

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

|                                   |   |                      |
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| A.D., Appellant                   | ) |                      |
|                                   | ) |                      |
| and                               | ) | Docket No. 21-0415   |
|                                   | ) | Issued: June 8, 2023 |
| U.S. POSTAL SERVICE, POST OFFICE, | ) |                      |
| Larchmont, NY, Employer           | ) |                      |
|                                   | ) |                      |

*Appearances:* *Case Submitted on the Record*  
*Paul Kalker, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**DECISION AND ORDER**

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

**JURISDICTION**

On January 28, 2021 appellant, through counsel, filed a timely appeal from a December 16, 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.

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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.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish a low back condition causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

On March 5, 2019 appellant, then a 48-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed lower back pain radiating into his left leg due to factors of his federal employment. He explained that his injury was an exacerbation of a previous injury he sustained on June 7, 2016.<sup>3</sup> Appellant indicated that he first became aware of his condition on June 7, 2016, and first realized that it was caused or aggravated by his federal employment on February 28, 2019. He stopped work on February 28, 2019.

In a March 2, 2018 medical note, Dr. Yasmin Dhar, a Board-certified orthopedic surgeon, advised that appellant was unable to return to work due to a left knee injury.

In a February 25, 2019 medical note, Dr. Nirav Patel, a Board-certified neurosurgeon, indicated that appellant was symptomatic for neuropathy as a result of herniated discs.

In a March 5, 2019 medical note, Dr. Yu-Shiuan Sun, Board-certified in family medicine, opined that appellant was unable to return to work due to lower back pain.

Appellant also submitted a position description of his duties as a city carrier.

In a development letter dated March 22, 2019, OWCP advised appellant of the deficiencies of his claim. It informed him of the type of evidence needed to establish his claim. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In a March 19, 2019 progress report, Dr. David Lent, a Board-certified orthopedic surgeon, reviewed appellant's history of injury relating to his original 2016 injury. He observed that appellant was evaluated by Dr. Thomas Lee, a Board-certified neurosurgeon, who diagnosed left L4-5 radiculopathy and right-sided L5-S1 and L4-5 annular tears. Dr. Lent noted that appellant elected to continue with his conservative treatment and advised that he undergo an additional magnetic resonance imaging (MRI) scan for further evaluation.

In an April 2, 2019 report, Dr. Lee reviewed appellant's ongoing complaint of lower back pain and sciatica. Appellant explained the history of his injury dating back to June 7, 2016 where he stepped on a loose manhole cover and fell into the manhole trapping his left lower leg and knee. He received treatment for his left knee and eventually underwent an MRI scan of his lumbar spine

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<sup>3</sup> On June 7, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury when he stepped on a loose manhole cover under OWCP File No. xxxxxx351. On August 2, 2016 OWCP accepted his claim for a left knee contusion and an acute lumbar sprain. By decision dated February 9, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits under OWCP File No. xxxxxx351 on the basis that he was no longer disabled or required treatment due to his accepted injury.

in July 2017 which revealed a left L4-5 foraminal disc bulge with an annular tear. Dr. Lee observed appellant's symptoms worsened with walking, standing, and cold temperatures and that appellant was unable to carry out his regular employment duties when he returned to work in July 2018. Appellant informed Dr. Lee that his job duties required him to walk long distances and carry heavy packages and that he had fallen in grass previously because his left leg gave out while performing these duties. Dr. Lee noted a 2019 MRI scan of appellant's lumbar spine, demonstrating a left L4-5 posterolateral/foraminal annular tear with disc bulge, mild L4 and L5 nerve root impingement, proximal foraminal narrowing at L4-5 and a chronic right L5-S1 disc bulge. On examination and review of the diagnostic reports, he diagnosed right L5-S1 and left L4-5 annular tears with associated disc bulge, clinical left L4 and L5 radiculopathy and depression/anxiety.

In an April 2, 2019 response to OWCP's development questionnaire, appellant detailed his employment duties as a mail carrier which required him to sort and deliver mail and packages. He indicated that the packages he carried weighed approximately 30 to 70 pounds and that his duties involved frequent lifting, pushing, pulling, bending, stooping, and climbing the steps of residential homes. Appellant asserted that his job required a significant amount of physical exertion which caused him to exacerbate his previous injury. He also attached a position description of his duties as a mail carrier.

