

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

G.P., Appellant	)	
	)	
and	)	Docket No. 21-0095
	)	Issued: April 7, 2023
U.S. POSTAL SERVICE, BROOKHOLLOW STATION, Dallas, TX, Employer	)	
	)	

*Appearances:*  
Capp Taylor, 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 October 28, 2020 appellant, through his representative, filed a timely appeal from a September 14, 2020 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 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 issuance of the September 14, 2020 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 his burden of proof to expand acceptance of his claim to include additional medical conditions as causally related to the accepted July 17, 2014 employment injury; and (2) whether OWCP abused its discretion by denying appellant's request for authorization of cervical epidural steroid injection (CESI).

## **FACTUAL HISTORY**

On July 18, 2014 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his right hand when he slipped and fell on July 17, 2014 while in the performance of duty. He stopped work on July 22, 2014 and returned to work on July 30, 2014. On July 30, 2015 OWCP accepted this claim for sprain of the right rotator cuff, and right-hand contusion.

On August 21, 2014 Dr. Steven B. Sanders, a Board-certified orthopedic surgeon, examined appellant due to his July 17, 2014 employment injury. He diagnosed right hand and finger pain. In an January 14, 2015 report, Dr. Sanders noted that appellant gradually developed right shoulder pain beginning July 18, 2014 and diagnosed right-hand contusion and right shoulder impingement syndrome. On May 15, 2015 he noted that appellant had slipped and fallen, landing on his right shoulder and hand. Dr. Sanders reported that appellant had no cervical pain, but some occasional right fifth finger numbness. He noted that appellant had previously undergone L5-S1 fusion.

On February 15, 2016 appellant underwent a magnetic resonance imaging (MRI) scan of his cervical spine which demonstrated cervical spondylosis with multilevel canal stenosis and foraminal stenosis from C5-7.

On July 28, 2016 Dr. Muhammad Zulqarnain, a Board-certified anesthesiologist, diagnosed cervical radiculopathy. He noted that appellant was experiencing neck pain which radiated down to both upper extremities with numbness of the fourth and fifth fingers. Dr. Zulqarnain performed a CESI.

On August 23, 2016 Dr. Zulqarnain requested authorization for additional CESI.

In an August 31, 2016 development letter, OWCP noted that the request for authorization of CESI could not be approved without an explanation as to how the need for the procedure requested was causally related to the accepted employment conditions.

In notes dated August 25 through December 15, 2016, Dr. Zulqarnain noted that appellant presented with ongoing complaints of neck pain radiating into his upper extremities and back pain radiating to his hips. He diagnosed cervicgia, pain in the left shoulder, low back pain, radiculopathy cervicothoracic region, adjustment disorder, and sleep disorder. Dr. Zulqarnain

prescribed a CESI and recommended a steroid injection; however, this treatment was declined as appellant's back pain was found to be unrelated to his workers' compensation claim.<sup>4</sup>

On January 5, 2017 appellant filed a claim for compensation (Form CA-7) for disability from work for the period November 12 through December 23, 2016.

By decision dated February 23, 2017, OWCP denied appellant's claim for compensation.

On January 19, 2017 Dr. Yong T. Pak, a Board-certified physiatrist, examined appellant due to neck, back, and bilateral shoulder pain. She noted that the onset of symptoms was associated with an injury at work. Dr. Pak diagnosed cervical radiculopathy, lumbar radiculitis, and postlaminectomy syndrome following a 2006 L4-5 fusion. She prescribed physical therapy.

Dr. Zulqarnain completed a narrative report on February 13, 2017 and described appellant's history of injury on July 17, 2014. He asserted that appellant experienced an injury to his neck and shoulders, which he reported on March 12, 2016. Dr. Zulqarnain again recommended CESI. In notes dated March 9 and April 6, 2017, he diagnosed cervical radiculopathy and lumbago.

On June 15, 2017 appellant requested reconsideration of the February 23, 2017 decision.

By decision dated August 21, 2017, OWCP denied modification of its prior decision.

On May 4 and 31, July 27, and September 27, 2017 Dr. Zulqarnain continued to diagnose cervical radiculopathy and to recommend CESI.

In an October 5, 2017 letter, OWCP denied appellant's request for CESI as it noted that the accepted July 17, 2014 employment injury did not include a cervical condition.

Dr. Zulqarnain completed notes on October 27 and November 29, 2017 as well as January 29 and March 1, 2018, repeating his diagnoses and recommendations.

On November 13, 2017 and April 15, 2018 appellant, through his representative, requested that OWCP expand the acceptance of appellant's claim to include cervical disc displacement.

