United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 21-1319**
	)	**Issued: September 7, 2023**
U.S. POSTAL SERVICE, NEW JERSEY INTERNATIONAL BULK MAIL & DISTRIBUTION CENTER, Jersey City, NJ, Employer	)	

Appearances:
Michael D. Overman, *Esq.*, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 31, 2021 appellant, through counsel, filed a timely appeal from a March 5, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

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[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 March 5, 2021 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 her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted July 12, 2017 employment injury.

FACTUAL HISTORY

On July 14, 2017 appellant, then a 28-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2017 she sustained an injury when a bulk mail container fell on her head, neck, and upper back while in the performance of duty. She stopped work on the date of the claimed injury.

The case record contains administrative documents showing that appellant visited an emergency room on July 12, 2017 and was treated for a suspected concussion. In a July 13, 2012 letter, Dr. Rohitkumar Shah, a Board-certified internist, indicated that appellant sustained a head injury on the prior day and that she was incapacitated from work until seen by a "workers' comp[ensation] [physician.]"

In a July 20, 2017 narrative report, Dr. Mark Filippone, a Board-certified physiatrist, indicated that appellant was injured at work on July 12, 2017 when a bulk mail carrier weighing 1,000 pounds fell over due to a missing right front wheel and struck the back of her head. He noted that the impact of the bulk mail carrier pushed her to the floor, rendering her unconscious for 15 to 20 seconds and injuring her head, entire spine, shoulders, and arms. Dr. Filippone reported his physical examination findings, noting that appellant had obvious pain, spasm, and guarding of the cervical paraspinals, suboccipital musculature, upper trapezius, scapular adductors, thoracic paraspinals, and lumbar paraspinals. He diagnosed head trauma, postconcussion syndrome, post-traumatic cephalgia, vertigo, labyrinthitis syndrome, temporomandibular joint (TMJ) syndrome, post-traumatic stress disorder (PTSD), traumatic brain injury, suboccipital neuritis, grossly abnormal hemi-sensory deficit, cervical radiculitis, thoracalgia with radiculitis, lumbosacral radiculitis, rule out cervical/thoracic/lumbosacral radiculopathy, rule out myelopathy, and rule out herniated nucleus pulposus of the cervical, thoracic, and lumbar spines. Dr. Filippone advised that appellant was totally disabled and noted, "[o]bviously this is directly and solely the result of the injuries sustained when a [bulk mail container] with no front right wheel fell and struck her on the head and knocked her out."

In a July 20, 2017 attending physician's report (Form CA-20), Dr. Filippone listed the date of injury as July 12, 2017, and diagnosed head trauma, vertigo, post-traumatic labyrinthitis, cervical/thoracic/lumbar spine sprains, and rule out peripheral nerve entrapment of the right shoulder. He checked a box marked "Yes" indicating that these conditions were caused or aggravated by the identified employment activity. Dr. Filippone advised that appellant was totally disabled from July 12, 2017 through the next examination.

In duty status reports (Form CA-17) dated July 20 and August 4, 2017, Dr. Filippone found that appellant was totally disabled from all work. In an August 4, 2017 Form CA-20, he diagnosed multiple traumas to the head, neck, right shoulder, and thoracic and lumbosacral spines. Dr. Filippone checked a box marked "Yes" indicating that these conditions were caused or aggravated by the July 12, 2017 employment activity. The report of an August 10, 2017 magnetic resonance imaging (MRI) scan of appellant's brain and auditory canals without contrast revealed normal findings.

In an August 14, 2017 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted additional CA-20 forms, dated August 18 and 25, September 5, and October 13, 2017, and February 28, 2018, wherein Dr. Filippone diagnosed trauma to the right wrist in addition to the previously-diagnosed conditions, and checked boxes marked "Yes" indicating that the conditions were caused or aggravated by the July 12, 2017 employment activity. In CA-17 forms dated August 18, September 5, and October 13, 2017, and February 28, 2018, Dr. Filippone found that she was totally disabled from work.

By decision dated September 28, 2017, OWCP accepted that the July 12, 2017 employment incident occurred as alleged, however, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident. It found that the requirements had not been met to establish an injury.

A November 14, 2017 MRI scan of appellant's brain contained an impression of "unremarkable MRI [scan] of the brain." In a November 14, 2017 report, Dr. Filippone argued that her claim should be accepted for a July 12, 2017 work injury. He indicated that appellant had cerebellar and other traumatic brain damage and had developed a seizure disorder. The case record contains documents from a November 11, 2017 hospital visit after she fainted and had convulsions at home. An unsigned report among these documents contains a diagnosis of syncope/near syncope.

