

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 March 23, 2018 employment injury.

FACTUAL HISTORY

On March 26, 2018 appellant, a 46-year-old trust fund specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 23, 2018 she slipped and fell while in the performance of duty. She claimed injuries to her left shoulder, right hand, back and knees. Appellant stopped work on March 26, 2018.

In an April 26, 2018 statement, appellant further described the April 23, 2018 employment incident, noting that she fell to the concrete floor and cut her right hand. In reports from early-April 2018, Dr. Lisa J. Schaffer, an osteopath Board-certified in family medicine, diagnosed left shoulder sprain and lumbar strain and excused appellant from work for various periods.

By decision dated May 30, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted March 23, 2018 employment incident.

On June 14, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated October 5, 2018, OWCP's hearing representative set aside the May 30, 2018 decision, finding that the case required additional development of the medical evidence. It remanded the case to OWCP in order to prepare a detailed statement of accepted facts (SOAF), and refer appellant for a second opinion examination and evaluation regarding her claimed work injury.

Appellant submitted an October 23, 2018 report from Dr. Mark D. Allen, a Board-certified orthopedic surgeon, who reported physical examination findings, and opined that she sustained post-traumatic cervical sprain/strain, cervical radiculopathy, post-traumatic lumbosacral sprain/strain, lumbar radiculopathy, disc bulge at L3-4, disc protrusion at L4-5, post-traumatic left shoulder sprain/strain, and post-traumatic left knee contusion at the medial collateral ligament (MCL) as a direct result of the March 23, 2018 employment incident.

On April 15, 2019 OWCP referred appellant, along with the medical record, a SOAF and a series of questions, for a second opinion examination and evaluation with Dr. Steven J. Valentino, an osteopath and Board-certified orthopedic surgeon. It requested that he comment on whether appellant sustained an injury due the accepted March 23, 2018 employment incident.

In a May 7, 2019 report, Dr. Valentino reported physical examination findings, and diagnosed resolved post-traumatic cervical sprain/strain, cervical radiculopathy, post-traumatic lumbosacral sprain/strain, lumbar radiculopathy, disc bulge at L3-4, disc protrusion at L4-5, post-traumatic left shoulder sprain/strain, and post-traumatic left knee contusion with strain of the MCL. He noted that appellant's subjective complaints were not validated by objective findings, and opined that the diagnostic study findings were consistent with age-appropriate degenerative changes and body habitus physiologic findings, rather than any acute or traumatic injury. Dr. Valentino indicated that, "[t]here was no precipitation, acceleration[,] or aggravation

apportioned to the history of work-related injury.” He concluded that appellant recovered from her work-related injury and was capable of working in her preinjury position.

By decision dated October 21, 2019, OWCP accepted appellant’s claim for left knee contusion, left knee sprain, and left shoulder joint sprain, all resolved.

On November 4, 2019 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review. Following a preliminary review, by decision dated January 24, 2020, OWCP’s hearing representative vacated the October 21, 2019 decision finding that the SOAF provided to Dr. Valentino was deficient. The hearing representative remanded the case to OWCP to prepare an updated SOAF and request clarification from Dr. Valentino regarding the specific conditions that were causally related to the March 23, 2018 work incident.

In a March 3, 2020 supplemental report, Dr. Valentino acknowledged that the left knee contusion, left knee sprain, and left shoulder joint sprain conditions delineated in the newly-provided SOAF were due to the March 23, 2018 employment incident, but found that appellant no longer had continuing work-related disability or residuals related to those accepted conditions.

By decision dated April 9, 2020, OWCP determined that the October 21, 2019 decision accepting several conditions as resolved would remain unchanged and found that appellant was not entitled to further benefits after April 9, 2020 as these conditions had resolved.

On April 18, 2020 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review. Following a preliminary review, by decision dated August 12, 2020, OWCP’s hearing representative vacated the April 9, 2020 decision and remanded the case to OWCP to prepare a new SOAF and obtain a supplemental report from Dr. Valentino. The hearing representative explained that OWCP failed to produce a complete SOAF that included appellant’s physical job duties.

On August 28, 2020 OWCP provided Dr. Valentino an updated SOAF and requested that he produce a supplemental opinion. In a September 15, 2020 supplemental report, Dr. Valentino found that appellant had recovered from the work-related left knee contusion, left knee sprain, and left shoulder joint sprain, and opined that the acceptance of her claim should not be expanded to include any additional conditions.

