United States Department of Labor
Employees' Compensation Appeals Board

M.T., Appellant	)	
and	)	**Docket No. 23-0251**
	)	**Issued: February 22, 2024**
DEPARTMENT OF AGRICULTURE, ANIMAL & PLANT HEALTH INSPECTION SERVICE, Mount Dora, FL, Employer	)	

Appearances:
Wayne Johnson, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 9, 2022 appellant, through counsel, filed a timely appeal from a June 14, 2022 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]

[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 June 14, 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 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 a head condition as causally related to the accepted September 13, 2018 employment injury.

FACTUAL HISTORY

On September 17, 2018 appellant, then a 63-year-old plant protection and quarantine officer, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2018 she sustained injuries to her right hip and right shoulder when she tripped over a threshold to the bathroom door and fell while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim for nondisplaced fracture of the greater trochanter of the right femur and nondisplaced fracture of the greater tuberosity of the right humerus.[4]

The employing establishment issued an authorization for examination and/or treatment report (Form CA-16) on September 14, 2018. The form indicated that appellant had fallen on her right side, was in a lot of pain, and could barely move on her own.

Appellant sought treatment in the emergency room on September 13, 2018 and was admitted to the hospital from September 14 through October 3, 2018.

In a September 14, 2018 emergency room report, Dr. Jenniffer De La Rosa Ogando, a Board-certified internist, noted that appellant related that she tripped and fell onto her right side. A review of systems was negative for neurologic complaints and an examination of her eyes, head, ear, nose, and throat was normal.

In a consultation report dated September 14, 2018, Dr. Vrej K. Manoogian, an osteopath specializing in orthopedic surgery, reviewed appellant's complaints of right hip pain with movement. He diagnosed a nondisplaced right greater trochanteric fracture, right hip pain, and right shoulder pain.

Diagnostic testing, including x-rays of the right humerus and right hip, computerized tomography (CT) scans of the right hip, and magnetic resonance imaging (MRI) scans of the right shoulder and right hip revealed a nondisplaced fracture of the greater trochanter of the right femur and a nondisplaced fracture of the greater tuberosity of the right humerus.

In a hospital discharge summary dated October 3, 2018, Dr. Sameer Shaharyar, a Board-certified internist, diagnosed a nondisplaced fracture of the greater trochanter of the right femur and a nondisplaced fracture of the greater tuberosity of the right humerus. He noted that appellant had been medically stable since September 17, 2018 and would be discharged that day to a skilled nursing facility for further care of her injuries.

Reports dated October 5 through 15, 2018 outlined appellant's course of care in the skilled nursing facility and noted diagnoses of nondisplaced fractures of the right humerus and femur, insomnia, osteoporosis, and generalized muscle weakness.

[4] Appellant retired from federal service, effective September 29, 2018.

On October 20, 2018 an OWCP field nurse noted that she met with appellant in the hospital on October 3, 2018 and again at the skilled nursing facility on October 15, 2018. On both occasions, appellant described injuries to her right shoulder and right hip. The field nurse further noted that appellant related a history of significant head and spinal injuries which required two years of rehabilitation following a motor vehicle accident (MVA) at age 20.

In a report dated October 23, 2018, Mary M. Cameron, a physician assistant, noted that appellant complained of pain in her right shoulder and right lower leg and was currently residing in a skilled nursing facility.

In medical reports dated November 2 and December 7, 2018, Dr. Richard C. Smith, a Board-certified orthopedic surgeon, evaluated appellant's right shoulder and right hip complaints. He diagnosed a right closed avulsion fracture of the greater trochanter of the femur and a right closed fracture of the head of the humerus. On December 7, 2018 Dr. Smith further diagnosed right hip and shoulder pain.

On January 18, 2019 Dr. Smith noted that appellant related ongoing complaints in the right shoulder and right hip and a new complaint of dizziness with falls. He indicated that "on further questioning, she states that when she originally fell at work, she 'cracked' her head, but that no CT [scan] or other workup was done." Dr. Smith diagnosed right hip and shoulder pain, closed avulsion fracture of the greater tuberosity of the right femur, closed fracture of the greater tuberosity of the right proximal humerus, and a history of syncope. He recommended a neurology referral and indicated that he would defer to a neurologist regarding causal relationship between appellant's syncopal episodes and the reported closed head injury.

In a follow-up report dated February 15, 2019, Dr. Smith noted that appellant related pain with certain motions in the right shoulder and that her main concern was vertigo, falling, memory loss, and temporomandibular joint (TMJ) symptoms, which she attributed to striking her head when she fell at work on September 13, 2018. He opined that "based upon the history given by the patient and her ongoing symptoms, I believe closed head injury should be added as an accepted condition."

In follow-up reports dated April 9, May 3, June 7, October 3, and November 8, 2019, Dr. Smith noted that appellant related that her right hip pain had greatly improved, but that she was still experiencing right shoulder pain and stiffness and episodes of dizziness. He indicated that she underwent a CT scan of her brain on May 13, 2019, which revealed no evidence of acute intracranial hemorrhage, mass effect, or acute large territory infarcts; chronic small vessel disease; encephalomalacia and gliosis in the left superior frontal lobe, likely representing a chronic subcortical infarct; and a small punctate calcification along the left occipital horn of the left lateral ventricle.