Appellant argued that her claim should be accepted for the conditions diagnosed by Dr. Filippone, including head trauma, post-traumatic cephalgia, vertigo, labyrinthitis, TMJ syndrome, PTSD, traumatic brain injury, suboccipital neuritis, cervical radiculitis, thoracalgia with radiculitis, and lumbosacral radiculitis.

After development of the evidence, by decision dated May 29, 2018, OWCP accepted appellant's claim for head concussion, postconcussion syndrome, and neck strain.[4] It indicated that her claim for post-traumatic cephalgia, vertigo, labyrinthitis, TMJ syndrome, PTSD, traumatic brain injury, suboccipital neuritis, cervical radiculitis, "thoracicalgia with radiculitis," and lumbosacral radiculitis would be "addressed under a different cover."

By decision dated June 4, 2018, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions related to the July 12, 2017 employment injury, including post-traumatic cephalgia, vertigo, labyrinthitis, TMJ syndrome, PTSD, traumatic brain injury, suboccipital neuritis, cervical radiculitis, "thoracalgia with radiculitis," and lumbosacral radiculitis.

Appellant subsequently submitted a May 30, 2018 Form CA-20, in which Dr. Filippone diagnosed multiple traumas to the head, neck, right shoulder, right wrist, and thoracic and lumbosacral spines, and checked a box marked "Yes" indicating that all of these conditions were caused or aggravated by the July 12, 2017 employment injury.

[4] OWCP paid appellant wage-loss compensation on the supplemental rolls, effective August 27, 2017, and on the periodic rolls, effective May 27, 2018.

On June 11, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 28, 2018. Appellant subsequently submitted a February 19, 2018 report wherein Dr. Dani Korya, a Board-certified neurologist, noted multiple inconsistent findings upon neurological examination. Dr. Korya noted that neuroimaging testing was normal and diagnosed headache. In a May 1, 2018 report, he diagnosed intractable episodic tension-type headache.

On June 27, 2018 OWCP referred appellant, the medical record, a statement of accepted facts and a series of questions, for a second opinion examination and evaluation with Dr. Andrew Farber, an osteopath and Board-certified orthopedic surgeon. It requested that he evaluate whether the acceptance of her claim should be expanded to include additional conditions causally related to the accepted July 12, 2017 employment injury. In a July 18, 2018 report, Dr. Farber discussed appellant's factual and medical history and reported physical examination findings. He advised that there was evidence of symptom magnification on examination, which put the whole examination in question.

In July 24, October 2, and November 1, 2018 reports, Dr. Filippone reported physical examination findings and opined that appellant's central and peripheral neurological findings were abnormal. In an October 2, 2018 Form CA-20, he diagnosed multiple traumas to the head, neck, right shoulder, right wrist, and thoracic and lumbosacral spines, and checked a box marked "Yes" to indicate that these conditions were caused or aggravated by the July 12, 2017 employment activity.

In an October 15, 2018 report, Dr. Roman Isaac, a Board-certified orthopedic surgeon, noted that appellant reported that on July 12, 2017 a bulk mail container fell on top of her head and she lost consciousness. He diagnosed right cervical disc herniation at C6-7, and right neck and upper extremity pain/numbness. Dr. Isaac opined, "I believe [appellant's] symptoms are a direct result of her work-related accident and are attributed to her cervical disc herniation."

Appellant was reexamined by Dr. Farber on October 8, 2018 at OWCP's direction and, in a report of the same date, he indicated that she reported right upper extremity paresthesias, which were in a nonanatomic distribution. She exhibited a 4/5 right shoulder shrug upon examination, which did not appear to be a neurological deficit given the remainder of the examination. Dr. Farber opined that appellant continued to have partially disabling residuals of her July 12, 2017 employment injury, but found that OWCP should not expand the acceptance of her claim to include other conditions suffered as a result of the July 12, 2017 employment injury.

