

² The Board notes that, following the April 23, 2021 decision on appeal, 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.*

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 her accepted August 18, 2019 employment injury.

FACTUAL HISTORY

On August 29, 2019 appellant, then a 46-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 18, 2019 she sustained a right lower back injury when lifting a heavy package while in the performance of duty. She stopped work on August 19, 2019. By decision dated October 4, 2019, OWCP accepted the claim for lumbar sprain. It paid appellant wage-loss compensation as of October 3, 2019.

An October 18, 2019 magnetic resonance imaging (MRI) scan read by Dr. Steven Winter, a Board-certified radiologist, revealed L4-5 millimeter grade 1 spondylolisthesis with posterior disc bulging impressing on the ventral thecal sac with bilateral facet arthrosis with borderline central spinal stenosis; L5-S1 subligamentous posterior disc bulging with facet arthrosis, with fluid edema within the hypertrophic left facet; and benign L1 bone island and posterior paraspinal fasciitis.

A November 4, 2019 x-ray of appellant's lumbar spine read by Dr. Winter revealed anterior spondylolisthesis at L4-5, increasing in flexion and decreasing in extension with L4-5 facet arthrosis.

In a report dated December 2, 2019, Dr. Edwin Perez, Board-certified in pain medicine, related that appellant continued to complain of sharp low back pain. He noted appellant's x-ray findings and diagnosed lumbar intervertebral disc displacement, and unspecified cord compression.

In May 7 and June 15, 2020 reports, Dr. Perez noted that appellant had changes in her condition with acute onset. He related that the cause of the symptoms was a work-related accident and that the symptoms were exacerbated by activities such as lifting, movement, and sleeping. Dr. Perez found that appellant had moderate spasms in the lumbar paraspinal, moderate weakness in the left lower extremity and right lower extremity, decreased lumbar motion all moderate, and pain with movement. He noted that appellant had pain with movement, flexion, and moderate extension, moderate left rotation, moderate right rotation, and moderate left and right bending. Dr. Perez diagnosed other intervertebral disc displacement, lumbar region, and unspecified cord compression.

On September 16, 2020 OWCP referred appellant for a second opinion examination with Dr. Robert DeFalco, an orthopedic surgeon, to determine the status of her accepted employment injury.

In an October 7, 2020 report, Dr. DeFalco noted appellant's history of injury and medical treatment. He related that appellant no longer suffered from active residuals of the accepted lumbar spine sprain. Dr. DeFalco opined that appellant was medically capable of returning to her date-

of-injury job without restrictions. He noted appellant's physical examination findings, relating that she had intact and symmetric reflexes and no pain on range of motion (ROM). Dr. DeFalco found that appellant's subjective complaints did not correspond with her objective findings. He noted that appellant had not worked since August 18, 2019 and that he found no sign of any radiculopathy on examination. Dr. DeFalco also noted that appellant had an MRI scan of the lumbar spine on October 18, 2019, which showed slight disc bulge at L4-5 and a disc bulge at L5-S1. He referred to a 2015 article and explained that disc degeneration occurred with age. Dr. DeFalco also noted that November 4, 2019 x-rays showed a grade 1 spondylolisthesis at L4-5. He explained that appellant sustained a soft tissue injury only, which had resolved, and no further treatment was warranted. Dr. DeFalco noted that appellant was walking on a school track three to four times a week and gardening without difficulty, and she could continue to do so without restriction. He opined that the work-related condition had resolved, there was no evidence to support that the work-related condition was still active and causing objective findings, and no additional medical recovery was expected. Dr. DeFalco further opined that appellant had reached a fixed and stable state and had reached maximum medical improvement (MMI).

In a development letter dated November 13, 2020, OWCP advised appellant of the type of evidence needed to establish expansion of the acceptance of her claim for possible additional medical conditions. It afforded her 30 days to submit the necessary evidence.

OWCP received a copy of a September 16, 2019 report and a November 24, 2020 report from Dr. Perez. In his September 16, 2019 report, Dr. Perez diagnosed lumbar radiculopathy. In his November 24, 2020 report, he diagnosed other intervertebral disc displacement, lumbosacral region, and unspecified cord compression.

OWCP received a January 3, 2020 report indicating that appellant had undergone a bilateral L3-5 medial branch block on that day.

On March 17, 2021 OWCP requested an addendum opinion from Dr. DeFalco regarding the findings from Dr. Perez that appellant developed additional conditions of lumbar radiculopathy, lumbar intervertebral disc displacement, unspecified cord compression, L4-5 spondylolisthesis, L5-S1 disc bulge and facet arthrosis, as a consequence of the accepted work-related injury.