By decision dated November 16, 2020, OWCP denied expansion of the acceptance of appellant’s claim to include cervical sprain/strain, lumbosacral sprain/strain, cervical radiculopathy, lumbar radiculopathy, disc bulge at L3-4, and disc protrusion at L4-5.

On November 23, 2020 appellant, through counsel, requested a hearing before a representative of OWCP’s Branch of Hearings and Review. A hearing was held on March 12, 2021.

By decision dated May 26, 2021, OWCP’s hearing representative vacated the November 23, 2020 decision and remanded the case to OWCP for further development, finding that the SOAF provided to Dr. Valentino was deficient. It directed OWCP to update the SOAF to indicate whether appellant could be expected to perform law enforcement functions, and to refer

her for a new second opinion examination/evaluation regarding whether the accepted conditions had resolved and whether she sustained additional conditions due to the accepted March 23, 2018 employment injury.

On July 22, 2021 OWCP prepared an updated SOAF and referred appellant and the medical record, including a new SOAF and a series of questions, for an impartial medical examination with Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, to resolve a conflict in the medical opinion evidence between Dr. Allen and Dr. Valentino regarding whether the accepted conditions had resolved, and whether OWCP should expand the acceptance of appellant's claim to include additional conditions.

In an October 28, 2021 report, Dr. Askin, serving as the impartial medical examiner (IME), discussed appellant's factual and medical history and reported physical examination findings. He opined that she had age-appropriate cervical and lumbar spondylosis and arthritis of both knees consequential to exogenous obesity, unrelated to the March 23, 2018 employment injury. Dr. Askin opined that the accepted conditions had fully resolved and that appellant's subjective complaints corresponded with her exogenous obesity as the explanation for her continuing medical problems.

In a November 9, 2021 report, Dr. Allen opined that appellant's conditions of unresolved post-traumatic cervical and lumbar sprain/strain, lumbar disc protrusion, cervical and lumbar radiculopathy, left shoulder sprain, and left knee sprain were a direct result of the March 23, 2018 employment incident.

By decision dated December 10, 2021, OWCP again denied expansion of the acceptance of appellant's claim to include cervical sprain/strain, lumbosacral sprain/strain, cervical radiculopathy, lumbar radiculopathy, disc bulge at L3-4, and disc protrusion at L4-5. It based this determination on the opinion of Dr. Askin and also found that the accepted conditions of left knee contusion, left knee sprain, and left shoulder joint sprain had resolved.

On December 20, 2021 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated February 25, 2022, OWCP's hearing representative vacated the December 10, 2021 decision, finding that there was no conflict in the medical opinion evidence at the time of the referral to Dr. Askin, noting that OWCP's May 26, 2021 decision directed appellant to be referred for a new second opinion examination. The hearing representative found that, while Dr. Askin's opinion was not entitled to special weight, his opinion did qualify as that of a second opinion physician. OWCP's hearing representative determined that there was a new conflict in the medical opinion evidence between Dr. Allen and Dr. Askin regarding whether appellant's accepted conditions had resolved and whether she sustained additional conditions causally related to the accepted March 23, 2018 employment injury. OWCP was directed to refer appellant for an impartial medical examination/evaluation to resolve the conflict.

On March 22, 2022 OWCP referred appellant and the medical record, including a new SOAF and a series of questions, for an impartial medical examination with Dr. Robert B. Grob, an osteopath and Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion

evidence regarding whether the accepted conditions had resolved and whether the acceptance of her claim should be expanded to include additional conditions.

The case record contains a screenshot from the medical management application (MMA) system under the Integrated Federal Employees' Compensation System (iFECS) documenting the selection of Dr. Grob. In addition, the record contains a March 22, 2022 Form ME023, a system-generated appointment notification report, showing that the MMA system had been successfully completed to select Dr. Grob. The bypass history, placed in the case record on March 22, 2022 indicates that the only physician OWCP bypassed was Dr. Kevin Anbari, a Board-certified orthopedic surgeon, because he only saw patients for lower extremity issues and would not be able to offer an opinion on appellant's left shoulder injury. This bypass record contains the "S" code for the reason of the bypass.