In an April 4, 2019 progress report, Dr. Lent explained that appellant underwent an MRI scan of his lumbar spine that revealed L4-5 disc herniation and an annular tear. He also referenced Dr. Lee's suggestion that appellant undergo surgical treatment to treat his condition.

By decision dated May 2, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical condition was causally related to the accepted factors of his federal employment.

OWCP continued to receive evidence. Appellant attached a copy of a June 7, 2016 police report in which he informed the police that he injured his left leg when he stepped on an open manhole cover. He also submitted an ambulance report of even date noting that he was transported to the hospital.

In a June 7, 2016 medical report, Dr. Gigi Madore, Board-certified in emergency medicine, evaluated appellant for a left leg injury appellant sustained when he stepped on a manhole cover that was not anchored and caused it to flip up and hit him in the left lower leg. In unsigned diagnostic reports of even date appellant underwent x-ray scans of his left knee and tibia/fibula that found no evidence of an acute bony fracture or dislocation. Dr. Madore diagnosed a left knee and leg contusion and attached information sheets describing treatment instructions.

In a July 27, 2017 medical report, Dr. Shoudu Zeng, a Board-certified psychiatrist, evaluated appellant for depression and anxiety. He described appellant's history of injury relating to appellant's June 2016 employment injury and his subsequent concern about possibly having to undergo surgery to treat herniated discs in his lower back. Dr. Zeng diagnosed major depressive disorder and job stress related to appellant's herniated discs.

In a March 29, 2019 diagnostic report, Dr. Steven Klein, a Board-certified radiologist, performed an MRI scan of appellant's lumbar spine, finding a L4-5 annular fissure in the disc with a small left foraminal disc herniation.

On May 30, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 15, 2019 medical report, Dr. Manuel Tejera, a Board-certified internist, evaluated appellant for back pain which appellant experienced while carrying heavy packs at work and also observed appellant's previous left leg injury in which he fell through a manhole cover. He diagnosed left leg pain and unspecified hyperlipidemia.

In a May 26, 2019 medical report, Mini S. Thomas, a licensed nurse practitioner, evaluated appellant for lower back pain radiating down into his left leg and observed his history of a herniated disc injury from his work-related injury three years prior. She diagnosed acute back pain, midline sciatica, and left sided lumbago with sciatica.

In a May 28, 2019 medical report, Dr. Tejera replied "Yes" to questions indicating that in his opinion the incident appellant described was a competent cause for his condition and that appellant's complaints were consistent with his history of injury as well as objective findings. He diagnosed left-sided sciatica and chronic back pain.

In a May 28, 2019 amendment to his April 2, 2019 medical report, Dr. Lee observed that appellant presented with lower back pain he believed that was a reinjury of appellant's original 2016 lower back injury caused while performing his duties as a mail carrier. He opined that on February 28, 2019 appellant exacerbated his back injury when he lifted a heavy package.

In a June 10, 2019 state workers' compensation physician's initial report, Dr. Michael Cushner, a Board-certified orthopedic surgeon, diagnosed lumbar region radiculopathy. He checked boxes marked "Yes" to indicate his opinion that appellant's complaints were consistent with appellant's history of injury and his own objective findings. Dr. Cushner opined that appellant was 100 percent temporarily disabled.

On June 12, 2019 Dr. Tejera noted that appellant was still experiencing pain in his lower back and left leg which he believed that was related to lifting a manhole cover after his foot became stuck. He prescribed medication for treatment and referred appellant to pain management for further evaluation.

In a July 16, 2019 medical report, Dr. Cy Blanco, Board-certified in pain medicine, indicated that appellant experienced pain, numbness, and tingling in his left leg on February 28, 2019 after lifting heavy items. He responded "Yes" to questions indicating that it was his opinion that the incident appellant described was a competent cause for appellant's condition and that appellant's complaints were consistent with his history of injury as well as objective findings. On evaluation, Dr. Blanco diagnosed lumbar radiculopathy.

In medical reports dated August 1 to 12, 2019, Dr. Rehana Latif, a Board-certified psychiatrist, observed appellant in relation to his June 7, 2016 employment injury and February 28,

2019 reinjury of his left leg and lower back. She reviewed his prior medical treatment and diagnosed major depressive disorder due to another medical condition.

