

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

T.S., Appellant	)	
	)	
and	)	Docket No. 23-0539
	)	Issued: September 19, 2023
DEPARTMENT OF VETERANS AFFAIRS,	)	
ALEXANDRIA HEALTH CARE SYSTEM,	)	
Alexandria, LA, Employer	)	
	)	

*Appearances:*  
Wayne Johnson, Esq., for the appellant<sup>1</sup>  
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 March 11, 2023 appellant, through counsel, filed a timely appeal from a September 12, 2022 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.

---

<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 her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On August 12, 2019 appellant, then a 40-year-old registered nurse, filed a traumatic injury claim (Form CA-1), alleging that on August 5, 2019 she sustained spinal and left leg injuries while in the performance of duty due to an increased travel schedule, and the employing establishment's delay in accommodating restrictions given by her physician. She stopped work on August 12, 2019.

In a development letter dated August 23, 2019, OWCP informed appellant of the deficiencies of her traumatic injury claim. It advised her of the type of factual and medical evidence required to establish her claim and afforded her 30 days to submit the requested evidence.

OWCP subsequently received medical evidence by Dr. Jason Cormier, an attending Board-certified neurosurgeon. In an August 5, 2019 report, Dr. Cormier noted that appellant had been referred by her treating physician for lumbar disc displacement, radiculopathy, and spondylosis. He reported that she was a traveling nurse and that driving increased her lower back pain. Dr. Cormier provided his physical examination findings and reviewed diagnostic test results. He diagnosed lumbar herniated nucleus pulposus (HNP) and recommended L4-5 microdiscectomy surgery. In a work/school status form of even date, Dr. Cormier released appellant to return to light duty with restrictions of no prolonged sitting, no lifting more than 10 pounds, and freedom to change position as necessary.

In a form report dated August 14, 2019, Dr. Cormier diagnosed other intervertebral disc displacement, lumbar region, and indicated that appellant underwent left L5-S1 microdiscectomy surgery on August 14, 2019. He also indicated that she was unable to work due to the diagnosed condition.

In an August 14, 2019 operative report, Dr. Cormier provided preoperative and postoperative diagnoses of left L5-S1 disc herniation, and performed a minimally invasive L5-S1 hemilaminectomy, microdiscectomy and decompression of posterior aspects. In a postoperative progress note of even date, he reiterated his diagnosis of left L5-S1 herniation. Following surgery, he provided care plan goals and discharge instructions in an August 15, 2019 patient visit information form.

In a procedure order note dated August 21, 2019, Dr. Cormier continued to diagnose lumbar HNP and ordered physical therapy exercises for the next 8 to 12 weeks.

In a September 23, 2019 completed development questionnaire, appellant stated that she was still required to travel out to the clinic despite paperwork approving her accommodations/restrictions. Following her return to duty on July 2, 2019, appellant asserted that her condition had been aggravated causing new injury and trauma as supported by her August 5,

2019 medical appointment. Appellant stated that she informed her supervisors that her condition was aggravated by the increase in her daily travel.

By decision dated November 14, 2019, OWCP converted appellant's traumatic injury claim into an occupational disease claim (Form CA-2). It then denied her claim, finding that the evidence of record was insufficient to establish the implicated employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 10, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on April 6, 2020.

By decision dated June 16, 2020, OWCP's hearing representative affirmed the November 14, 2019 decision, finding that the medical evidence of record was insufficient to establish that the diagnosed back conditions were causally related to the accepted factors of her federal employment.

On June 16, 2021 appellant, through counsel, requested reconsideration. In support thereof, she submitted reports dated December 12, 2019 and February 27, 2020, wherein Dr. Cormier detailed appellant's injury and medical histories and provided his examination findings. His diagnoses included lumbar radiculitis and lumbar spine instability.

By decision dated August 19, 2021, OWCP denied modification of the June 16, 2020 decision.

On August 19, 2022 appellant, through counsel, requested reconsideration. In support thereof, she submitted reports dated March 8, and December 2 and 13, 2021 from Dr. Cormier, and cervical and thoracic spine magnetic resonance imaging (MRI) scans dated December 9, 2021.