OWCP also received physical therapy notes.

On March 5, 2019 appellant requested expansion of the acceptance of her claim to include a head injury.

In a development letter dated December 12, 2019, OWCP indicated that it had received appellant's request for claim expansion to include an injury to her head. It informed her of the deficiencies in her claim, advised her of the type of additional factual and medical evidence

required, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated January 15, 2020, OWCP denied expansion of the acceptance of appellant's claim to include a head injury, finding that the factual evidence of record was insufficient to establish that she struck her head on September 13, 2018, as alleged.

On February 13, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive evidence, including January 17 and March 17, 2020 reports wherein Dr. Smith noted that appellant related complaints of right leg pain, right arm pain, dizziness, and occasional falls.

A telephonic hearing was held on June 15, 2020. During the hearing, appellant testified that on September 13, 2018, she tripped, fell, and hit her head "very hard" on tile. She related that she felt like her whole skull had been "crushed" and that she would not have a tooth left in her mouth once she stood up. Appellant indicated that she slowly walked out of the office while holding onto the walls and then drove home, stopping at her chiropractor's office along the way. Once she arrived home, she felt like a freight train had hit her and she could not scream or talk, so she honked her horn in her driveway until her neighbors came out to help her from her car to her house. Appellant called 911 and they transported her to the hospital on a gurney. She related that she was having pain "all over" and denied specifically telling the providers at the emergency room that she had pain in her right shoulder, right hip, or head. Appellant indicated that she assumed they would conduct a thorough evaluation and identify her injuries without her input. She related that the dizziness came on gradually after she was discharged from the skilled nursing facility and that she also experienced memory loss and difficulty finding words. Appellant noted that she had fallen several times and that she told the skilled nursing facility about her dizziness. She denied any prior head conditions, but then indicated she had been involved in an MVA at age 20 where she sustained a head injury. The hearing representative held the record open for 30 days for the submission of additional evidence.

OWCP thereafter received reports of diagnostic testing dated May 13, 2019 including an MRI scan of appellant's right shoulder and a CT scan of her brain.

In a July 14, 2020 follow-up report, Dr. Smith noted that appellant's right arm and lower extremity symptoms were unchanged. He opined that her head injury was related to her original date of injury and recommended that she see a neurologist.

On June 23, 2020 appellant, through counsel, requested authorization for evaluation by Dr. Gary Weiss, a neurologist.

By letter dated June 29, 2020, OWCP advised appellant that treatment was not authorized with Dr. Weiss as it was not for evaluation of the accepted right femur and right humerus injuries.

By decision dated August 10, 2020, OWCP's hearing representative affirmed the January 15, 2020 decision.

OWCP continued to receive evidence, including records of Dr. William Weaver, a primary care physician. On December 16, 2019 Dr. Weaver noted that appellant related getting up in the middle of the night on November 28, 2019 and falling, striking her face. On February 4 and April 5, 2021 he indicated that she related she was very forgetful and had a history of multiple direct and indirect head traumas over the past 50 years, including an automobile crash resulting in coma and paralysis and treatment in a long-term care facility. On February 4, 2021 Dr. Weaver noted that she had an "ambulatory gait disorder that appears unstable but [appellant] has acclimated to it."

A March 5, 2021 report of MRI scan of the brain demonstrated no evidence of acute infarction; chronic infarcts in the form of encephalomalacia and surrounding gliosis in the area of the superior frontal gyri bilaterally, left greater than right; probable early subcortical chronic microangiopathic ischemic change; mild cerebral volume loss with cortical predominance; early cerebellar volume loss with slight temporal lobe involvement; and minimal hippocampal volume loss.

In a May 17, 2021 report, Dr. Robert R. Reppy, an osteopath, noted that appellant related that she slipped and fell on a tile floor and "struck her head so hard she was unconscious for 30 minutes" and that "no CT of the brain was ever done despite her having post-traumatic migraines ever since" at a "frequency of about five per week." He noted a past medical history of an MVA in 1976 that put her in a coma for six weeks. Dr Reppy provided a review of systems and noted dizziness, speech problems, loss of consciousness. He also performed a physical examination and diagnosed nondisplaced fractures of the right femur and humerus and chronic post-traumatic migraines. Dr. Reppy referred appellant to a neurologist and recommended a CT scan of the brain.

In a narrative report dated June 2, 2021, Dr. Reppy requested approval for a neurology consultation.

