

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

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<b>D.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0323</b>
	)	<b>Issued: September 26, 2022</b>
<b>DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, THE METROPOLITAN CORRECTIONAL CENTER, NEW YORK, New York, NY, Employer</b>	)	
_____	)	

*Appearances:*  
Shannon Bravo, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On December 30, 2021 appellant filed a timely appeal from an October 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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 an 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the October 8, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

## ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to the accepted May 5, 2020 employment injury.

## FACTUAL HISTORY

On May 6, 2020 appellant, then a 47-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on May 5, 2020 he sustained neck and back injuries when he passed through a check point at work and his vehicle came to a violent stop while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx817.<sup>4</sup>

In a report dated May 27, 2020, Dr. Allen Wilkins, a Board-certified physiatrist, discussed appellant's reporting of a "May 6, 2020" employment incident when a steel security gate malfunctioned and lifted his vehicle off the pavement. Appellant complained of neck, lower back, and bilateral leg pain due to the incident. Dr. Wilkins detailed the findings of the physical examination, including a positive Spurling's test demonstrating cervical radicular pain. He noted that examination of the right shoulder revealed no swelling, atrophy, or tenderness. Dr. Wilkins diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; and lumbar radiculopathy.

In a June 6, 2020 attending physician's report (Form CA-20), Dr. Wilkins referenced the malfunctioning of the security gate on an unspecified date. He diagnosed cervical spine strain and low back injury. Dr. Wilkins checked a "Yes" box indicating that appellant's conditions were related to the reported employment activity and provided the notation, "injuries caused by impact of vehicle with pavement [and] steel barricade." He found total disability from May 6 through June 24, 2020.

By decision dated July 28, 2020, OWCP denied appellant's claim, finding that he had not submitted sufficient factual evidence to establish that the injury arose during the course of employment and within the scope of compensable work factors.

On August 3, 2020 appellant requested a telephone hearing before a representative of OWCP's Branch of Hearings and Review. A telephone hearing was held on October 5, 2020.

Appellant submitted additional medical evidence, including June 10 and July 15, 2020 reports from Dr. Wilkins who again indicated that appellant complained of neck, lower back, and bilateral leg pain due to a May 6, 2020 employment incident. He diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; and lumbar radiculopathy.

In a July 17, 2020 report, Dr. Howard M. Baruch, a Board-certified orthopedic surgeon, discussed the May 5, 2020 employment incident and diagnosed lumbago and cervicalgia.

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<sup>4</sup> Appellant filed claims for other employment injuries, including a claim for a September 12, 2013 back injury, which OWCP denied, assigned OWCP File No. xxxxxx675; a claim for a June 20, 2017 low back injury, which OWCP denied, assigned OWCP File No. xxxxxx569; and a September 20, 2019 injury OWCP accepted for left wrist sprain/contusion and left carpal tunnel syndrome, assigned OWCP File No. xxxxxx512. OWCP administratively combined OWCP File Nos. xxxxxx675, xxxxxx817, xxxxxx569, and xxxxxx512, and designated the latter as the master file.

In an undated Form CA-20, Dr. Wilkins referenced the malfunctioning of the steel security gate as occurring on May 5, 2020. He diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; and lumbar radiculopathy. Dr. Wilkins checked a “Yes” box indicating that the diagnosed conditions were related to the reported employment activity.

By decision dated December 18, 2020, OWCP’s hearing representative set aside OWCP’s July 28, 2020 decision and remanded the case for further development of the factual evidence.

After such development, OWCP issued a January 15, 2021 decision in which it denied appellant’s claim for a May 5, 2020 employment injury, finding that he had not submitted sufficient factual evidence to establish that the injury arose during the course of employment and within the scope of compensable work factors.

OWCP then referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination with Dr. Robert DeFalco, Jr., a Board-certified orthopedic surgeon. It requested that he address whether appellant had work-related disability and residuals. In a December 10, 2020 report, Dr. DeFalco diagnosed right shoulder strain, resolved, cervical strain, resolved, and disc bulges at L3-4, L4-5 and L5-S1, as seen on a magnetic resonance imaging (MRI) scan of the lumbar spine.

Appellant submitted a June 10, 2021 report in which Dr. Wilkins indicated that appellant complained of neck, lower back, and bilateral leg pain due to a May 6, 2020 employment incident. Dr. Wilkins diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; and lumbar radiculopathy.

By decision dated May 14, 2021, OWCP vacated its January 15, 2021 decision and accepted appellant’s claim for a lumbar radiculopathy and resolved sprain of cervical spine ligaments.<sup>5</sup> In this decision, it also determined that appellant failed to establish a right shoulder strain and disc bulges at L3-4/L5-S1 as employment related.

On June 7, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review in connection with the May 14, 2021 decision, which denied his claim for acceptance of additional conditions causally related to the accepted May 5, 2020 employment injury. Counsel argued that the acceptance of appellant’s claim should be expanded to include several additional conditions, including a right shoulder strain and disc bulges at L3-4/L5-S1.

Appellant submitted additional medical evidence. In a May 10, 2021 report, Dr. Chris E. Thomas, a Board-certified physiatrist, referenced the May 5, 2020 accident and diagnosed lumbar radiculopathy and low back pain.

In a June 19, 2021 report, Dr. Wilkins diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; and lumbar radiculopathy. In an August 14, 2021 report, he diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; lumbar radiculopathy; and injury of right rotator cuff muscle or tendon.

