

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

## **ISSUE**

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to, or as a consequence of, her accepted employment injuries.

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 26, 2005 appellant, then a 42-year-old part-time regular mail processor, filed an occupational disease claim (Form CA-2) alleging that she sustained an aggravation of a prior right wrist injury resulting in pain and swelling of her left wrist due to repetitive work activities. She initially became aware of the conditions and related them to factors of her federal employment on October 4, 2005. OWCP accepted the claim, assigned OWCP File No. xxxxxx360, for tenosynovitis of the left hand and wrist, and right carpal tunnel syndrome. Appellant stopped work on December 7, 2005.

OWCP previously accepted that on September 29, 1996 appellant sustained a right wrist sprain and other tenosynovitis of the right wrist and hand under OWCP File No. xxxxxx248. It subsequently accepted appellant's July 2007 occupational disease claim, assigned OWCP File No. xxxxxx464, for other tenosynovitis of the left hand and wrist and left carpal tunnel syndrome, and her October 2007 occupational disease claim for right thumb trigger finger, assigned OWCP File No. xxxxxx937. OWCP administratively combined appellant's claims with the current case file, OWCP File No. xxxxxx360, serving as the master file number.

By decision dated March 24, 2009, OWCP reduced appellant's compensation effective that date based on its finding that she had the capacity to perform the constructed position of customer complaint clerk.

Appellant elected retirement benefits from the Office of Personnel Management (OPM) effective July 21, 2017.

In a report dated December 23, 2019, Dr. Jason Chen, a Board-certified internist, evaluated appellant for bilateral recurrent carpal tunnel syndrome and bilateral arthritis of the knees. He noted that she advised that her knee pain was unrelated to her workers' compensation injury. In an addendum dated December 24, 2019, Dr. Samuel J. Chmell, an attending Board-certified orthopedic surgeon, advised that he was "present for the history-taking and the physical examination" and concurred with Dr. Chen's findings.

On February 17, 2020 Dr. Chmell noted that appellant had accepted employment injuries to her upper extremities that had begun in 1996. He indicated that appellant related that her restrictions were not always followed, that she was harassed, and that she thus sustained depression

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<sup>3</sup> Docket No. 11-2009 (issued July 9, 2012).

and anxiety, which caused overeating and severe obesity. Dr. Chmell advised that she asserted that her obesity caused arthritis of the low back, hips, and knees.

On May 5 and August 11, 2020 counsel requested that OWCP expand its acceptance of the claim to include arthritis of the low back, hips, and knees.

In a development letter dated September 15, 2020, OWCP advised appellant that it had reviewed the evidence from her master and subsidiary files and had not found a statement addressing how the claimed condition of arthritis of the hips, knees, and low back were causally related to her accepted upper extremity conditions. It requested that she submit a detailed statement addressing the causal relationship between her claimed conditions and her accepted employment injuries and medical records regarding her treatment for these conditions. OWCP afforded appellant 30 days to provide the requested information.

In a statement dated October 6, 2020, appellant attributed her back, hips, and knee condition to “harassment, embarrassment, humiliation and anxiety” that she experienced while working at the employing establishment. She related that this caused obesity and unhealthy eating which “caused the above conditions/injuries.”

On December 10, 2020 Dr. Chmell discussed appellant’s continued symptoms of numbness and tingling in the hands, particularly at night.

On February 19, 2021 counsel requested an update on appellant’s request to expand the acceptance of her claim. In a response dated March 18, 2021, OWCP referred counsel to the information contained in its September 15, 2020 development letter and noted that appellant’s October 6, 2020 statement did not address the information requested in its September 15, 2020 development letter.

On April 19, 2022 OWCP informed appellant that she did not have an approved emotional condition claim and thus any claimed consequential injuries for such a condition would not be considered.

By decision dated May 4, 2022, OWCP denied appellant’s request to expand the acceptance of her claim to include additional conditions of arthritis to her knees, hips, and back as causally related to her accepted employment injuries.

