician visit under the Family and Medical Leave Act (FMLA), totaling six hours.

Appellant also submitted a January 14, 2020 letter from Dr. Jazini who noted that, in addition to the accepted condition of strain of muscle, fascia, and tendon of the abdomen, she had other specified dorsopathies, radiculopathy, and other intervertebral disc disorders of the lumbar region, myalgia, sacroiliitis, not elsewhere classified, left groin pain, and greater trochanteric bursitis of the left hip. Dr. Jazini related that the diagnosed conditions were based on her history and physical examination findings. He further related that the objective findings included tenderness over the lumbar facet joints, sacroiliac joint, paraspinal musculature, and left greater trochanter, limited lumbar range of motion with pain in extension (facet loading), and weakness of the left gastric with repetitive calf raise motor testing. Dr. Jazini maintained that these clinical findings supported the diagnosed conditions despite normal-appearing anatomy on lumbar x-ray and MRI scan test results. He recommended further testing, including lumbar discography arthrograms, or other testing to obtain further information. Additionally, Dr. Jazini maintained that improvement of appellant's symptoms with steroid lidocaine injections at the left L4-5 and L5-S1 facet joints and separately at the left S1 joint and left greater trochanter were also objective findings to support these areas as generators of pain and inflammation. He requested that OWCP expand the acceptance of her claim to include the above-noted diagnoses. Dr. Jazini indicated that appellant was unable to perform full-duty work. He placed her on limited-duty status with a work schedule that included one day in the office and four days of telework due to her ongoing pain and dysfunction related to her lumbar conditions. Dr. Jazini maintained that appellant's conditions were separate from her abdominal symptoms that may be associated with her previous umbilical hernia repair. He further maintained that her abdominal condition would not cause the symptoms in her low back and legs. Dr. Jazini related that appellant had no lumbar problems prior to the accepted employment injury according to his review of her medical records.

In a November 7, 2019 report, Dr. Gelenidze reiterated his prior diagnosis of the accepted condition strain of muscle, fascia, and tendon of the abdomen, subsequent encounter. He also diagnosed unspecified abdominal pain. Dr. Gelenidze anticipated appellant's release to full-duty work on November 15, 2019.

In a November 13, 2020 report, Dr. Faiqa Mahmud, a Board-certified family practitioner, diagnosed the accepted condition strain of muscle, fascia, and tendon of the abdomen, subsequent encounter.

In a January 23, 2020 report, Dr. Mingilanti Tjahjana, a Board-certified internist, confirmed that appellant had no reported symptom or any abnormal physical finding related to abdominal or back/lumbar/spine.

OWCP, by decision dated January 29, 2020, denied the expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish that the additional claimed medical conditions of left groin pain, other intervertebral disc disorders, spondylosis, and radiculopathy, lumbar region, sacroiliitis, not elsewhere; myalgia, greater trochanteric bursitis of the left hip, segmental and somatic dysfunction of the sacral region, other bursitis of the left hip, not elsewhere classified, and other specified dorsopathies, lumbar region, were causally related to the accepted employment injury.

In a development letter of even date, OWCP advised appellant that her claim had only been accepted for strain of muscle, fascia, and tendon of the abdomen. It further advised her of the deficiencies of her wage-loss compensation claim. OWCP also explained that it will only reimburse up to four hours for medical appointments and advised her of the type of medical evidence necessary to establish her claim. It afforded appellant 30 days to submit the requested evidence.

OWCP subsequently received a January 21, 2020 letter from Dr. Jazini who reiterated his prior diagnoses and advised that appellant could work six hours per day, one to two days in the office and three to four days of telework per week. Dr. Jazini provided her work restrictions.

On January 30, 2020 appellant filed an additional Form CA-7 requesting wage-loss compensation for the period January 19 through February 1, 2020. In an accompanying Form CA-7a, she noted that she used 18 hours of LWOP during the period January 21 through 31, 2020 due to a physician visit under the FMLA.

