



Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUES**

The issues are: (1) whether appellant has established that the acceptance of her claim should be expanded to include additional conditions causally related to the accepted December 10, 2002 employment injury; and (2) whether OWCP abused its discretion by denying authorization for C5-7 anterior cervical discectomy and fusion.

### **FACTUAL HISTORY**

On December 10, 2002 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she was involved in an automobile accident while in the performance of duty. She stopped work December 11, 2002. OWCP accepted the claim for cervical dislocation at C4-5, lumbar dislocation at L3-4 and herniated disc at L3-4. Appellant returned to light-duty work on March 18, 2003 and full-duty work on April 3, 2004. She stopped work again on February 26, 2014 and underwent an OWCP-authorized left L3-4 hemilaminectomy and posterior lumbar discectomy with partial medial facetectomy and left L4 foraminotomy on March 10, 2014. Appellant returned to full-time, modified-duty work on October 13, 2015 and continued working in a modified-duty position through October 28, 2016. She stopped work on October 29, 2016.

On January 8, 2020 appellant underwent authorized L4-S1 total laminectomies and bilateral wide foraminotomies of the L4-S1 nerve roots; bilateral L4-S1 facetectomy; L4-S1 posterolateral intertransverse process fusions; L4-S1 posterior segmental instrumentation; bilateral lysis of adhesions of the L4-S1 nerve roots; allograft and autograft, which were performed by Dr. Plas T. James, a Board-certified orthopedic surgeon.

An October 2, 2020 cervical spine magnetic resonance imaging (MRI) scan indicated mild multilevel disc spur complex and canal encroachment between C3-4 and C5-7, stable since prior examination. An October 14, 2020 electromyogram and nerve conduction velocity study was reported as normal.

In a November 5, 2020 report, Dr. James reviewed appellant's October 2020 diagnostic testing. He reported that her cervical spine MRI scan revealed evidence of C3-4 and C4-5 disc bulges, mild spinal stenosis and evidence of C5-6 and C6-7 herniated nucleus pulposus with severe spinal stenosis. Dr. James also related that x-rays of appellant's cervical spine revealed evidence of C5-6 and C6-7 severe degenerative disc disease with anterior and posterior osteophytes. He provided an impression of C5-6, C6-7 herniated nucleus pulposus and severe spinal stenosis and

---

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that, following the May 11, 2022 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 caserecord 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.*

C3-4 and C4-5 disc bulges. Dr. James recommended that appellant undergo a C5-7 anterior cervical discectomy and fusion as she had failed conservative measures.

In a development letter dated November 23, 2020, OWCP advised appellant that it was unable to authorize the proposed cervical surgery as it had not received any medical evidence that explained the medical necessity for the proposed surgical intervention and that the multilevel disc spur complex and canal encroachment between C3-4 and C6-7 was due to the December 10, 2022 work incident that occurred 18 years ago. It requested that she submit a narrative report from her physician explaining why the proposed surgical intervention was causally related to the accepted December 10, 2002 traumatic injury. OWCP afforded appellant 30 days to submit the necessary evidence.

On November 24, 2020 OWCP referred appellant, along with the medical record and a statement of accepted facts (SOAF) to Dr. John G. Keating, an orthopedic surgeon, for a second opinion evaluation.

In a December 14, 2020 report, Dr. Keating reviewed the SOAF and the medical record, and provided examination findings. He indicated that appellant's current neck complaints, as demonstrated by MRI scan, were the result of degenerative changes rather than acute changes incurred in her work-related motor vehicle accident. Dr. Keating also indicated that she has well-established diagnoses of cervical spondylosis, lumbar radiculopathies, and partial rotator cuff tears, for which she was at maximum medical improvement (MMI). He opined that no reasonable treatment was expected to improve appellant's current symptomology. Dr. Keating further opined that she was able to return to sedentary light-duty work with restrictions as result of her work-related lumbar and bilateral shoulder surgeries. Following OWCP's January 15, 2021 letter requesting clarification of appellant's work restrictions, Dr. Keating, in a February 3, 2021 addendum, indicated that his opinion was based solely on the SOAF which has accepted conditions of cervical spondylosis at C5, lumbar spondylosis at L3-4 and a herniated disc at L3-4.

In a January 12, 2021 report, Dr. James noted appellant's lumbar and cervical spine examination findings. He related diagnoses of C5-6 and C6-7 herniated nucleus pulposus and severe spinal stenosis, C3-4 and C4-5 disc bulges, and indicated that these diagnoses should be accepted as causally related to appellant's employment injury. Dr. James recommended a C5-7 anterior cervical discectomy and fusion as appellant had failed conservative management. He noted that she had no prior history of neck pain before the December 10, 2002 work injury and opined that her work-related symptoms had not resolved, therefore, she required a C5-7 anterior cervical discectomy and fusion.