On May 16, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

On May 26, 2022 Dr. Chmell advised that appellant had injured her hands and wrists while working for the employing establishment. He asserted that her carpal tunnel syndrome resulted in work restrictions. Dr. Chmell related, “[Appellant] sustained harassment, embarrassment, humiliation and anxiety due to her accepted work-related injuries to her hands and wrists. These problems led to her obesity and unhealthy eating habits which led to aggravation of arthritis in her knees, back and hips.” Dr. Chmell requested that OWCP expand the acceptance of the claim to include an aggravation of osteoarthritis of the hips, knees, and back.

A telephonic hearing was held on September 1, 2022. Appellant testified that at an unspecified time after her employment injuries she returned to work in the nixie unit and later as a bar code sorter performing light duty. She advised that she was ostracized and humiliated due to her “weight gain and mental state.” Appellant related that if she took a break a supervisor often called her on the intercom. OWCP’s hearing representative advised counsel that it appeared that she was claiming a new occupational disease due to stress as she attributed her condition to employment factors rather than the accepted conditions. Counsel advised that he would explore filing a separate occupational disease claim for an emotional condition.

In a report dated September 9, 2022, Dr. Chmell discussed appellant’s continued complaints of low back pain and pain in her hips and knees. He related that while working with restrictions due to her hand and wrist injuries she had experienced harassment, humiliation, and anxiety due to her accepted employment injuries which resulted in obesity and an aggravation of arthritis in the back, knees, and hips. Dr. Chmell noted that appellant had lost weight after the harassment ended. He recommended that OWCP expand its acceptance of the claim to include an aggravation of osteoarthritis of the knees, back, and hips.

In an August 29, 2022 progress report, Dr. Neal Naveen, an orthopedic surgeon, discussed appellant’s symptoms of carpal tunnel syndrome and pain primarily in the left knee with some mild pain in the left hip. He recommended physical therapy. Dr. Chmell cosigned the report on August 30, 2022.

By decision dated October 26, 2022, OWCP’s hearing representative affirmed the May 4, 2022 decision.

On December 1, 2022 Dr. Chmell reported that while working in the nixie unit at the employing establishment as a result of appellant’s accepted employment-related upper extremity conditions, she experienced harassment, embarrassment, anxiety, and humiliation that caused unhealthy eating and weight gain, which in turn resulted in an aggravation of osteoarthritis of the hips and knees and an aggravation of lumbar arthritis and degenerative disc disease.<sup>4</sup> He related, “Whether the aggravation of arthritis in the lumbar spine, hips, and knees represents a new claim or consequential conditions needs to be determined by the parties involved.”

On February 2, 2023 Dr. Chmell asserted that appellant had developed an eating disorder when she was harassed at work while working limited duty as a result of her accepted injuries to her upper extremities. He referenced medical literature supporting that weight gain aggravated osteoarthritis of the knees, hips, and back. Dr. Chmell noted that appellant had gained over 100 pounds during this time, which she had now lost. He opined that the aggravation of osteoarthritis was an “injury consequential to her accepted work-related conditions....”

On February 22, 2023 appellant, through counsel, requested reconsideration. Counsel submitted affidavits from coworkers discussing appellant’s mental health and management’s negative references.

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<sup>4</sup> Appellant received treatment for carpal tunnel syndrome and pain in her knees, hips and low back on May 23 and November 21, 2022.

By decision dated March 1, 2023, OWCP denied modification of its October 26, 2022 decision.

### **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>5</sup>

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup> The opinion of the physician must be one of reasonable certainty, and must explain the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>7</sup>

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to, or as a consequence of, her accepted employment injuries.

On May 5, 2020 counsel requested that OWCP expand its acceptance of her claim to include arthritis of the low back, hips, and knees. In a statement dated October 6, 2020, appellant related that she experienced harassment, anxiety, and humiliation working for the employing establishment, which caused unhealthy eating and obesity that resulted in arthritis of her low back, hips, and knees. At the September 1, 2022 telephonic hearing, she testified that after sustaining employment injuries to her hands, she worked in the nixie unit and as a bar code sorter. Coworkers humiliated appellant and treated her as an outsider, and she was paged on a loudspeaker if she left her unit.

Initially, the Board notes that, to the extent that appellant is claiming an emotional condition due to harassment while performing her modified work duties, this would constitute a new claim.