Dr. Cormier, in his March 8, 2021 report, indicated that appellant continued to have complaints of upper extremity numbness and tingling which might be consistent with cervical myelopathy and contributing to her heaviness complaint. His review of an August 24, 2020 MRI scan did not reveal any significant pathology which could cause her left lower extremity symptoms. Dr. Cormier reiterated his diagnosis of lumbar spine instability. He also diagnosed cervical disc disorder with cervicothoracic region myelopathy, and intervertebral thoracic region disc disorder.

In his December 2, 2021 report, Dr. Cormier again noted appellant's injury and medical histories and provided his examination findings. He recommended cervical and thoracic spine MRI scans, explaining that a lumbar MRI scan showed nothing significant. Dr. Cormier again diagnosed lumbar radiculitis. He also diagnosed cervical radiculitis.

Dr. Cormier, in a December 13, 2021 report, reiterated the findings set forth in his prior reports and restated his diagnoses of lumbar radiculitis and lumbar HNP. He also diagnosed sacroiliac joint inflammation. In a note of even date, Dr. Cormier reviewed cervical and thoracic MRI scans dated December 9, 2021, which showed cervical spondylosis with age-related changes,

mild C4-5 to C6-7 disc bulge, mild disc bulging with varying degrees of foraminal stenosis from C4-5 down to T11-12, and no evidence of important cervical or thoracic stenosis.

In his December 9, 2021 thoracic spine MRI scan report Dr. F. Michael Hindelang, III, a Board-certified diagnostic radiologist, provided impressions of questionable left atrial enlargement; mild left foraminal stenosis at T7-T8; facet hypertrophy within the lower thoracic spine; moderate-to-severe left and severe right foraminal stenosis at T8-T9; mild left foraminal stenosis at T9-T10; posterior disc bulge and facet hypertrophy at T10-T11 without central canal stenosis and mild left foraminal stenosis; and posterior disc bulge and facet hypertrophy at T11-T12 without central canal stenosis and mild right and moderate-to-severe left foraminal stenosis. In his cervical spine MRI scan report of even date, Dr. Hindelang provided impressions of straightening of the cervical spine; mild disc space narrowing and anterior spurring at C5-C6; posterior disc bulge at C5-C6 resulting in mild central canal stenosis and abutting the ventral rami of the C7 nerve roots bilaterally, and mild bilateral foraminal stenosis; posterior disc bulge at C6-C7 resulting in mild central canal stenosis; and mild right foraminal stenosis at C7-T1.

By decision dated September 12, 2022, OWCP denied modification of the August 19, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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

---

<sup>3</sup> *Id.*

<sup>4</sup> *N.F.*, Docket No. 21-1145 (issued January 25, 2023); *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *N.F.*, *supra* note 4; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *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> The opinion of the physician must be based upon a complete factual and medical background, 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.<sup>9</sup>

### ANALYSIS

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

In support of her claim, appellant submitted a series of reports from Dr. Cormier dated August 5, 2019 through December 13, 2021. In these reports, Dr. Cormier indicated an awareness of the accepted employment factors and provided diagnoses; however, he did not offer an opinion on causal relationship. 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.<sup>10</sup> As such, this evidence is insufficient to establish appellant's claim.

The remaining medical evidence consisted of cervical and thoracic MRI scans. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and the diagnosed conditions.<sup>11</sup> For this reason, this evidence is also insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment factors, the Board finds that appellant has not met her burden of proof.

---

<sup>7</sup> *K.R.*, *supra* note 5; *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<sup>8</sup> *K.R.*, *id.*; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48ECAB 238 (1996).

<sup>9</sup> *K.R.*, *id.*; *D.C.*, Docket No. 19-1093 (issued June 25, 2020).

<sup>10</sup> *M.O.*, Docket No. 22-1035 (issued March 22, 2023); *J.B.*, Docket No. 21-0211 (issued March 21, 2023); *M.C.*, Docket No. 22-0992 (issued March 15, 2023); *D.H.*, Docket No. 20-1410 (issued December 21, 2022); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *H.E.*, Docket No. 22-1129 (issued December 16, 2022); *S.S.*, Docket No. 21-1381 (issued December 7, 2022); *M.S.*, Docket No. 22-0586 (issued July 12, 2022); *M.T.*, Docket No. 20-0184 (issued June 24, 2022).

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 establish a medical condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 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