

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, RICHMOND POST
OFFICE, Richmond, VA, Employer**

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**Docket No. 22-0939
Issued: January 9, 2023**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 1, 2022 appellant, through counsel, filed a timely appeal from a May 9, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include left hip and left lower extremity conditions as causally related to the accepted December 19, 2019 employment injury.

FACTUAL HISTORY

On December 23, 2019 appellant, then a 58-year-old city carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2019 he sustained right elbow, left lower extremity, and right-sided facial injuries in a motor vehicle accident (MVA) when his delivery vehicle skidded on black ice into an embankment while in the performance of duty.

In a development letter dated December 26, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted reports dated December 19, 2019 by Dr. Jacob A. Wayman, an emergency medicine specialist who recounted that appellant had been involved in an MVA approximately one hour prior. He had been wearing a seatbelt while driving at approximately 25 miles per hour, slid on ice, and skidded into an embankment. The vehicle rolled onto its left side. Appellant was able to extricate himself and was able to walk at the accident scene. He was transported to the hospital emergency department by ambulance. Appellant presented in the emergency department with right elbow pain, left hamstring pain, and pain in the left mid-femur when weightbearing. On examination, Dr. Wayman observed no tenderness or deformity of the upper or lower extremities, a minor abrasion to the right elbow, and some pain with range of motion of the right elbow.³ An ultrasound of the left hamstring demonstrated no significant soft tissue injury, and x-rays of the pelvis and left lower extremity demonstrated osteoarthritis of the left hip, knee, and ankle without evidence of acute fracture.⁴ Dr. Wayman provided a differential diagnosis of motor vehicle collision, head injury, abrasion, contusion, and sprain. Appellant was issued crutches and scheduled for an orthopedic consultation on December 20, 2019. Dr. Wayman returned appellant to light-duty work as tolerated effective December 21, 2019.

Appellant also submitted a December 20, 2019 report by Jeffrey Grant, a physician assistant.

In a December 24, 2019 report, Dr. John Coles Wiggins, III, an emergency medicine specialist, related appellant's account that he had been in a motor vehicle collision, which resulted in a left-sided pelvic fracture. He experienced severe pain and was referred for a computerized

³ December 19, 2019 x-rays of the right elbow revealed soft tissue calcifications anterior to the distal humerus, moderate degenerative changes at the elbow joint with osteophytosis, and no evidence of fracture or dislocation.

⁴ December 19, 2019 x-rays of the pelvis and left lower extremity revealed mild degenerative changes of the left hip, no evidence of fracture in the left hip or femur, tricompartmental joint space narrowing in the left knee with marginal osteophytosis, and osteoarthritis of the left hip, knee, and ankle.

tomography (CT) scan to determine if he required surgery. Dr. Wiggins obtained the CT scan⁵ and diagnosed a left posterior column acetabular fracture, nondisplaced on previous MRI scan,⁶ and left hip pain.

By decision dated February 5, 2020, OWCP denied appellant's traumatic injury claim, finding that he had established that the incident occurred on December 19, 2019, as alleged. However, it further found that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. Consequently, OWCP found that appellant had not met the requirements to establish an injury and/or medical condition.

On February 28, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, held June 9, 2020. At the hearing appellant noted that approximately 20 years prior, he had sustained a hairline fracture of the left ankle requiring surgery, and subsequently developed arthritis with occasional pain and swelling.

By decision dated August 24, 2020, OWCP's hearing representative reversed OWCP's February 5, 2020 decision and directed OWCP to accept the claim for a right elbow contusion and abrasion.

On August 25, 2020 OWCP accepted the claim for abrasion and contusion of the right elbow, initial encounter.

In an August 5, 2020 report, Dr. Bennett B. Lee, a Board-certified internist, noted that appellant's "[i]nitial injuries began" after the December 19, 2019 employment injury. He noted that appellant's left hip condition had improved and recommended additional evaluation for low back pain. Dr. Lee authorized continued work restrictions.

In a form report dated September 19, 2020, Mr. Grant noted work restrictions.

In a February 1, 2021 letter, appellant, through counsel, requested that OWCP expand acceptance of the claim to include nondisplaced posterior column fracture of the left acetabulum, and osteoarthritis of the left hip, knee, and ankle.

On February 10, 2021 OWCP received duty status reports (Form CA-17) by Mr. Grant dated from January 11 through May 20, 2020, and a May 15, 2020 treatment summary signed by Mr. Grant.

In a development letter dated March 12, 2021, OWCP indicated that it had received a request for claim expansion. It advised that the medical evidence of record indicated that the

⁵ December 24, 2019 CT scans of the bony pelvis demonstrated an oblique intra-articular nondisplaced fracture of the posterior column of the left acetabulum, and thickening of the obturator internus on the left with a small amount of adjacent fat stranding/hemorrhage, and a left-sided joint effusion. December 24, 2019 x-rays of the pelvis demonstrated bilateral iliac enthesopathy, with appellant's known left posterior acetabular fracture not well appreciated.

⁶ A December 22, 2019 magnetic resonance imaging (MRI) scan demonstrated a nondisplaced left posterior column acetabulum fracture. X-rays of the pelvis obtained from December 30, 2019 through February 20, 2020 revealed a healing nondisplaced left posterior wall acetabular fracture.

accepted December 19, 2019 employment injury may have caused a nondisplaced left posterior column acetabulum fracture and osteoarthritis of the left hip, knee, and ankle. OWCP requested additional evidence on the history of appellant's injury and whether he had similar preexisting medical conditions. It provided questions for his physician. OWCP afforded 30 days for submission of the requested evidence.