In a February 6, 2020 report, Dr. Nguyen reiterated his prior assessments of low back pain and other specified dorsopathies, lumbar region. He also provided assessments of bilateral sacroiliitis. Dr. Nguyen again indicated that appellant sustained a work-related injury.

OWCP, by decision dated March 20, 2020, denied appellant's claim for disability from work during the period January 6 through 17, 2020 and continuing, finding that the medical evidence of record was insufficient to establish disability during the claimed period due to the accepted employment injury.

On May 22, 2020 OWCP referred appellant, together with the medical record, a statement of accepted facts (SOAF), and a set of questions, Dr. D. Burke Haskins, a Board-certified orthopedic surgeon, for a second opinion to determine whether the accepted condition had resolved or worsened and whether appellant had ongoing disability and any additional conditions caused by her accepted employment injury.

In a July 7, 2020 report, Dr. Haskins reviewed the SOAF and medical record. He noted the history of appellant's employment injury and her complaints of pain in her back, left buttock,

and lateral hip area, and similar pain on the right, but not as bad. Dr. Haskins reported normal findings on examination of appellant's gait, pelvis, and shoulders. He found pain in the lumbosacral region, sacroiliitis region, bilaterally, and both greater trochanters. Range of motion of the lumbar spine was full in flexion and extension with complaints of pain. Assessments of heel and toe when walking were normal. Strength was normal in both lower extremities. There was decreased sensation using a pinwheel on the lateral aspect of the left leg, posterior left calf, and plantar surface and dorsum of the left foot. Manual strength test was normal bilaterally. A Faber's sign and straight leg raising test were negative. A Lasegue's sign was negative bilaterally. Dr. Haskins diagnosed a history of lumbar strain, trochanteric bursitis, and resolved abdominal complaints. He noted that appellant's subjective complaints of numbness and complaints of decreased sensation in the left leg were not supported by the clinical studies of a normal lumbar spine MRI scan and normal nerve conduction studies. Dr. Haskins further noted that, although there was a history of lumbar strain, clinical studies did not support an ongoing condition. The lumbar strain was related by direct cause. Dr. Haskins indicated that he was unaware of a preexisting back condition. He advised that the diagnosed condition of trochanteric bursitis was active and based on history and was work related. Appellant had not reached maximum medical improvement regarding this condition. Dr. Haskins opined that she could return to her date-of-injury position as a supervisory economist on a full-time basis with restrictions due to her trochanteric bursitis work injury. He further advised that there was no need for further medical treatment. Dr. Haskins found that Dr. Jazini's diagnoses of other dorsopathies, radiculopathy, and other intervertebral disc disorder of the lumbar region were not causally related to the accepted employment injury. He explained that there was no evidence of dorsopathy of the lumbar region. Regarding Dr. Jazini's diagnosis of left hip trochanteric bursitis, Dr. Haskins again noted that there was left hip trochanteric bursitis based on physical examination findings. He also explained that there was no evidence of radiculopathy based on a normal lumbar spine MRI scan and neurodiagnostic studies. Additionally, there was no supplied evidence of intervertebral disc disorder. Based on history, the abdominal muscle strain had resolved. Dr. Haskins noted that the umbilical hernia condition was outside his professional expertise. In a July 14, 2020 work capacity evaluation (Form OWCP-5c), he reiterated that appellant was unable to perform her usual job without restriction due to pain and loss of function and that she could work eight hours per day. Dr. Haskins noted that the work restrictions would apply for six months.

On August 12, 2020 OWCP requested that Dr. Haskins explain how trochanteric bursitis was related to the accepted employment-related abdominal injury, why he provided work restrictions due to trochanteric bursitis, a condition which had not been accepted as work related, and how a history of lumbar strain was related by direct cause.

In a response letter dated August 27, 2020, Dr. Haskins explained that his diagnoses of trochanteric bursitis and lumbar strain were causally related to the accepted employment injury based on examination findings and appellant's history. He indicated that if OWCP did not accept these conditions as work related, then she could return to full-time unrestricted work.