In a February 8, 2021 report, Dr. James noted the history of appellant's employment injury. In pertinent part, he noted that her October 2, 2020 MRI scan of the cervical spine revealed evidence of multilevel spondylosis, most significant at levels of C5-6 and C6-7, but also present at C3-4 and C4-5. Dr. James indicated that November 5, 2020 x-rays also revealed evidence of C5-6 and C6-7 severe degenerative disc disease with anterior-posterior osteophytes present. He opined that appellant's accepted cervical spine conditions should be upgraded to include C5-6 and C6-7 severe degenerative disc disease and herniated nucleus pulposus with anterior-posterior osteophytes resulting in central spinal canal stenosis. Dr. James noted that her cervical spine had become a significant issue and it was recently recommended that she undergo a C5-7 anterior cervical discectomy and fusion for cervical spinal stenosis. He opined that those conditions are directly related to the December 10, 2002 work injury as appellant never had cervical spine or

lumbar spine issues prior to her injury. While Dr. James indicated that she was at MMI for her lumbar spine, he opined that her active cervical spine issues precluded her from returning to work in any capacity as she awaited surgical approval.

By decision dated March 1, 2021, OWCP denied appellant's request for authorization for C5-7 anterior cervical discectomy and fusion to treat cervical stenosis. It found that she had not submitted sufficient medical evidence which explained how the accepted C4-5 subluxation resulted in the newly-diagnosed conditions of C5-6 and C6-7 herniated nucleus pulposus and severe spinal stenosis and C3-5 disc bulges, or why these conditions were causally related to her December 10, 2002 traumatic work injury. OWCP also found that appellant had not established that the proposed surgical procedure was medically necessary to address the effects of the December 10, 2002 traumatic work injury.

In February 23, April 6, June 2, July 26, September 15, October 6, and November 17, 2021 reports, Dr. James continued to provide impressions of C5-7 herniated nucleus pulposus and severe spinal stenosis, C3-5 disc bulges, and status post L4-S1 posterior lumbar fusion. He also continued to recommend a C5-7 anterior cervical discectomy and fusion, noting that appellant had no prior history of neck pain prior to her December 10, 2002 work injury.

In a June 23, 2021 report, Dr. Kamal C. Kabakibou, a Board-certified anesthesiologist, provided assessments of other cervical disc displacement, unspecified cervical region. He agreed with Dr. James that cervical epidural steroid injections were necessary.

On June 25, 2021 OWCP denied authorization for cervical epidural injections as the requested procedure was to treat nonwork-related conditions.

On March 1, 2022 appellant requested reconsideration of the March 1, 2021 decision.

In reports dated January 24, March 7, and April 25, 2022, Dr. James continued to provide impressions of C5-7 herniated nucleus pulposus and severe spinal stenosis, and C3-5 disc bulging. He provided recommendations for epidural injections of the cervical spine. Dr. James reported that appellant was still off work and was waiting on approval for the C5-7 anterior cervical discectomy and fusion.

OWCP also received a September 27, 2021 MRI scan of cervical spine reported stable mild multilevel disc spur complex and canal encroachment between C3-4 and C6-7 as compared to October 2, 2020 cervical spine MRI scan.

By decision dated May 11, 2022, OWCP denied modification of its March 1, 2021 decision.

## LEGAL PRECEDENT -- ISSUE 1

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 the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.<sup>6</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 the specific employment factors identified by the claimant.<sup>7</sup>

## ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that the acceptance of her claim should be expanded to include additional conditions causally related to the accepted December 10, 2002 employment injury.

Appellant's claim was accepted for cervical dislocation at C4-5. On November 5, 2020 Dr. James reviewed October 2020 diagnostic testing of the cervical spine and provided an impression of C5-7 herniated nucleus pulposus and severe spinal stenosis, and C3-4 and C4-5 disc bulges. In his report dated January 12, 2021, he recommended that acceptance of appellant's claim be expanded to include these cervical conditions. Dr. James related that appellant did not have any cervical symptoms prior to the December 10, 2022 injury. However, the Board has held that an opinion that a condition is causally related to an employment incident simply because the employee was asymptomatic before the injury, is insufficient, without adequate rationale, to establish causal relationship.<sup>8</sup> As such, Dr. James' opinion is of diminished probative value and is insufficient to establish expansion of the claim.<sup>9</sup>