In an April 19, 2018 development letter, OWCP requested additional medical evidence supporting causal relationship between appellant's accepted July 17, 2014 employment injury and his additional diagnosed conditions. It afforded 30 days for a response.

In a note dated March 30, 2018, Dr. Zulqarnain diagnosed cervical radiculopathy, right rotator cuff tear, contusion of the right hand, low back pain, lumbar radiculopathy, and bilateral shoulder pain.

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<sup>4</sup> In OWCP File No. xxxxxx523, OWCP accepted appellant's traumatic injury claim for closed dislocation of lumbar vertebra and authorized a transpedicular decompression at L5-S1. It has not administratively combined that claim with the current claim.

On April 19, 2018 appellant requested reconsideration of the August 21, 2017 decision. In a statement of even date he asserted that he experienced pain in his shoulders and arms, as well as numbness in his fifth fingers as a result of a disc problem in his neck.

In an October 30, 2017 note, Dr. Zulqarnain reported that he first examined appellant on March 12, 2016 due to his July 17, 2014 employment injury. He noted that at that time appellant reported an injury to the neck and shoulders. Dr. Zulqarnain recommended a CESI. He repeated his prior diagnoses and recommendations on April 27, 2018. Dr. Zulqarnain explained that at the time of appellant's initial injury the diagnosis was a sprain, but that later testing demonstrated a herniated disc causing cervical radiculopathy. He further noted that appellant's initial diagnosis was based on an evaluation by a physical therapist. Dr. Zulqarnain reported that, prior to the injury, appellant did not have cervical symptoms and that this was the only proof that this pain was related to his injury, resulting in at least deterioration of his cervical condition.

On June 6, 2018 OWCP denied appellant's request for a CESI as his claim was not accepted for a cervical condition.

By decision dated July 6, 2018, OWCP denied modification of its prior decisions.

Dr. Zulqarnain completed a series of reports dated July 26, 2018 through February 19, 2019, diagnosing cervical radiculopathy, right hand contusion, right rotator cuff tear, low back pain, lumbar radiculopathy, and bilateral shoulder pain. He continued to recommend CESI.

In a letter dated February 27, 2019, OWCP denied authorization of CESI as there was no explanation as to how the need for the requested procedure was causally related to the accepted July 17, 2014 employment conditions.

Dr. Zulqarnain submitted treatment notes dated March 19 and April 16, 2019, relating that appellant's chronic cervical pain had increased and recommending CESI. He diagnosed cervical radiculopathy, right-hand contusion, right rotator cuff tear, low back pain, lumbar radiculopathy, and bilateral shoulder pain.

In a letter dated June 12, 2019, OWCP denied authorization for CESI.

In a July 5, 2019 report, Dr. Zulqarnain noted examining appellant due to chronic cervical pain in the C5 and C6 nerve distributions. He continued to recommend a CESI. Dr. Zulqarnain diagnosed cervical radiculopathy, bilateral shoulder pain, cervical spondylosis, low back pain, lumbar radiculopathy, chronic pain syndrome, and spinal stenosis of the cervical region.

By decision dated August 5, 2019, OWCP denied appellant's request for CESI as the medical evidence did not support that the treatment was medically necessary to treat the effects of the employment-related conditions. It noted that his July 17, 2014 employment injury was accepted for right rotator cuff sprain, and right-hand contusion.

In an August 2, 2019 report, Dr. Zulqarnain repeated his prior diagnoses and recommendations for treatment. He diagnosed additional conditions of chronic pain syndrome, brachial neuritis, and displacement of cervical intervertebral disc without myelopathy. Dr. Zulqarnain opined that appellant's neck pain radiating mainly to the left upper extremity in the C5-6 distribution started after he was injured at work. He again recommended CESI. In reports

dated September 10, 2019 through April 14, 2020, Dr. Zulqarnain repeated his findings and conclusions.