An oral hearing was held on August 13, 2019.

In an August 16, 2019 medical report, Dr. Tejera noted that appellant had been seeing Dr. Latif for appellant's anxiety issues and Dr. Blanco for pain management for his back injury. On evaluation, he diagnosed lumbar radiculopathy.

In medical reports dated August 21 and 26, 2019, Dr. Latif diagnosed major depressive disorder due to "another" medical condition. She made note of appellant's initial 2016 lower back injury as well as his February 28, 2019 injury, reasoning that his psychiatric stress was a secondary issue.

In medical reports dated August 30 and September 3, 2019, Dr. Blanco diagnosed low back pain and again responded "Yes" to questions indicating that it was his opinion that the incident appellant described was a competent cause for appellant's condition and that appellant's complaints were consistent with his history of injury as well as objective findings.

By decision dated October 22, 2019, an OWCP hearing representative affirmed the May 2, 2019 decision. He noted appellant's prior left knee and lower back injuries on June 7, 2016 accepted for a left knee contusion and an acute lumbar sprain under OWCP File No. xxxxxx351. Upon return of the case record, the hearing representative instructed OWCP to administratively combine the two file numbers.

In a December 2, 2019 medical report, Dr. Blanco performed an evaluation in relation to appellant's low back and left leg pain. He reviewed the history of appellant's June 2016 injury as well as appellant's subsequent reinjury as he returned to work and attempted to lift heavy mail. Dr. Blanco reviewed an MRI scan of appellant's lumbar spine and, on evaluation, diagnosed left L5 radiculopathy from his L4-5 disc herniation.

In medical reports dated December 13, 2019 and January 31, 2020, Dr. Blanco diagnosed low back pain and lumbar radiculopathy. He again responded "Yes" to questions indicating his opinion that the incident appellant described was a competent cause for his condition and that appellant's complaints were consistent with his history of injury as well as objective findings.

On September 17, 2020 appellant, through counsel, requested reconsideration of OWCP's October 22, 2019 decision. Counsel contended that new medical evidence from Dr. Virany Hillard, a Board-certified neurological surgeon, and Dr. Blanco would be sufficient to meet appellant's burden of proof.

In her June 1, 2020 medical report, Dr. Hillard reviewed the history of appellant's lumbar injury on June 7, 2016 and his subsequent employment duties which he believed to have exacerbated his original injury. Appellant noted that, since his injury, he had been unable to perform his normal employment duties and had subsequently developed major depressive disorder as a result. Dr. Hillard examined his lumbar spine and reviewed MRI scans demonstrating a left L4-5 lateral disc herniation. She asserted that appellant sustained an injury to his lumbar spine which caused disc herniation with resulting lumbar radiculopathy and nerve damage. Dr. Hillard

further asserted that his injury was further exacerbated by his ongoing physical occupation. She opined, with a reasonable degree of medical certainty, that appellant's injuries were causally related to his initial June 7, 2016 injury and further exacerbated by his ongoing employment duties. Dr. Hillard explained that workers with physically demanding jobs that require excessive lifting, forward-bending, and twisting have a greater risk for herniated discs. She indicated that the June 7, 2016 employment injury caused a disc herniation at L4-5 and when appellant returned to performing the physical demands of his job, his injury was exacerbated.

On September 1, 2020 Dr. Blanco reviewed the history of appellant's June 7, 2016 employment injury and the subsequent medical care he provided. He diagnosed lumbar radiculopathy and concluded that appellant would likely need to undergo surgery to treat his condition. Dr. Blanco opined that appellant's condition was causally related to appellant's June 7, 2016 and further exacerbated by his employment on or about February 28, 2019. He recommended surgery.

On September 21, 2020 OWCP administratively combined OWCP File No. xxxxxx351 and the current case file, with the former serving as the master file.

By decision dated December 16, 2020, OWCP denied modification of its October 22, 2019 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or

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<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</sup> 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 specific employment factor(s).<sup>10</sup>

In any case where 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.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a low back condition causally related to the accepted factors of his federal employment.