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<sup>5</sup> OWCP paid appellant wage-loss compensation for disability on the supplemental rolls, on a retroactive basis, commencing June 20, 2020, and on the periodic rolls, commencing October 10, 2021.

In an August 5, 2021 report, Dr. Wesam Mohamed, a Board-certified orthopedic surgeon, referenced the May 5, 2020 employment incident. He diagnosed lumbar sprain/strain; possible lumbar radiculopathy versus lumbar facet syndrome versus lumbar discogenic pain; possible coccyx pain; and possible lumbar myofascial pain with trigger point. Dr. Mohamed indicated that these diagnoses were “related to work injury.”

Following a preliminary review, by decision dated August 19, 2021, OWCP’s hearing representative set aside the May 14, 2021 decision and remanded the case to OWCP for further development of the question as to whether the acceptance of appellant’s claim should be expanded to include a right shoulder strain, disc bulges at L3-4/L5-S1, or some other previously unaccepted condition causally related to the May 5, 2020 employment injury, to be followed by a *de novo* decision.

By decision dated August 27, 2021, OWCP provided further discussion of the medical evidence submitted by appellant and determined that appellant’s claim for a May 5, 2020 employment injury was only accepted for a lumbar radiculopathy and resolved sprain of cervical spine ligaments. Thereby, it determined that appellant failed to establish that the acceptance of his claim should be expanded to include additional conditions causally related to the accepted May 5, 2020 employment injury.<sup>6</sup>

By decision dated October 8, 2021, OWCP determined that appellant’s claim for a May 5, 2020 employment injury was only accepted for a lumbar radiculopathy and resolved sprain of cervical spine ligaments, and that appellant failed to establish that expansion of the acceptance of his claim should include additional conditions causally related to the accepted May 5, 2020 employment injury.

### **LEGAL PRECEDENT**

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>7</sup> The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

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<sup>6</sup> On September 17, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP’s Branch of Hearing and Review. In an October 7, 2021 informational letter, OWCP advised appellant that the case was not in posture for a review of the written record.

<sup>7</sup> *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>8</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

## 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 the accepted May 5, 2020 employment injury.

Appellant submitted a June 6, 2020 Form CA-20 in which Dr. Wilkins referenced the malfunctioning of the steel security gate on an unspecified date. He diagnosed cervical spine strain and low back injury. Dr. Wilkins checked a “Yes” box indicating that the diagnosed conditions were related to the reported employment activity and provided the notation, “injuries caused by impact of vehicle with pavement and steel barricade.” He found total disability from May 6 through June 24, 2020. In an undated Form CA-20 received by OWCP on September 16, 2020, Dr. Wilkins referenced the malfunctioning of the steel security gate as occurring on May 5, 2020. He diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; and lumbar radiculopathy. Dr. Wilkins checked a “Yes” box indicating that the diagnosed conditions were related to the reported employment activity.

Appellant’s burden of proof regarding his expansion claim includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.<sup>9</sup> In the above-noted reports, Dr. Wilkins diagnosed some medical conditions, which OWCP had not accepted as related to the May 5, 2020 employment incident. However, he failed to provide sufficient rationale for his opinion on causal relationship. The Board has held that when a physician’s opinion on causal relationship consists only of checking “Yes” to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.<sup>10</sup> As such, these reports of Dr. Wilkins are insufficient to establish appellant’s expansion claim.

Appellant submitted an August 5, 2021 report from Dr. Mohamed who referenced the May 5, 2020 employment incident. Dr. Mohamed diagnosed lumbar sprain/strain; possible lumbar radiculopathy *versus* lumbar facet syndrome versus lumbar discogenic pain; possible coccyx pain; and possible lumbar myofascial pain with trigger point. He indicated that these diagnoses were “related to [the] work injury.” The Board notes that this report is of limited probative value regarding appellant’s expansion claim. Although Dr. Mohamed provided an opinion on causal relationship, he failed to provide medical rationale in support of that opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/level of disability has an employment-related cause.<sup>11</sup> Therefore, this report is insufficient to establish appellant’s expansion claim.

Appellant submitted reports, dated May 27, June 10, and July 15, 2020, and April 17 and June 19, 2021, in which Dr. Wilkins referenced a “May 6, 2020” malfunctioning of a steel security gate and diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; and lumbar radiculopathy. In an August 14, 2021 report, Dr. Wilkins diagnosed cervical spine ligaments sprain; injury of muscle, fascia, and tendon of the lower back; lumbar

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<sup>9</sup> *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34ECAB 379, 381 (1982).

<sup>10</sup> *Id.*

<sup>11</sup> *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

radiculopathy; and injury of right rotator cuff muscle or tendon. In a July 17, 2020 report, Dr. Baruch discussed the May 5, 2020 employment incident and diagnosed lumbago, cervicgia, lumbar pain, and cervical pain. In a May 10, 2021 report, Dr. Thomas referenced the May 5, 2020 employment incident and diagnosed lumbar radiculopathy and low back pain.

The Board finds that these reports are of no probative value regarding appellant's expansion claim. Although some of the reports reference the accepted May 5, 2020 employment incident and contain diagnoses that have not been accepted by OWCP, the reports do not contain an opinion that the conditions are causally related to the accepted employment incident. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>12</sup> Therefore, these reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between his claimed additional work-related conditions and the accepted May 5, 2020 employment injury, he has not met his burden of proof regarding his expansion claim.

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 appellant has not met his burden of proof to expand the acceptance of his claim to include additional conditions causally related to the accepted May 5, 2020 employment injury.

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<sup>12</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 26, 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