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<sup>5</sup> *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>6</sup> *B.W.*, Docket No. 21-0536 (issued March 6, 2023); *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

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

<sup>8</sup> *See D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

An emotional condition due to chronic pain and limitations resulting from an employment injury is compensable under FECA only if the employee establishes through rationalized medical evidence that the condition is causally related to the accepted injury.<sup>9</sup> Appellant, however, has not specifically attributed the alleged harassment and humiliation to her accepted employment injuries or maintained that the harassment occurred as a result of her injuries or modified work status. Instead, she generally described incidents that she alleged constituted harassment and that occurred at a time when she worked in a particular assignment. This would constitute a new claim necessitating separate factual development.

The Board further finds that the medical evidence is insufficient to support that the acceptance of appellant's claim should be expanded. As previously noted, to establish a consequential injury the medical evidence must establish that the consequentially claimed condition was a direct and natural result of a compensable primary injury.<sup>10</sup> In a report dated February 17, 2020, Dr. Chmell noted that appellant related that her restrictions were not always followed when she worked limited duty as a result of her employment injuries to her upper extremities and she was harassed, which caused overeating and obesity. He indicated that she attributed the arthritis of her low back, hips, and knees to her obesity. While Dr. Chmell discussed appellant's belief that her restrictions were not followed and that she was harassed, he did not otherwise provide an independent causation finding. A physician's report is of little probative value when it is based on a claimant's belief rather than the physician's independent judgment.<sup>11</sup> Consequently, Dr. Chmell's report is insufficient to meet appellant's burden of proof to expand the acceptance of her claim.

In May 26 and September 9, 2022 reports, Dr. Chmell discussed appellant's history of bilateral hands and wrists conditions while working that resulted in restrictions. He advised that she sustained harassment, humiliation, anxiety, and embarrassment as a result of her accepted employment injuries, which caused obesity due to unhealthy eating and an aggravation of bilateral knee, bilateral hip, and back arthritis. Dr. Chmell did not attribute appellant's arthritis of the back, knees, and hips to her accepted upper extremity injuries but instead to harassment leading to obesity; consequently, his report is insufficient to meet her burden of proof.<sup>12</sup> He further offered no explanation as to how the unsubstantiated harassment physiologically caused the alleged consequential emotional injury resulting in unhealthy eating, obesity, and an aggravation of arthritis.<sup>13</sup>

On December 1, 2022 Dr. Chmell again related that while performing limited duty appellant had experienced harassment and humiliation leading to unhealthy eating and weight gain, which aggravated her osteoarthritis of the bilateral hips and knees and aggravated lumbar arthritis

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<sup>9</sup> *F.R.*, Docket No. 07-2320 (issued September 17, 2008).

<sup>10</sup> *Supra* note 8; *see also K.S.*, Docket No. 17-1583 (issued May 10, 2018).

<sup>11</sup> *See D.R.*, Docket No. 21-1056 (issued April 13, 2023); *K.B.*, Docket No. 17-0682 (issued July 24, 2017); *B.S.*, Docket No. 15-0002 (issued February 27, 2015); *Earl David Seale*, 49 ECAB 152 (1997).

<sup>12</sup> *See R.A.*, Docket No. 20-0969 (issued August 9, 2021); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

<sup>13</sup> *K.S.*, *supra* note 10.

and degenerative disc disease. He advised that the “parties involved” should determine whether the aggravation constituted a new claim or a consequential condition. In a February 2, 2023 report, Dr. Chmell asserted that appellant had developed an eating disorder due to harassment at work while performing limited duty. He referenced medical literature supporting that weight gain aggravated osteoarthritis of the knees, hips, and back. While Dr. Chmell opined that harassment at work caused obesity and thus an aggravation of arthritis, he did not provide sufficient rationale, and thus his reports are insufficient to meet her burden of proof.<sup>14</sup>

On December 23, 2019 Dr. Chen diagnosed bilateral recurrent tunnel syndrome and bilateral knee arthritis. He noted that appellant related that her knee condition was unrelated to her accepted employment injury. On December 24, 2019 Dr. Chmell reviewed and concurred with Dr. Chen’s findings. As neither Dr. Chen nor Dr. Chmell attributed appellant’s knee condition to her accepted employment injury, their opinions are insufficient to meet her burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to, or as a consequence of, her accepted employment injuries.

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<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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