In her June 1, 2020 medical report, Dr. Hillard opined that appellant sustained an injury to his lumbar spine which caused disc herniation with resulting lumbar radiculopathy and nerve damage. She concluded that with a reasonable degree of medical certainty, that appellant's injuries were causally related to his initial June 7, 2016 injury, and were further exacerbated by his ongoing physical employment duties. Dr. Hillard explained that workers with physically demanding jobs that, require excessive lifting, forward-bending, and twisting have a greater risk for herniated discs, indicating that the June 7, 2016 employment injury caused a disc herniation at L4-5, and when appellant returned to performing the physical demands of his job, his injury was exacerbated. While she provided an affirmative opinion on causal relationship, she did not offer any medical rationale sufficient to explain why she believed that his employment duties could have resulted in or contributed to his diagnosed condition. The Board has held that medical opinion evidence should offer a medically-sound explanation of how the specific employment incident or work factors physiologically caused the injury.<sup>12</sup> Without explaining how the implicated employment factors caused appellant to develop a herniated disc, and without explaining how his lifting,

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<sup>7</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *Id.*; *Victor J. Woodhams*, *supra* note 7.

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>12</sup> See *H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

forward-bending and twisting further exacerbated his condition, Dr. Hillard's June 1, 2020 medical report is of limited probative value. Further, as noted above, in any case where 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 medical evidence must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition. As Dr. Hillard did not specifically differentiate between appellant's preexisting condition and the effects of his accepted employment duties, her medical reports are insufficient to establish causal relationship.<sup>13</sup>

Similarly, Dr. Blanco, in his September 1, 2020 medical report diagnosed lumbar radiculopathy, and opined that appellant's condition was causally related to appellant's June 7, 2016 injury, and further exacerbated by his employment on or about February 28, 2019. As noted previously, without offering a medically-sound explanation as to how appellant's employment duties caused his lumbar condition, Dr. Blanco's medical report is insufficient to meet appellant's burden of proof.<sup>14</sup>

In Dr. Blanco's remaining medical reports dated July 16, 2019 to January 31, 2020, he observed an MRI scan of appellant's lumbar spine and, on evaluation, diagnosed left L5 radiculopathy from his L4-5 disc herniation. He also responded "Yes" to questions relating his opinion that the incident appellant described was a competent cause for his condition and that appellant's complaints were consistent with his history of injury as well as objective findings. The Board has explained that, when a physician's opinion on causal relationship consists of only noting "Yes" to a form question, without further medical rationale explaining how the employment factors caused or aggravated the alleged injury, the opinion is of limited probative value regarding causal relationship.<sup>15</sup> For this reason, Dr. Blanco's remaining medical evidence is insufficient to meet appellant's burden of proof.

Likewise, in Dr. Tejera's May 28, 2019 report and Dr. Cushner's June 10, 2019 medical report they replied "Yes" to questions relating their opinion that the accepted employment factors appellant described was a competent cause for appellant's condition and that appellant's complaints were consistent with his history of injury as well as objective findings. As noted above, a physician's opinion on causal relationship consisting of only noting "Yes" without further medical rationale explaining how the employment factors caused or aggravated the alleged injury, is of diminished probative value and insufficient to establish causal relationship.<sup>16</sup>

Dr. Tejera, in medical reports dated May 15 and August 16, 2019, observed that appellant had been experiencing back pain while carrying heavy packages at work and also encountered anxiety issues subsequently. On evaluation, he diagnosed lumbar radiculopathy, left leg pain and unspecified hyperlipidemia. Without offering a medically-sound explanation as to how appellant's

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<sup>13</sup> *Supra* note 11.

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *J.K.*, Docket No. 20-0590 (issued July 17, 2020); *J.A.*, Docket No. 17-1936 (issued August 13, 2018).