In an October 24, 2018 report, Dr. Praveen Kadimcherla, a Board-certified orthopedic surgeon, diagnosed cervicalgia, cervical radiculopathy, lumbago, lumbar radiculopathy, and spontaneous rupture of other tendons of the right upper arm. In a November 28, 2018 Form CA-20, Dr. Filippone diagnosed bilateral cervical radiculopathy and multiple traumas to the head, neck, right shoulder, right wrist, and lumbosacral spine. He checked a box marked "Yes" indicating that these conditions were caused or aggravated by the July 12, 2017 employment injury. In October 2 and November 28, 2018 CA-17 forms, Dr. Filippone found that appellant was totally disabled from all work.

In November 26 and December 19, 2018 reports, Dr. Helene Miller, a Board-certified psychiatrist, diagnosed chronic PTSD, single episode of major depressive disorder (moderate), and postconcussion syndrome. In December 17, 2018 and January 31, 2019 reports, Dr. Theodore Conte, a Board-certified neurosurgeon, diagnosed concussion, postconcussion syndrome with

headache, vertigo, tinnitus, diplopia/blurry vision, cognitive impairment, and post-traumatic mood/anxiety disturbance.

On January 22, 2019 counsel requested that OWCP expand the acceptance of appellant's claim to include cervical disc herniation/radiculopathy, lumbar radiculopathy, and right upper extremity tendon injury based on Dr. Kadimcherla's opinion.

By decision dated February 12, 2019, OWCP's hearing representative affirmed the June 4, 2018 decision.

On July 9, 2019 appellant, through counsel, requested reconsideration of the February 12, 2019 decision.

Appellant submitted January 23, February 5 and 27, and March 7, 2019 reports in which Dr. Miller diagnosed chronic PTSD, single episode of major depressive disorder (moderate), and postconcussion syndrome. In an April 30, 2019 report, Barry Benzing, a physician assistant, also diagnosed chronic PTSD, single episode of major depressive disorder (moderate), and postconcussion syndrome. He opined that appellant's current symptoms were a direct result of the "work-related accident" and asserted that the mood disorder with "depressive-like episodes" stemmed from the trauma of the accident.

In reports dated February 21 and 26 and April 3, 2019, Dr. Filippone noted that appellant's central and peripheral neurologic examinations were unchanged and advised that she remained totally disabled.

In February 12 and April 8, 2020 reports, Dr. Conte diagnosed concussion, postconcussion syndrome with headache, vertigo, tinnitus, diplopia/blurry vision, cognitive impairment, and post-traumatic mood/anxiety disturbance. In reports dated August 20, 2019 through February 23, 2021, Dr. Shah diagnosed concussion with loss of consciousness of unspecified duration, postconcussional syndrome, myalgia of auxiliary muscle, cervicalgia, and strain of muscle, fascia and tendon at neck level.

By decision dated March 5, 2021, OWCP denied modification of the February 12, 2019 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.[5] The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. 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

[5] *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).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted July 12, 2017 employment injury.

In a July 20, 2017 narrative report, Dr. Filippone indicated that appellant was injured at work on July 12, 2017 when a bulk mail carrier weighing 1,000 pounds fell over due to a missing right front wheel and struck the back of her head. He noted that the impact of the bulk mail carrier pushed her to the floor, rendering her unconscious for 15 to 20 seconds and injuring her head, entire spine, shoulders, and arms. Dr. Filippone diagnosed head trauma, postconcussion syndrome, post-traumatic cephalgia, vertigo, labyrinthitis syndrome, TMJ syndrome, PTSD, traumatic brain injury, suboccipital neuritis, grossly abnormal hemi-sensory deficit, cervical radiculitis, "thoracicalgia with radiculitis," lumbosacral radiculitis, rule out cervical/thoracic/lumbosacral radiculopathy, rule out myelopathy, and rule out herniated nucleus pulposus of the cervical, thoracic, and lumbar spines. He advised that appellant was totally disabled and noted, "[o]bviously this is directly and solely the result of the injuries sustained when a [bulk mail container] with no front right wheel fell and struck [appellant] on the head and knocked her out." The Board finds, however, that this report is of limited probative value regarding her expansion claim because Dr. Filippone did not provide adequate medical rationale in support of his opinion on causal relationship. Dr. Filippone did not explain how the July 12, 2017 employment injury could have been competent to cause the diagnosed conditions, which OWCP had not accepted. 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 has an employment-related cause.[7] Therefore, this evidence is insufficient to establish appellant's expansion claim.