In a narrative report and treatment notes dated June 11, 2020, Dr. Zulqarnain described appellant's July 17, 2014 employment incident alleging that appellant fell on his outstretched right upper extremity injuring his right hand, shoulder, and upper arm. He related that appellant's neck and bilateral upper extremity pain began shortly after his July 17, 2014 fall. Dr. Zulqarnain reviewed a February 15, 2016<sup>5</sup> MRI scan and found both right and left foraminal stenosis at C5-6, cervical spondylosis at C5-7, and foraminal stenosis at C6-7 and noted appellant's symptoms were consistent his findings on MRI scan. He opined that the force generated by falling on the outstretched upper extremity would put sufficient stress or sudden pressure on the cervical spine to produce the narrowing or stenosis as depicted on MRI scan. Dr. Zulqarnain further opined that the osteophytic condition more than likely developed as a result of the same traumatic injury or may have been somewhat preexisting, but aggravated by the fall. He found that appellant's spinal stenosis of the cervical spine was caused by the July 17, 2014 fall. Dr. Zulqarnain explained that due to the injury the openings in the cervical spine with nerve roots were narrowed, foraminal stenosis, and that the requested CESI were designed to alleviate the swelling and inflammation of the nerve roots to reduce compression, alleviate pain, and partially restore function of the upper extremities.

In a June 15, 2020 letter, appellant, through his representative, requested that OWCP expand the accepted conditions to include bilateral cervical foraminal stenosis at C5-6, cervical spondylosis with multi-level canal stenosis at C5-7, and multi-level foraminal stenosis at C6-7 based on Dr. Zulqarnain's June 11, 2020 report.

On June 16, 2020 appellant, through his representative requested reconsideration.

Dr. Zulqarnain continued to submit treatment notes dated April 28, June 11, July 10, and August 7, 2020, repeating his diagnoses and recommendations.

By decision dated September 14, 2020, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

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.<sup>6</sup>

To establish causal relationship, the employee must submit rationalized medical opinion evidence.<sup>7</sup> 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

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<sup>5</sup> Dr. Zulqarnain mentioned a February 15, 2018 cervical MRI scan, but this appears to be a typographical error.

<sup>6</sup> *D.H.*, Docket No. 19-0687 (issued March 31, 2021); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

the accepted employment injury.<sup>8</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

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

Appellant requested that OWCP accept additional conditions including bilateral cervical foraminal stenosis at C5-6, cervical spondylosis with multi-level canal stenosis at C5-7, and multi-level foraminal stenosis at C6-7 as causally related to the July 17, 2014 employment injury.

On June 11, 2020 Dr. Zulqarnain diagnosed right and left foraminal stenosis at C5-6, cervical spondylosis at C5-7, and foraminal stenosis at C6-7 as demonstrated by MRI scan study. He opined that the force generated when appellant fell on his outstretched upper extremity on July 17, 2014 would have put sufficient stress or sudden pressure on the cervical spine to produce the narrowing or stenosis as depicted on MRI scan. Dr. Zulqarnain further opined that the osteophytic condition more than likely developed as a result of the same traumatic injury or may have been somewhat preexisting, but aggravated by the fall. He concluded that appellant's spinal stenosis of the cervical spine was caused by the July 17, 2014 fall.

The Board finds that, although Dr. Zulqarnain's reports are insufficient to discharge appellant's burden of proof that the diagnosed cervical conditions were caused or aggravated by the accepted July 17, 2014 employment injury, his reports constitute substantial evidence in support of appellant's claim and provide sufficient rationale to require further development of the case record by OWCP.<sup>10</sup> Dr. Zulqarnain provided a detailed history of injury, referenced objective medical reports demonstrating injury, expressed his opinion on causal relationship within a reasonable degree of medical certainty, and provided an explanation as the cause of appellant's diagnosed cervical conditions. His opinion raises an inference of causal relationship sufficient to require further development of the case record by OWCP.<sup>11</sup>

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>12</sup>

The case shall therefore be remanded for OWCP to refer appellant, the case record, and a statement of accepted facts to a specialist in the appropriate field of medicine for an evaluation

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<sup>8</sup> *L.P.*, Docket No. 20-0609 (issued October 15, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *J.L.*, Docket No. 20-0717 (issued October 15, 2020); *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> *D.H.*, *supra* note 5; *B.F.*, Docket No. 20-0990 (issued January 13, 2021); *Y.D.*, Docket No. 19-1200 (issued April 6, 2020).

<sup>11</sup> *A.D.*, Docket No. 20-0758 (issued January 11, 2021); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>12</sup> *C.R.*, Docket No. 20-1102 (issued January 8, 2021); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

and a rationalized medical opinion on whether his accepted work conditions caused, contributed to, or aggravated his diagnosed cervical conditions. If the physician opines that a diagnosed cervical condition is not causally related to the accepted employment injury, he or she must explain with rationale how or why their opinion differs from that of Dr. Zulqarnain. Following this and other such further 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 a decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 14, 2020 decision of the Office of Workers' Compensation Programs is set aside and remanded for proceedings consistent with this decision of the Board.

Issued: April 7, 2023  
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

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