In a March 24, 2021 addendum report, Dr. DeFalco indicated that he disagreed with Dr. Perez and explained that there was no evidence of lumbar radiculopathy or any other orthopedic residuals at the time of his examination and appellant's findings were consistent with resolved soft tissue injuries. He noted that there were subjective complaints only, with no objective clinical findings. Dr. DeFalco opined that the clinical picture on the date of the examination was consistent with resolved soft tissue injuries.

By decision dated April 23, 2021, OWCP denied expansion of the acceptance of her claim to include lumbar radiculopathy, other intervertebral disc displacement, lumbar region, other intervertebral disc displacement, lumbosacral region, unspecified cord compression, L4-5 spondylolisthesis, L5-S1 disc bulge, and facet arthrosis. It found that the evidence of record did not demonstrate that the claimed medical conditions were related to the established work injury. OWCP explained that the claim remained accepted for sprain of ligaments of lumbar spine.

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.³

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁴ 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.⁵ 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.⁶

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 her accepted August 18, 2019 employment injury.

In reports dated May 7 and June 15, 2020, Dr. Perez noted that appellant had acute changes in her condition and diagnosed low back pain, other intervertebral disc displacement, lumbar region, other intervertebral disc displacement, lumbosacral region, and unspecified cord compression. He opined that the cause of the symptoms was the work-related accident; however, he did not explain how he arrived at his opinion. This is especially important as appellant had not returned to work and Dr. Perez noted that her symptoms worsened as she performed other activities such as lifting, movement, and sleeping, without explaining how he concluded that her symptoms were caused by the work-related injury. The Board has held that a mere conclusion, without the necessary rationale, is insufficient to meet a claimant's burden of proof.⁷

Dr. Perez submitted additional reports dated September 16, 2019, in which he diagnosed lumbar radiculopathy, and December 2, 2019, and November 24, 2020, in which he diagnosed lumbar pain, other intervertebral disc displacement, lumbosacral region, and unspecified cord compression. However, he offered no opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is

³ *L.N.*, Docket No. 20-1619 (issued December 30, 2021); *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).

⁴ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *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).

⁶ *Id.*

⁷ *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

of no probative value on the issue of causal relationship.⁸ Thus, the reports from Dr. Perez are of limited probative value and are insufficient to establish causal relationship.

OWCP also received diagnostic reports; however, the Board has held that diagnostic testing, standing alone, lacks probative value, as it does not address whether a given medical condition or period of disability was caused by the employment.⁹ These reports are therefore insufficient to establish appellant's claim.

Dr. DeFalco based his opinion on a proper factual and medical history and physical examination findings and provided medical rationale for his opinion that appellant did not have additional conditions due to her accepted August 18, 2019 employment injury. He noted that the October 18, 2019 MRI scan of the lumbar spine revealed a slight disc bulge at L4-5 and a disc bulge at L5-S1, and that November 4, 2019 x-rays showed a grade 1 spondylolisthesis at L4-5. Dr. DeFalco explained that these were age-based degenerative changes. He further found that appellant had intact and symmetric reflexes, no pain on ROM, and no sign of any radiculopathy, and that appellant's subjective complaints did not correspond with the objective findings. Dr. DeFalco concluded that appellant sustained a soft tissue injury only, which had resolved, and no further treatment was warranted. He noted that appellant was walking the school track three to four times per week and gardening without difficulty, and advised that she could return to full-time, regular-duty work. In a March 24, 2021 addendum, Dr. DeFalco disagreed with Dr. Perez and explained that there was no evidence of lumbar radiculopathy or any other orthopedic residuals and the findings were consistent with a resolved soft tissue injury. He provided a well-rationalized opinion, supported by objective findings, in response to the questions posed to him regarding appellant's August 18, 2019 employment injury and expansion of the acceptance of appellant's claim for the above-noted additional conditions.¹⁰ Accordingly, the Board finds that the weight of the medical opinion evidence is properly accorded to the opinions of Dr. DeFalco.¹¹

As appellant has not submitted a rationalized medical opinion establishing that her additional conditions are causally related to her accepted August 18, 2019 employment injury, the Board finds that she has not met 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁸ See *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ See *M.M.*, Docket No. 20-1557 (issued November 3, 2021); see *T.G.*, Docket No. 20-0032 (issued November 10, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

¹⁰ See *V.D.*, Docket No. 19-0979 (issued February 5, 2020).

¹¹ See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); see also *A.F.*, Docket No. 16-0393 (issued June 24, 2016).

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 her accepted August 18, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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