OWCP received reports dated April 6 and May 11, 2021 by Katherine Houston, a family nurse practitioner, and a May 28, 2021 report by Mr. Grant.

May 28, 2021 x-rays demonstrated mild-to-moderate medial joint space narrowing with marginal osteophytes in the left knee, and mild bilateral hip joint space narrowing.

A June 13, 2021 MRI scan of the left hip demonstrated peritendinitis of the left gluteal tendon insertion, tendinosis versus small partial tear of the conjoined tendon of the hamstring, degenerative superior and anterosuperior labral tearing with joint space narrowing and subchondral cystic changes in the acetabulum, and a lumbosacral segmentation anomaly with pseudoarticulation in the left sacrum and associated marrow edema.

On June 15, 2021 OWCP received a report dated August 19, 2020 by Lynn Gufeld, a nurse practitioner.

In a report dated August 10, 2021, Dr. Kevin E. Larkin, an orthopedic surgeon, recounted appellant's history of left knee osteoarthritis and a left posterior column acetabular fracture in 2019. On examination, he observed minimal effusion in the left knee with some tenderness to palpation along the medial joint line, and some limitation of left hip range of motion. Dr. Larkin reviewed a CT scan of the pelvis and opined that the left posterior column fracture had healed with no significant articular incongruity. He diagnosed a healed left posterior wall fracture, left hip osteoarthritis, and moderate left knee osteoarthritis.

By decision dated November 2, 2021, OWCP denied appellant's request to expand acceptance of his claim to include nondisplaced left posterior column acetabulum fracture, and osteoarthritis of the left hip, knee, and ankle. It found that the medical evidence of record did not establish a causal relationship between the accepted December 19, 2019 employment injury and the additional conditions.

On November 9, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 3, 2022.

Appellant submitted an August 25, 2021 report of an intra-articular injection of the left hip joint, performed by Dr. Aram Salem, a Board-certified diagnostic radiologist.

By decision dated May 9, 2022, OWCP's hearing representative affirmed OWCP's November 2, 2021 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.⁷

To establish causal relationship, the employee must submit rationalized medical opinion evidence.⁸ 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.⁹ 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.¹⁰

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include left hip and left lower extremity conditions as causally related to the accepted December 19, 2019 employment injury.

Dr. Wayman, in his December 19, 2019 report, noted the accepted employment injury and provided a differential diagnosis of MVA, head injury, abrasion, contusion, and sprain. Dr. Wiggins, in his December 24, 2019 report, recounted appellant's belief that the December 19, 2019 MVA had caused a left-sided pelvic fracture, but did not express an independent opinion addressing causal relationship. Dr. Salem, in his August 25, 2021 report, administered an injection but did not address causal relationship. As appellant had a history of a left ankle fracture and surgery, as well as osteoarthritis of the left hip, knee, and ankle, detailed medical rationale addressing the effect of the accepted December 19, 2019 employment incident on these preexisting

⁷ *J.R.*, Docket No. 21-0790 (issued June 21, 2022); *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).

⁸ *R.H.*, Docket No. 21-0493 (issued March 4, 2022); *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

⁹ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *R.H.*, *supra* note 8; *C.L.*, 20-0213 (issued September 15, 2021); *J.L.*, Docket No. 20-0717 (issued October 15, 2020); *James Mack*, 43 ECAB 321 (1991).

¹¹ *G.D.*, Docket No. 20-0966 (issued July 21, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

conditions is particularly crucial in this case.¹² However, Dr. Wayman, Dr. Wiggins, and Dr. Salem did not provide an opinion regarding how appellant's accepted employment injury caused or aggravated additional diagnosed conditions. As the Board has held, 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.¹³ Therefore, their reports are insufficient to meet appellant's burden of proof.¹⁴

Dr. Lee, in a report dated September 4, 2020, noted that appellant's injuries began after the accepted December 19, 2019 employment injury. The Board has held, however, that the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship. Temporal relationship alone will not suffice.¹⁵

OWCP also received reports by Mr. Grant, a physician assistant, Ms. Gufeld, a nurse practitioner, Ms. Houston, a family nurse practitioner, and physical therapy treatment notes. The Board has held, however, that medical reports signed solely by a nurse practitioner, physician assistant, or physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.¹⁶

Appellant has also submitted diagnostic studies addressing the left lower extremity. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship.¹⁷

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met his burden of proof to establish the additional conditions of left posterior column acetabulum fracture and osteoarthritis of the left knee, hip, and ankle.

¹² *Id.*

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *G.D.*, *supra* note 11; *T.D.*, Docket No. 19-1506 (issued November 4, 2020); *L.G.*, Docket No. 19-0142 (issued August 8, 2019).

¹⁵ *R.G.*, Docket No. 21-1238 (issued May 9, 2022); *see also Z.S.*, Docket No. 19-1010 (issued October 1, 2020); *S.S.*, Docket No. 19-0675 (issued August 22, 2019); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁶ Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, *supra* note 11 at Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also B.D.*, Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

¹⁷ *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *see Y.D.*, Docket No. 16-1896 (issued February 9, 2017).

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 left hip and left lower extremity conditions as causally related to the accepted December 19, 2019 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 9, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 9, 2023
Washington, DC

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

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

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