In a July 20, 2017 Form CA-20, Dr. Filippone listed the date of injury as July 12, 2017 and diagnosed head trauma, vertigo, post-traumatic labyrinthitis, cervical/thoracic/lumbar spine sprains, and rule out peripheral nerve entrapment of the right shoulder. He checked a box marked "Yes" indicating that these conditions were caused or aggravated by the identified employment activity. In CA-20 forms dated between August 4, 2017 and October 2, 2018, Dr. Filippone diagnosed multiple traumas to the head, neck, right shoulder, and thoracic and lumbosacral spines. On each form, he checked a box marked "Yes" indicating that these conditions were caused or aggravated by the July 12, 2017 employment activity. Dr. Filippone, however, failed to provide medical rationale for the above-described opinions on the causal relationship between any currently unaccepted medical conditions and the July 12, 2017 employment injury. The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[8] As such, this evidence is insufficient to establish appellant's expansion claim.

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[6] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[7] *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[8] *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

Appellant submitted other reports of Dr. Filippone, which do not reference the cause of any of the additional medical conditions that she requested be accepted by OWCP. A number of these reports were CA-17 forms, which delineated periods of disability. These reports would have no probative value regarding appellant's expansion claim. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[9] Therefore, this evidence is insufficient to establish appellant's expansion claim.

In an October 15, 2018 report, Dr. Isaac related that on July 12, 2017 a bulk mail container fell on top of appellant's head and she lost consciousness. He diagnosed right cervical disc herniation at C6-7, and right neck and upper extremity pain/numbness. Dr. Isaac opined, "I believe [that] the [appellant's] symptoms are a direct result of her work-related accident and are attributed to her cervical disc herniation." However, he did not provide any medical rationale in support of his opinion on causal relationship. As noted above, 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 has an employment-related cause.[10] Therefore, this evidence is insufficient to establish appellant's expansion claim.

Appellant submitted numerous reports of attending physicians, which referenced medical conditions that she requested be accepted by OWCP. In an October 24, 2018 report, Dr. Kadimcherla diagnosed cervicalgia, cervical radiculopathy, lumbago, lumbar radiculopathy, and spontaneous rupture of other tendons of the right upper arm. In reports dated November 26 and December 19, 2018, and January 23, February 5 and 27, and March 7, 2019, Dr. Miller diagnosed chronic PTSD, single episode of major depressive disorder (moderate), and postconcussion syndrome. In reports dated December 17, 2018, January 31, 2019, and February 12 and April 8, 2020, Dr. Conte diagnosed concussion, postconcussion syndrome with headache, vertigo, tinnitus, diplopia/blurry vision, cognitive impairment, and post-traumatic mood/anxiety disturbance. In reports dated August 20, 2019 through February 23, 2021, Dr. Shah diagnosed concussion with loss of consciousness of unspecified duration, postconcussional syndrome, myalgia of auxiliary muscle, cervicalgia, and strain of muscle, fascia and tendon at neck level. This evidence, however, does not relate the diagnosed conditions to the July 12, 2017 employment injury. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] Therefore, this evidence is insufficient to establish appellant's expansion claim.

In an April 30, 2019 report, Mr. Benzing, a physician assistant, diagnosed chronic PTSD, single episode of major depressive disorder (moderate), and postconcussion syndrome. He opined that appellant's current symptoms were a direct result of the "work-related accident" and asserted that the mood disorder with "depressive-like episodes" stemmed from the trauma of the accident. The Board has held, however, that nurses, physician assistants, and physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent

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

[10] *See supra* note 9.

[11] *See supra* note 9.

medical evidence.[12] Therefore, this report is of no probative value and is insufficient to establish appellant's expansion claim.

In a July 18, 2018 report, Dr. Farber, an OWCP referral physician, discussed appellant's factual and medical history and reported physical examination findings. He advised that there was evidence of symptom magnification on examination, which put the whole examination in question. Appellant was reexamined by Dr. Farber on October 8, 2018 at OWCP's direction and, in a report of the same date, indicated that she reported right upper extremity paresthesias, which were in a nonanatomic distribution. Dr. Farber opined that she continued to have partially disabling residuals of her July 12, 2017 employment injury, but found that OWCP should not expand the acceptance of her claim to include other conditions suffered as a result of the July 12, 2017 employment injury. As his report was well-reasoned and based on a complete and accurate history, the Board finds that it constitutes the weight of the medical evidence.

As the medical evidence of record is insufficient to establish causal relationship between appellant's additional claimed conditions and the accepted July 12, 2017 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted July 12, 2017 employment injury.

[12] 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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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