In a May 6, 2022 report, Dr. Grob discussed appellant's factual and medical history, including the circumstances of her March 23, 2018 employment injury and subsequent medical treatment. He reported the findings of his physical examination, noting that there was no tenderness to deep palpation of the cervical spine and that both upper extremities were neurovascularly intact. There were no signs of impingement in the shoulders and the negative drop test was negative bilaterally. Dr. Grob advised that appellant exhibited tenderness between L4 and S1 in the lumbar spine, but the straight leg testing was negative bilaterally. Appellant did not exhibit tenderness or medial/lateral instability in her knees. Dr. Grob discussed diagnostic testing of her cervical spine, left shoulder, lumbar spine, and left knee. He opined that, apart from the accepted conditions of left knee contusion, left knee sprain, and left shoulder joint sprain, appellant did not sustain any work-related injuries of the lumbar and cervical spine. Dr. Grob opined that her lumbar and cervical spine conditions were preexisting and degenerative in nature, and not related to any injury that occurred on March 23, 2018. He further determined that the March 23, 2018 employment injury did not aggravate or exacerbate appellant's preexisting lumbar spine and cervical spine conditions as the mechanism of the March 23, 2018 employment injury would not support such aggravation or exacerbation. Dr. Grob maintained that the present treatment of her cervical spine and lumbar spine was "related to a progressive degenerative condition compounded by [appellant's] age and history of morbid obesity." He opined that appellant had fully recovered from the March 23, 2018 employment injury, noting that she did not exhibit any positive objective findings of the accepted work-related conditions during his physical examination which would substantiate any further treatment. Appellant was capable of returning to work in a full-duty capacity without restrictions.

By decision dated June 10, 2022, OWCP again denied expansion of the acceptance of the claim to include the additional diagnoses of cervical sprain/strain, lumbosacral sprain/strain, cervical radiculopathy, lumbar radiculopathy, disc bulge at L3-4, and disc protrusion at L4-5.

On June 20, 2022 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 18, 2022. At the hearing, counsel questioned whether Dr. Grob was properly selected as a referee physician. He further argued that, in the event that Dr. Grob were found to have been properly selected, the case should be remanded for clarification of Dr. Grob's report to comment on lumbar spine magnetic resonance imaging (MRI) scans dated June 29, 2021 and August 19, 2022, which reflected minimal change from 2018. Counsel argued that Dr. Grob should be asked to explain why there has been no real change in the intervening years after the traumatic injury and comment on the new evidence.

After the hearing, appellant submitted MRI scans of the lumbar spine dated June 29, 2021 and August 19, 2022, as well as discharge instructions dated April 13 and June 29, 2022 from Dr. Amit Doshi, a Board-certified anesthesiologist.

By decision dated November 29, 2022, OWCP's hearing representative affirmed OWCP's June 10, 2022 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 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 appellant, 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 accepted employment injury.⁵

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.⁶ For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.⁷ In situations where the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

The MMA system provides for a rotation among potential impartial medical specialists from the American Board of Medical Specialties, including the medical boards of the American Medical Association, and those physicians Board-certified with the American Osteopathic Association.⁹ Upon proper entry of appointment information, the MMA system prompts the medical scheduler to prepare a Form ME023 (appointment notification report) for imaging into the

⁴ *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).

⁵ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁶ 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

⁷ *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

⁸ *See D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

⁹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter.500.5a (May 2013).

case file. The Form ME023 serves as documentary evidence supporting that the referee appointment was properly scheduled through the MMA rotational system.¹⁰

The MMA contains an automatic and strict rotational scheduling feature. This application provides for consistent rotation among physicians and records the information needed to document the selection of the physician.¹¹ The services of all available and qualified Board-certified specialists will be used as far as possible to eliminate any inference of bias or partiality. This is accomplished by selecting physicians (in the designated specialty in the appropriate geographic area) in alphabetical order as listed in the roster and repeating the process until the list is exhausted.¹² OWCP's procedures provide valid reasons for bypassing physicians. If the case requires a different subspecialty, or if the physician does not evaluate the specific body part or extremity, the physician can be bypassed with the "S" code and another physician can be contacted.¹³ Selection of a referee physician should be made only through the MMA (absent exceptional circumstances) and OWCP may not dictate which physician will serve as a referee examiner. The Board has placed great importance on the appearance as well as the fact of impartiality in selecting an impartial medical examiner, and only if the selection procedures designed to achieve impartiality are scrupulously followed may the selected physician carry the special weight accorded to an impartial medical specialist.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions causally related to the accepted March 23, 2018 employment injury.

