

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

R.C., Appellant)	
)	
and)	Docket No. 22-0888
)	Issued: October 4, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
BROCKTON VA MEDICAL CENTER,)	
Brockton, MA, Employer)	
)	

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 May 26, 2022 appellant, through counsel, filed a timely appeal from a May 3, 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 to consider 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 establish that the acceptance of his claim should be expanded to include Bell's palsy and/or a low back condition as causally related to or as a consequence of his accepted December 19, 2019 employment injury.

FACTUAL HISTORY

On February 11, 2020 appellant, then a 67-year-old acting environmental care specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2019 he injured his left knee moving and lifting boxes while in the performance of duty. OWCP accepted his claim for complex tear of the medial meniscus of the left knee.

In medical reports dated December 23, 2019, and January 6 and 9, 2020, Kristen Antoine, a nurse practitioner, diagnosed appellant with a left knee sprain due to lifting heavy boxes at work on December 19, 2019.

In an initial evaluation report dated February 10, 2020, Jennifer Desalvo, a physical therapist, noted that appellant complained of left knee pain due to a December 19, 2019 lifting incident. She further noted that he related complaints of low back pain, which he attributed to favoring his left lower extremity.

In a report dated February 11, 2020, Dr. Edward M. Phillips, a Board-certified physiatrist, discussed appellant's complaints of left knee pain and compensatory pain in the right leg and back. He performed a physical examination, which revealed an antalgic gait favoring the left leg, minimal crepitus, medial knee pain with valgus stress, and limited lumbar extension due to pain. Dr. Phillips reviewed diagnostic studies including x-rays of the left knee obtained on December 23, 2019, which were negative for fracture, and prior computed tomography (CT) and magnetic resonance imaging (MRI) of the lumbar spine dated October 23 and November 22, 2017, respectively, which revealed anterolisthesis of L4 on L5, disc bulging from L2 through L5, and a left paracentral disc extrusion at L5-S1. He diagnosed a possible meniscal tear and sprain of the medial collateral ligament and recommended an MRI scan of the left knee.

A report of MRI scan of the left knee dated February 12, 2020 revealed a complex tear of the posterior horn body of the medial meniscus.

On March 12, 2022 Dr. Courtney Dawson, a Board-certified orthopedic surgeon, performed an OWCP-authorized left knee arthroscopy with partial medial and lateral meniscectomies.

In a postoperative progress note dated March 27, 2022, Dr. Dawson noted that appellant's left knee pain had resolved, but that he was using a cane for back pain. She further noted that he developed Bell's palsy that week. Dr. Dawson performed a physical examination, which revealed a right-sided facial droop consistent with Bell's palsy, healed surgical scars, and painless range of motion of the left knee. She prescribed an at-home strengthening program, and recommended that appellant avoid climbing ladders, kneeling, and crawling for three to four weeks.

In a report dated April 28, 2020, Dr. Michael Klein, a Board-certified family medicine specialist, noted that appellant had undergone surgery to his left knee, and was diagnosed with Bell's palsy five days later. He also noted that, while participating in physical therapy, following appellant's left knee surgery, appellant experienced right-sided lower back pain due to limping to compensate for the injured left leg. Dr. Klein performed a physical examination, which revealed an antalgic gait favoring the left leg, limited left knee flexion, and marked palsy of the seventh cranial nerve. He diagnosed Bell's Palsy and a tear of meniscus of the left knee. Dr. Klein related that Bell's palsy had many etiologies, but that it "occurring so close to surgery would seem to point to some peri-surgical event whether systemic stress or a viral infection as the inciting event."

In a separate narrative report of even date, Dr. Klein noted that there was no definitive test to determine the cause of Bell's palsy, but "an argument could be made" that the condition was related to appellant's initial left knee injury because postoperative stress and peri-operative viral infection had been correlated with Bell's palsy. He recommended that appellant remain out of work until the Bell's palsy resolved because appellant could not safely wear a mask, which was necessary due to the COVID-19 pandemic.

In a follow-up report dated June 18, 2020, Dr. Klein noted that appellant related that appellant experienced pain and multiple palpable muscle spasms in his lower back during physical therapy, which appellant attributed to a severely antalgic gait after his knee injury. He diagnosed Bell's palsy, lumbar back pain with radiculopathy affecting the left lower extremity, and a left knee meniscus tear. Dr. Klein agreed that appellant's Bell's palsy "could very well have arisen" from his employment injury.

In a separate narrative report of even date, Dr. Klein requested that the acceptance of appellant's claim be expanded to include low back pain and Bell's palsy. He noted that Bell's palsy had multiple triggers and was usually spontaneous, but could "certainly be triggered" by physiological stress. Dr. Klein opined that appellant's knee injury, surgery, and recovery "could have provided such a trigger." He further opined that appellant had a compensatory back injury due to gait changes related to his left knee injury. Dr. Klein concluded that there was a "clear starting point to the medical troubles which stemmed from [appellant's] December 19, 2019 injury and that his knee injury, back pain, and Bell's palsy can all be traced back to this injury as the initial cause within a reasonable degree of medical certainty."

