

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

C.W., Appellant)	
)	
and)	Docket No. 23-0057
)	Issued: June 16, 2023
U.S. POSTAL SERVICE, DENVER HARBOR)	
POST OFFICE, Houston, TX, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On October 20, 2022 appellant, through counsel, filed a timely appeal from a September 30, 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.³

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.*

³ The Board notes that, following the September 30, 2022 decision, appellant submitted additional evidence to OWCP. 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 his burden of proof to expand the acceptance of his claim to include additional physical and emotional conditions as causally related to the accepted August 28, 2012 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On August 31, 2012 appellant, then a 51-year-old transitional city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2012 he sustained a neck injury when he was involved in a motor vehicle accident while in the performance of duty. He stopped work on August 29, 2012.⁵ OWCP accepted appellant's claim for cervical, lumbar, and left shoulder strains and paid him wage-loss compensation benefits on the periodic rolls, effective April 29, 2013.

Appellant submitted reports dated September 29 and November 12, 2014 from Dr. Louis Train, a Board-certified family practitioner, who provided a history of the August 28, 2012 employment injury and requested expansion of appellant's claim to include the diagnoses of psychogenic pain/chronic pain syndrome, major depressive disorder, generalized anxiety disorder, and bilateral shoulder internal derangement due to his employment injury.

By decisions dated April 6 and 22, 2015, OWCP denied expansion of appellant's claim to include bilateral shoulder internal derangement, psychogenic pain, chronic pain, chronic pain syndrome, and major depressive disorder. It found that the medical evidence of record was insufficient to establish causal relationship between the accepted August 28, 2012 employment incident and the requested expansion of the diagnosed conditions.

On May 4, 2015 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 16, 2015. By decision dated February 1, 2016, OWCP's hearing representative affirmed the April 22, 2015 decision.

Appellant appealed to the Board. In an April 3, 2017 decision, the Board affirmed OWCP's February 1, 2016 decision. The Board found that appellant had not met his burden of proof to expand his claim to include additional conditions as causally related to the accepted August 28, 2012 employment injury.⁶

Appellant subsequently requested reconsideration and submitted additional medical evidence.

⁴ Docket No. 21-0287 (issued July 2, 2021); Docket No. 19-1747 (issued September 2, 2020); Docket No. 16-0858 (issued April 3, 2017).

⁵ On October 18, 2012 appellant's term appointment ended.

⁶ Docket No. 16-0858, *supra* note 4.

In a July 26, 2016 report, Dr. George P. Grimes, a clinical psychologist, noted that appellant was having difficulty sleeping and performing certain physical activities due to increased pain levels. He also indicated that appellant complained of nightmares and sleep disturbances and experienced nervousness, agitation, decreased appetite, weight fluctuations, and headaches. Dr. Grimes diagnosed chronic pain disorder.

OWCP also received reports by Dr. Charles Reinhardt, an osteopathic physician specializing in anesthesiology. In reports dated June 1, 2016 through February 27, 2019, Dr. Reinhardt noted appellant's accepted conditions of lumbar and cervical spine sprains, reviewed appellant's diagnostic testing reports, and provided cervical and lumbar spine examination findings. He opined that appellant's claim should be expanded to include internal disc disruption, spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, lumbar spondylosis foramen stenosis, and right shoulder tear of the supraspinatus tendon.

By decision dated April 3, 2019, OWCP denied modification of its prior decision.

On April 22, 2019 appellant, through counsel, requested reconsideration and submitted additional reports by Dr. Reinhardt dated April 15, May 20, and June 17, 2019.

By decision dated July 10, 2019, OWCP denied modification of its prior decision.

Appellant appealed to the Board. By decision dated September 2, 2020, the Board affirmed the July 10, 2019 decision, finding that the medical evidence of record was insufficient to establish that the claim should be expanded to include additional cervical, lumbar, and shoulder conditions causally related to his accepted August 28, 2012 employment injury.⁷

Appellant, through counsel, requested reconsideration and submitted reports by Dr. Reinhardt dated August 19, 2019 through November 2, 2020 regarding medical treatment for appellant's cervical, thoracic and lumbar spine, and shoulder conditions.

By decision dated November 19, 2020, OWCP denied modification of its prior decision.