Preliminarily, the Board finds that OWCP determined that there was a conflict in the medical opinion between Dr. Allen, an attending physician and Dr. Askin, an OWCP referral physician, on the issue of whether appellant sustained conditions causally related to the accepted March 23, 2018 employment injury other than those already accepted by OWCP.¹⁵

In order to resolve the conflict, OWCP referred appellant, pursuant to section 8123(a) of FECA, to Dr. Grob for an impartial medical examination and an opinion regarding her expansion claim.¹⁶

¹⁰ *Id.* at Chapter 3.500.5h, i (May 2013).

¹¹ *Id.* at Chapter 3.500.5 (May 2013).

¹² *Id.* at Chapter 3.500.4b(6) (July 2011).

¹³ *Id.* at Chapter 3.500.6 (July 2011).

¹⁴ *S.A.*, Docket No. 20-1168 (issued March 29, 2023); *C.E.*, Docket No. 19-1923 (issued March 30, 2021).

¹⁵ *See supra* notes 8 and 9.

¹⁶ *See supra* note 8.

The case record contains a screenshot from the MMA system under the iFECS documenting the selection of Dr. Grob.¹⁷ In addition, the case record contains a March 22, 2022 Form ME023, a system-generated appointment notification report which denotes that the MMA system had been successfully completed according to the procedures designed to ensure the random nature of the selection process.¹⁸

The bypass history in this case, placed in record on March 22, 2022 indicates that the only physician OWCP bypassed was Dr. Anbari because he only saw patients for lower extremity issues, and would not be able to offer an opinion on appellant's left shoulder injury. The bypass record contains the "S" code, which according to OWCP's procedures is the code for a valid bypass if the case requires a different subspecialty, or if the physician does not evaluate the specific body part or extremity.¹⁹ Therefore, OWCP properly followed procedure when it bypassed Dr. Anbari. For the above-detailed reasons, the record reflects that the MMA system was properly used to randomly select Dr. Grob as an impartial medical specialist.

The Board finds that the special weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Grob.²⁰ The May 6, 2022 report of Dr. Grob establishes that appellant did not sustain additional conditions causally related to the accepted March 23, 2018 employment injury other than those already accepted by OWCP.

In his May 6, 2022 report, Dr. Grob opined that, apart from the accepted conditions of left knee contusion, left knee sprain, and left shoulder joint sprain, appellant did not sustain any work-related injuries of the lumbar and cervical spine. He found that her lumbar and cervical spine conditions were preexisting and degenerative in nature, and not related to any injury that occurred on March 23, 2018. Dr. Grob further determined that the March 23, 2018 employment injury did not aggravate or exacerbate appellant's preexisting lumbar spine and cervical spine conditions, because the mechanism of the March 23, 2018 employment injury would not support such aggravation or exacerbation. He maintained that the present treatment of her cervical spine and lumbar spine was "related to a progressive degenerative condition compounded by her age and history of morbid obesity."

The Board has reviewed the opinion of Dr. Grob and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Grob's opinion provided a thorough factual and medical history, and accurately summarized the relevant medical evidence. In addition, he provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing, and reached conclusions regarding appellant's condition, which comported with this analysis.²¹ Dr. Grob provided medical rationale for his opinion by explaining that her claimed

¹⁷ See *supra* notes 11 through 16.

¹⁸ See *supra* note 12.

¹⁹ See *supra* note 15.

²⁰ See *supra* note 10.

²¹ See *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

additional work-related conditions were due to the nonwork-related causes, including the natural progression of her preexisting degenerative conditions.

On appeal counsel has argued that OWCP should remand the case in order to have Dr. Grob address the fact that lumbar spine MRI scans dated June 29, 2021 and August 19, 2022 revealed minimal change from diagnostic testing obtained in 2018. However, as noted above, Dr. Grob found that appellant's lumbar and cervical spine problems constituted preexisting degenerative conditions that were unrelated to the March 23, 2018 employment injury.

For these reasons, the medical evidence of record is insufficient to establish the expansion of the acceptance of appellant's claim to include the additional diagnoses of cervical sprain/strain, lumbosacral sprain/strain, cervical radiculopathy, lumbar radiculopathy, disc bulge at L3-4, and disc protrusion at L4-5.

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 causally related to the accepted March 23, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2024
Washington, DC

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

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

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