In a statement dated August 31, 2020, appellant indicated that hobbling and overcompensating for his injured left leg caused a longstanding back ailment³ to become more prevalent and intensify, and that he needed a cane, physical therapy, and back massages for his lower back symptoms. He also noted that he developed Bell's palsy while recovering from surgery to the left knee.

In a development letter dated September 1, 2020, OWCP informed appellant that the evidence was insufficient to warrant expansion of the acceptance of his claim to include Bell's

³ Appellant has a previously accepted October 16, 2017 traumatic injury claim for lower back strain under OWCP File No. xxxxxx943. His claims have not been administratively combined by OWCP.

palsy and a lower back condition. It advised him of the factual and medical evidence needed to establish a consequential claim and afforded him 30 days to submit the necessary evidence.

In a September 16, 2020 report, Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), reviewed a statement of accepted facts and the medical record. He opined that appellant's Bell's palsy and low back condition were not a consequence of the accepted December 19, 2019 employment injury. Dr. Fellars noted that there was a temporal association, but found that the conditions were idiopathic with a date of onset around the time of the knee surgery.

In a narrative report dated November 5, 2020, Dr. Sadie Elisseou, a Board-certified internist, noted that she had treated appellant for the past year. She indicated that she had reviewed various physical therapy notes which documented complaints of lower back pain due to difficulty ambulating on the left leg. Dr. Elisseou further indicated that Bell's palsy had multiple potential causes, including herpes simplex virus activation and general anesthesia during surgery. She noted that immediate postoperative facial nerve paralysis was rare and cited various case studies regarding Bell's palsy.

In a medical report dated November 9, 2020, Dr. Klein indicated that appellant related a substantial amount of pain in his back, which Dr. Klein opined that was due to an antalgic gait. He also diagnosed reflex Bell's palsy, which he opined was due to surgery for the accepted left knee injury.

In a separate narrative report of even date, Dr. Klein indicated that he disagreed with the opinion of OWCP's DMA. He again opined that appellant's left knee surgery triggered his Bell's palsy and his antalgic gait triggered back pain. Dr. Klein attributed appellant's meniscal tear of the knee, the lumbar pain, and Bell's palsy to the accepted December 19, 2019 employment injury.

By decision dated April 19, 2021, OWCP denied expansion of the acceptance of appellant's claim to include a consequential low back condition or Bell's palsy.

OWCP continued to receive evidence, including a January 13, 2022 narrative report by Dr. Elisseou, who diagnosed appellant with back pain and Bell's palsy. Dr. Elisseou opined that knee pain can cause new back pain or worsen underlying back pain by causing a change in gait, leading to malalignment of the spine, muscular spasm of the back, pinched peripheral nerves, or a flare in degenerative disc disease and/or arthritis of the spine. She explained that there was an association between Bell's palsy and general anesthesia or herpes simplex virus activation, but that postoperative facial paralysis was rare, and the cause of Bell's palsy was generally unknown. Dr. Elisseou opined that it was more than likely that the severe physical stress of appellant's left knee surgery led to increased pain and circulation of inflammatory markers in the body, which impaired his immunity and triggered an episode of acute Bell's palsy.

On January 31, 2022 appellant, through counsel, requested reconsideration of OWCP's April 19, 2021 decision.

In a letter dated February 23, 2022, the employing establishment controverted appellant's request for reconsideration.

By decision dated May 3, 2022, OWCP denied modification of its April 19, 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.⁴

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁵ 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 incident.⁶ 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.⁷

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁸

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.⁹

⁴ See *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *M.M.*, Docket No. 22-0037 (issued October 12, 2022); *C.W.*, Docket No. 21-0017 (issued December 28, 2021); *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004)

⁵ *L.R.*, Docket No. 21-0018 (issued February 17, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

⁶ *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *R.P.*, Docket No. 18-1591 (issued May 8, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

⁸ *D.L.*, *supra* note 6; *V.K.*, Docket No. 19-0422 (issued June 10, 2020).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *G.D.*, Docket No. 20-0966 (issued July 21, 2022); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that the acceptance of his claim should be expanded to include Bell's palsy and/or a lumbar condition as causally related to or as a consequence of the December 19, 2019 employment injury.

In her January 13, 2022 report, Dr. Elisseou diagnosed back pain and Bell's palsy. The Board has held that pain is a symptom and not a compensable medical diagnosis.¹⁰ Regarding the diagnosis of Bell's palsy, Dr. Elisseou opined that it was more than likely that the severe physical stress of appellant's left knee surgery led to increased pain and circulation of inflammatory markers in the body, causing impaired immunity which "can trigger" an acute illness, such as Bell's palsy. The Board notes that the medical record does not contain any indication that he was diagnosed with a viral infection on or about the date of his authorized knee surgery. Moreover, Dr. Elisseou did not explain how the authorized left knee surgery caused Bell's palsy, other than to note that it led to increased pain and circulation of inflammatory markers, which impaired immunity and could have triggered an acute illness. The Board has held that medical opinions that suggest that a condition "could" be caused by an event are speculative or equivocal in character and have limited probative value.¹¹ Therefore, the Board finds Dr. Elisseou's opinion to be speculative in nature and lacking sufficient medical rationale to demonstrate that the conclusion reached regarding appellant's condition was sound, logical, and rational.¹² For these reasons, the Board finds that her January 13, 2022 report is insufficient to establish his expansion claim.