In his subsequent reports of February 8 and 23, April 6, June 2, July 26, September 15, October 6, and November 17, 2021, Dr. James reiterated that appellant's accepted cervical spine conditions should be upgraded to include C5-6 and C6-7 severe degenerative disc disease and herniated nucleus pulposus with anterior-posterior osteophytes resulting in central spinal canal stenosis. He again indicated that she had no prior history of neck pain prior to the December 10, 2002 work injury. As noted above, the Board has held that an opinion that a condition is causally related to an employment incident simply because the employee was asymptomatic before the

---

<sup>5</sup> *V.S.*, Docket No. 19-1370 (issued November 30, 2020); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>6</sup> *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>7</sup> *T.K., id.; I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *See D.V.*, Docket No. 21-1259 (issued March 15, 2022); *S.D.*, Docket No. 20-1255 (issued February 3, 2021); *F.H.*, Docket No. 18-1238 (issued January 18, 2019).

<sup>9</sup> *M.M.*, Docket No. 19-0563 (issued August 1, 2019); *N.G.*, Docket No. 18-1340 (issued March 6, 2019).

injury, is insufficient, without adequate rationale, to establish causal relationship.<sup>10</sup> The Board finds that these reports are, therefore, insufficient to establish expansion of the claim.

In his June 23, 2021 report, Dr. Kabakibou provided assessments of other cervical disc displacement, unspecified cervical region. He did not, however, offer an opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employment condition is of no probative value on the issue of causal relationship.<sup>11</sup>

OWCP also received diagnostic studies of appellant's cervical spine. 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>12</sup> For this reason, this medical evidence is insufficient to establish causal relationship.

By contrast, in his December 15, 2020 report, Dr. Keating, OWCP's second opinion physician, reviewed the SOAF and appellant's medical records and opined, in pertinent part, that her current neck complaints, as demonstrated by MRI scan, were the result of degenerative changes rather than acute changes incurred in her work-related motor vehicle accident, some 18 years prior. His report is well rationalized and is based on examination findings and an accurate history of injury.<sup>13</sup> Accordingly, the Board finds that Dr. Keating's second opinion report constitutes the weight of the medical evidence.

As the medical evidence of record is insufficient to establish causal relationship between appellant's subsequently diagnosed additional conditions and the December 10, 2002 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103 of FECA<sup>14</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.<sup>15</sup> In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of

---

<sup>10</sup> *Id.*

<sup>11</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

<sup>13</sup> *See J.R.*, Docket No. 20-0292 (issued June 26, 2020); *C.J.*, Docket No. 18-0148 (issued August 20, 2018).

<sup>14</sup> 5 U.S.C. § 8103.

<sup>15</sup> *Id.*, *see also N.G.*, Docket No. 18-1340 (issued March 6, 2019).

reasonableness.<sup>16</sup> OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP's authority is that of reasonableness.<sup>17</sup>

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>18</sup>

In order to prove that the procedure is warranted, appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted. Both of these criteria must be met in order for OWCP to authorize payment.<sup>19</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP has not abused its discretion by denying authorization for C5-7 anterior cervical discectomy and fusion.

As noted above, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.<sup>20</sup> As previously discussed, appellant did not meet her burden of proof to establish that acceptance of her claim should be expanded to include the additional cervical conditions for which the C5-7 anterior cervical discectomy and fusion was proposed. Further, the Board finds that the medical evidence of record does not establish that the proposed procedure was medically necessary for treatment of her accepted C4-5 cervical vertebrae dislocation. While Dr. James opined that the procedure was necessary as conservative treatment had failed, he did not specifically explain that conservative treatment of the accepted C4-5 vertebrae dislocation had failed. As appellant must establish that the procedure was for a condition causally related to the employment injury and that the procedure was medically warranted, the Board finds that OWCP acted reasonably in denying her request for authorization for the proposed C5-7 anterior cervical discectomy and fusion.<sup>21</sup>

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.

---

<sup>16</sup> *D.W.*, Docket No. 19-0402 (issued November 13, 2019); *see also Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>17</sup> *J.E.*, Docket No. 18-0228 (issued August 8, 2019); *Daniel J. Perea, id.*

<sup>18</sup> *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007).

<sup>19</sup> *See P.S.*, *supra* note 9; *T.A.*, Docket No. 19-1030 (issued November 22, 2019); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

<sup>20</sup> *Supra* note 17.

<sup>21</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has not established that the acceptance of her claim should be expanded to include additional cervical conditions causally related to the accepted December 10, 2002 employment injury. The Board further finds that OWCP has not abused its discretion by denying authorization for C5-7 anterior cervical discectomy and fusion.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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