<sup>16</sup> *Id.*



employment duties caused his lumbar condition, Dr. Tejera's remaining medical evidence is insufficient to meet appellant's burden of proof.<sup>17</sup>

Dr. Tejera's remaining medical evidence consisted of a June 12, 2019 medical report where he observed that appellant was still experiencing pain in his lower back and left leg which he believed to be related to the June 7, 2016 employment incident. A medical report lacking a firm diagnosis is of no probative value.<sup>18</sup> As such, the June 12, 2019 medical report is insufficient to meet appellant's burden of proof. Additionally, the Board has consistently held that a diagnosis of "pain" does not constitute the basis for payment of compensation, as pain is a symptom and not a specific diagnosis.<sup>19</sup>

Similarly, in notes dated March 2, 2018 to March 5, 2019, from Drs. Dhar, Patel, and Sun in which they commented on appellant's inability to resume work and his symptomology for neuropathy, however, neither physician provided a diagnosis. As previously noted, medical evidence lacking a firm medical diagnosis is of no probative value.<sup>20</sup> For this reason, Drs. Dhar, Patel, and Sun's medical evidence is insufficient to meet appellant's burden of proof.

In Dr. Lee's April 2 and May 28, 2019 medical reports, he noted that appellant's symptoms worsened with walking, standing, and cold temperatures, and that he struggled to carry out his regular employment duties of walking long distances and carrying heavy packages upon his return to work in July 2018, and on February 28, 2019 appellant further exacerbated his back injury when he lifted a heavy package. He diagnosed right L5-S1 and left L4-5 annular tears with associated disc bulge, clinical left L4 and L5 radiculopathy and depression/anxiety. Dr. Lee's conclusions are largely based on appellant's opinion as to what caused appellant's condition, rather than by his independent analysis of the cause of his lumbar condition.<sup>21</sup> Further, he did not offer a medically-sound explanation as to how appellant's employment duties caused his lumbar condition, and thus, Dr. Lee's April 2 and May 28, 2019 reports are insufficient to meet appellant's burden of proof.<sup>22</sup>

Dr. Lent's medical evidence consisted of progress reports dated March 19 and April 4, 2019 which reviewed appellant's history of injury dating back to his June 7, 2016 employment injury as well as Dr. Lee's evaluation and diagnosis of a L4-5 disc herniation, left L4-5 radiculopathy and right-sided L5-S1 and L4-5 annular tears. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no

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<sup>17</sup> *Supra* note 12.

<sup>18</sup> *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>19</sup> *T.S.*, Docket No. 20-0343 (issued July 15, 2020); *D.H.*, Docket No. 19-0931 (issued October 2, 2019); *R.R.*, Docket No. 18-1093 (issued December 18, 2018); *A.C.*, Docket No. 16-1587 (issued December 27, 2016); *Robert Broome*, 55 ECAB 339 (2004).

<sup>20</sup> *Id.*

<sup>21</sup> *See D.L.*, Docket No. 15-0866 (issued November 23, 2015); *J.S.*, Docket No. 14-0818 (issued August 7, 2014).

<sup>22</sup> *Supra* note 12.

probative value on the issue of causal relationship.<sup>23</sup> For this reason, Dr. Lent's medical evidence is insufficient to meet appellant's burden of proof.

Dr. Madore, in her June 7, 2016 medical report, evaluated appellant for his left leg injury in which he stepped on a manhole cover that was not anchored. She reviewed x-ray scans of his left knee and tibia/fibula and diagnosed a left knee and leg contusion. However, Dr. Madore's medical report is of no probative value as it is not based on a complete factual medical background with regard to appellant's continued work following his original injury.<sup>24</sup>

Appellant submitted medical reports dated July 27, 2017 to August 26, 2019, in which Drs. Zeng and Latif diagnosed major depressive disorder and opined that his condition was a result of his previous left leg and lower back injuries. As stated previously, without offering a medically-sound explanation as to how appellant's employment duties caused his major depressive disorder, this medical evidence is insufficient to meet his burden of proof.<sup>25</sup>

Appellant also submitted a March 29, 2019 MRI scan of his lumbar spine performed by Dr. Klein. The Board has held, however, that diagnostic test reports standing alone lack probative value on the issue of causal relationship as they do not address the relationship between accepted employment factors and a diagnosed condition.<sup>26</sup> For this reason, this diagnostic report is insufficient to meet appellant's burden of proof.

The remaining medical evidence consisted of a May 26, 2019 medical report from Ms. Thomas. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.<sup>27</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

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.

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<sup>23</sup> *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>24</sup> *Supra* note 9.

<sup>25</sup> *Supra* note 12.

<sup>26</sup> *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

<sup>27</sup> Section 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. See also *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a low back condition causally related to the accepted factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 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