In her November 5, 2020 report, Dr. Elisseou provided her review of medical reports and noted that appellant wanted a report regarding his left knee pain, low back pain, and Bell's palsy. As noted above, the Board had held that pain is a symptom and not a compensable medical diagnosis.¹³ Moreover, Dr. Elisseou reviewed the medical evidence, but did not explain physiologically how the accepted employment injury resulted in Bell's palsy. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is causally related to the accepted employment injury.¹⁴ Thus, Dr. Elisseou's November 5, 2020 narrative report is also insufficient to meet appellant's burden of proof to establish expansion of the acceptance of his claim.

¹⁰ *R.N.*, Docket No. 19-1004 (issued October 18, 2019); *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *Robert Broome*, 57 ECAB 339, 342 (2004).

¹¹ *N.H.*, Docket No. 21-1133 (issued February 25, 2022); *see D.B.*, Docket No. 20-0775 (issued July 28, 2021); *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

¹² *See L.M.*, Docket No. 17-0279 (issued January 26, 2018); *B.S.*, Docket No. 15-0002 (issued February 27, 2015); *K.W.*, 59 ECAB 271 (2007).

¹³ *Supra* note 10.

¹⁴ *See S.S.*, Docket No. 21-1140 (issued June 29, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.S.*, Docket No. 21-0673 (issued October 10, 2021); *R.A.*, Docket No. 20-0969 (issued August 9, 2021); *see also T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

In his reports dated April 28, June 18, and November 9, 2020, Dr. Klein diagnosed Bell's palsy, low back pain, and left-sided lumbar radiculopathy. Regarding the low back, he opined that an antalgic gait following the authorized left knee surgery triggered low back pain and radiculopathy. While Dr. Klein attributed appellant's low back condition to appellant's accepted left knee injury, the Board finds that he did not offer medical rationale explaining how the accepted employment injury caused a low back condition.¹⁵ He did not explain the mechanism of injury of how overcompensating for appellant's left knee injury contributed to the development of an additional low back condition.¹⁶ The Board has held that medical evidence that states a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ Regarding the diagnosis of Bell's palsy, Dr. Klein opined that physiological stress associated with the authorized left knee surgery could have triggered the condition. As noted above, the Board has held that medical opinions that suggest that a condition "could" be caused by an event are speculative or equivocal in character and have limited probative value.¹⁸ Accordingly, Dr. Klein's reports are also insufficient to meet appellant's burden of proof.

Dr. Phillips, in his February 11, 2020 report, noted that appellant complained of compensatory back pain. Similarly, in her March 27, 2020 report, Dr. Dawson noted that he was using a cane due to back pain and had right-sided facial droop consistent with Bell's palsy. However, neither of these reports contain an opinion as to the cause of these conditions. The Board has held that a report is of no probative value regarding causal relationship if it does not provide an opinion on causal relationship.¹⁹ As such, neither the February 11, 2020 report from Dr. Phillips, nor the report dated March 27, 2020 from Dr. Dawson are sufficient to meet appellant's burden of proof.

The remaining evidence of record consists of notes by physical therapists and a nurse practitioner. Certain healthcare providers such as physician assistants, physical therapists, nurse practitioners, and social workers are not considered "physician[s]" as defined under FECA.²⁰

¹⁵ *Id.*

¹⁶ *See S.S., supra* note 14; *S.D.*, Docket No. 21-0085 (issued August 9, 2021); *see also M.B.*, Docket No. 19-1655 (issued April 7, 2020).

¹⁷ *Supra* note 10; *P.J.*, Docket No. 18-1738 (issued May 17, 2019); *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

¹⁸ *J.W.*, *supra* note 11.

¹⁹ *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁰ Section 8101(2) provides that under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See supra* note 9 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 R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

Moreover, appellant submitted diagnostic studies in support of his claim. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the employment factors caused any of the diagnosed conditions.²¹ As such, this evidence is also insufficient to establish appellant's claim.²²

Appellant has not submitted rationalized medical evidence establishing that the acceptance of his claim should be expanded to include Bell's palsy and/or a low back condition as causally related to or as a consequence of his accepted December 19, 2019 employment injury and therefore 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 Bell's palsy and/or a low back condition as causally related to or as a consequence of his December 19, 2019 employment injury.

²¹ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

²² *D.P.*, Docket No. 19-1295 (issued March 16, 2020); *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *see M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *David P. Sawchuk*, *supra* note 20.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 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