OWCP, by decision dated September 25, 2020, expanded the acceptance of appellant's claim to include trochanteric bursitis of the left hip.

OWCP subsequently received a July 13, 2020 progress note and July 22, 2020 report from Dr. Steven Papuchis, an osteopath specializing in pain management, provided assessments of tendinopathy of right and left gluteus medius, sacroiliac joint dysfunction of the left side,

spondylosis of the lumbar region without myelopathy or radiculopathy, and degenerative labral tear of the hip.

On October 15, 2020 appellant, through counsel, requested reconsideration of the January 29 and March 20, 2020 decisions.

In a September 27, 2019 work note, Dr. Ansher noted appellant's 20-pound lifting restriction until October 30, 2019.

By decision dated December 3, 2020, OWCP denied modification of the January 29 and March 20, 2020 decisions.

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.⁴

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.⁶ 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.⁷

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.⁸ OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁹

ANALYSIS -- ISSUE 1

The Board finds that this 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 additional medical conditions causally related to the accepted October 24, 2019 employment injury.

⁴ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *Id.*

⁸ 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

⁹ 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

In reports dated November 15, 2019 through January 14, 2020 and a November 26, 2019 letter, Dr. Jazini diagnosed abdominal and left groin pain, other intervertebral disc disorders of the lumbar region, sacroiliitis, not elsewhere classified, myalgia, unspecified site, and other specified dorsopathies, radiculopathy, and other spondylosis of the lumbar region. In the November 26, 2019 letter, he explained that repetitive lifting of multiple files over several hours directly caused appellant's lumbar intervertebral disc disorder, sacroiliitis, myalgia, and left groin and abdominal pain. Dr. Jazini maintained that despite normal-appearing anatomy on lumbar x-ray and MRI scan test results, his opinion was supported by her history and objective findings, which included tenderness over the lumbar facet joints, sacroiliac joint, paraspinal musculature, and left greater trochanter, limited lumbar range of motion with pain in extension (facet loading), and weakness of the left gastroc with repetitive calf raise motor testing.

OWCP referred appellant to Dr. Haskins for a second opinion examination. In an October 7, 2020 report, Dr. Haskins found that Dr. Jazini may have diagnosed other dorsopathies, radiculopathy, and other intervertebral disc disorder of the lumbar region, but he observed no such findings on physical examination or diagnostic testing. He related that appellant had sustained an employment-related lumbar sprain, that her lumbar sprain had resolved. Dr. Haskins found that the additional conditions Dr. Jazini diagnosed were not employment related. Additionally, He noted that the accepted abdominal muscle strain had resolved.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.¹⁰ Dr. Haskins and Dr. Jazini both diagnosed lumbar conditions, which they related were related to appellant's accepted employment injury. However, they disagreed regarding the exact diagnosis, and whether she had continuing findings of a lumbar condition. The Board, therefore, finds that a conflict exists between Dr. Jazini and Dr. Haskins regarding expansion of the acceptance of appellant's claim to include additional conditions causally related to the accepted employment injury.

On remand, OWCP shall refer appellant to an IME, pursuant to 5 U.S.C. § 8123(a), to determine whether the acceptance of her claim should be expanded to include the additional diagnosed conditions.¹¹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹²

CONCLUSION

The Board finds that the case is not posture for decision regarding whether appellant has met her burden of proof to expand the acceptance of her claim to include additional medical conditions causally related to the accepted October 24, 2019 employment injury.

¹⁰ See *M.R.*, Docket No. 21-0219 (issued May 25, 2022); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

¹¹ See *M.R.*, *id.*; *L.C.*, Docket No. 20-0866 (issued February 26, 2021); *S.N.*, Docket No. 19-1050 (issued July 31, 2020); *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

¹² In light of the Board's disposition regarding Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2020 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: September 2, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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