In a report dated July 14, 2021, Elliott James, a registered nurse, noted that he evaluated appellant on May 24 and July 14, 2021 for complaints of recent worsening issues with cognition, memory loss, and depression. During the May 24, 2021 visit, he noted that she related a history of an MVA in 1976 that left her paralyzed and in a coma for six weeks and required extensive rehabilitation. Appellant graduated from college but had trouble with numbers, as well as gait and balance problems due to knee pain and deformities. Mr. James further noted that appellant related that she also sustained additional head traumas in a skiing accident in 1984, an MVA in 1993, and a bike accident in 1995. During the July 14, 2021 visit, he noted that she related worsening depression due to ending a verbally abusive relationship. Mr. James performed a physical evaluation and mental status examination and reviewed the March 5, 2021 MRI scan. He opined that the MRI scan findings were consistent with stigmata of old injuries with no major acute changes. Mr. James further opined that appellant likely had cognitive impairment worsened by her prior head trauma, major depression, and stress. He indicated that he interviewed, examined, and formulated a plan of care for appellant under the supervision of Dr. Ramit H. Panara, a Board-certified neurologist with a subspecialty in clinical neurophysiology.

On August 10, 2021 appellant, through counsel, requested reconsideration.

OWCP thereafter received additional reports by Dr. Reppy dated August 23 and November 3, 2021.

By decision dated June 14, 2022, OWCP denied modification of the August 10, 2020 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]

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.[6] 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 identified by the claimant.[7]

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.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a head condition as causally related to the accepted September 13, 2018 employment incident.

In support of her expansion claim, appellant submitted reports dated from January 18, 2019 through July 14, 2020 by Dr. Smith who diagnosed a closed head injury. Dr. Smith opined that, based upon appellant's history, the diagnosed condition was causally related to the accepted September 13, 2018 employment-related fall. However, he failed to explain, with rationale, how the accepted employment injury physiologically caused the diagnosed head condition, including a rationalized explanation of the absence of any neurological complaint or mention of a head injury by appellant for four months after the fall. 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.[9] Moreover, Dr. Smith

[5] *J.R.*, Docket No. 21-0790 (issued June 21, 2022); *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).

[6] *S.S.*, Docket No. 23-0391 (issued October 24, 2023); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[7] *S.S., id.*; *T.K., id.*; *I.J.*, 59 ECAB 408 (2008).

[8] *J.M.*, Docket No. 23-0251 (issued January 9, 2023); *G.D.*, Docket No. 20-0966 (issued July 21, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[9] *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

did not document appellant's history of prior head trauma. As noted above, 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.[10] Medical rationale is particularly necessary where, as here, there are preexisting conditions involving some of the same body parts.[11] As Dr. Smith failed to provide this rationale, his reports are insufficient to meet appellant's burden of proof.

Dr. Reppy, in his reports dated May 17 through November 3, 2021, indicated that appellant "struck her head so hard she was unconscious for 30 minutes" and that "no CT scan of the brain was ever completed despite her having post-traumatic migraines ever since" at a "frequency of about five per week." Although Dr. Reppy documented appellant's history of prior head trauma and coma due to an MVA at age 20, he did not provide the necessary medical rationale differentiating between the effects of the work-related injury and the preexisting condition.[12] This evidence is also insufficient to meet appellant's burden of proof.

Dr. Weaver, in his report dated December 16, 2019, noted that appellant related falling on November 26, 2019 and striking her face. On February 4 and April 5, 2021 he indicated that she related she was very forgetful and had a history of multiple direct and indirect head traumas over the past 50 years, including an automobile crash resulting in coma and paralysis and treatment in a long-term care facility. However, these reports are of no probative value regarding appellant's claim for expansion of the accepted conditions as Dr. Weaver did not provide an opinion that she had additional medical conditions causally related to the September 13, 2018 employment injury. The Board has held that a medical report that does not offer an opinion on causal relationship is of no probative value.[13] Thus, this evidence is of no probative value and is insufficient to establish expansion of the acceptance of appellant's claim.

OWCP also received reports by Ms. Cameron, a physician assistant, Mr. Ellis, a registered nurse, and physical therapy notes. The Board has held that medical reports signed solely by a nurse, physician assistant, or physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not competent

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).

[10] *Supra* note 6.

[11] *Supra* note 7; *see also R.W.*, Docket No. 19-0844 (issued May 29, 2020); *A.M.*, Docket No. 19-1138 (issued February 18, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019).

[12] *Supra* note 6.

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

to provide a medical opinion.[14] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[15]

The remainder of the evidence of record consists of diagnostic study reports. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injury caused any of the additional diagnosed conditions.[16]

As the medical evidence of record is insufficient to establish causal relationship between additional diagnosed conditions and the accepted September 13, 2018 employment injury, the Board finds that appellant has not met her burden of proof to establish her expansion claim.

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 a head condition causally related to the accepted September 13, 2018 employment injury.[17]

[14] Section 8101(2) of FECA provides that 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. § 8101(2); 20 C.F.R. § 10.5(t). *See also supra* note 9 at Chapter 2.805.3a(1) (January 2013); *D.H.*, Docket No. 22-1050 (issued September 12, 2023) (nurses and nurse practitioners are not considered physicians as defined under FECA); *C.G.*, Docket No. 20-0957 (issued January 27, 2021) (physician assistants are not considered physicians as defined under FECA); *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).

[15] *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, *id.*

[16] *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[17] The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.G.*, Docket No. 23-0552 (issued August 28, 2023); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2024
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board