Appellant again appealed to the Board. By decision dated July 2, 2021, the Board affirmed the November 19, 2020 decision, finding that the medical evidence of record was insufficient to establish that the claim should be expanded to include additional cervical, lumbar, and shoulder conditions causally related to his accepted August 28, 2012 employment injury.⁸

Following the Board's decision, appellant, through counsel, requested reconsideration and submitted additional medical evidence.⁹

⁷ Docket No. 19-1747, *supra* note 4.

⁸ Docket No. 21-0287, *supra* note 4.

⁹ Although appellant claimed to be filing a request for reconsideration from the Board's July 2, 2021 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). Although the July 2, 2021 Board decision was the last merit decision, the November 19, 2020 OWCP decision is the appropriate subject of possible modification by OWCP.

Appellant submitted reports dated December 23, 2020 through November 9, 2021 from Dr. Reinhardt who indicated that appellant was evaluated for complaints of pain in his neck, lumbar spine, and right knee. He noted a date of injury of August 28, 2012 and the accepted conditions of neck and lumbar sprain. Dr. Reinhardt discussed appellant's cervical and lumbar diagnostic test results and reported that in March 2017 he had requested expansion of appellant's conditions to include spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, and lumbar spondylosis foramen stenosis. On examination of appellant's cervical spine, he noted range of motion testing of rotation to 20 degrees, and back and forward to 15 degrees. Dr. Reinhardt indicated that range of motion testing of appellant's lumbar spine demonstrated 15 degrees flexion, 10 degrees extension, and 10 degrees rotation.

In examination notes dated December 14, 2021 and January 11, 2022, Jacqueline Watson, a nurse practitioner, noted appellant's complaints of cervical and lumbar pain. She reviewed his history and diagnosed cervical and lumbar spine sprains.

In a February 8, 2022 examination note, Dr. Reinhardt indicated that appellant's neck pain increased with activities of daily living and his right shoulder pain increased with sitting and standing. He diagnosed cervical and lumbar spine sprains.

By decision dated September 30, 2022, OWCP denied modification of its prior 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.¹⁰

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the specific employment factor(s) identified by the employee.¹²

¹⁰ *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).

¹¹ *A.W.*, Docket No. 22-1196 (issued November 23, 2022); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹² *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional physical and emotional conditions as causally related to the accepted August 28, 2012 employment injury.

Preliminary, the Board notes that findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³ It is, therefore, unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's November 19, 2020 decision because the Board considered that evidence in its July 2, 2021 decision.¹⁴

Along with his most recent reconsideration request, appellant submitted reports dated December 23, 2020 through February 8, 2022 from Dr. Reinhardt. Dr. Reinhardt noted the August 28, 2012 date of injury, discussed appellant's cervical and lumbar diagnostic studies, and provided examination findings. He indicated that, in March 2017, he requested to expand the acceptance of appellant's claim to include spinal stenosis at C3-4, C4-5, and C5-6, cervical disc disease, lumbar disc disease, and lumbar spondylosis for foramen stenosis. Dr. Reinhardt did not, however, provide medical rationale explaining how appellant's involvement in a motor vehicle accident on August 28, 2012 would cause the diagnosed conditions.¹⁵ The Board has held that a medical opinion is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁶ Therefore, Dr. Reinhardt's reports are insufficient to establish causal relationship.¹⁷

OWCP also received notes from Ms. Watson, a nurse practitioner. However, nurse practitioners are not considered physicians as defined under FECA, and their medical findings and opinions are insufficient to establish entitlement to compensation benefits.¹⁸ These reports, therefore, lack probative value and are insufficient to establish expansion of the claim.

¹³ *G.B.*, Docket No. 19-1448 (issued August 21, 2020); *E.B.*, Docket No. 17-1497 (issued March 19, 2019); *Robert G. Burns*, 57 ECAB 657 (2006).

¹⁴ Docket No. 21-0287, *supra* note 4.

¹⁵ *See L.K.*, Docket No. 20-1117 (issued February 9, 2021).

¹⁶ *V.D.*, Docket no. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁷ *See S.A.*, Docket No. 22-0674 (issued November 28, 2022); *L.K.*, Docket No. 20-1117 (issued February 9, 2021).

¹⁸ 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, Part 2 -- Claims, *Causal Relationship*, 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).

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed lumbar, cervical, and right shoulder conditions and the accepted August 28, 2012 employment injury, the Board finds that he has not met his 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional physical and emotional conditions as causally related to the accepted August 28, 2012 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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