

² The Board notes that, following the August 9, 2023 decisions, 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.*

accepted July 25, 2022 employment injury; and (2) whether OWCP properly denied appellant's request for authorization of a spinal cord stimulator (SCS) implant.

FACTUAL HISTORY

On August 30, 2022 appellant, then a 39-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2022 he injured his L4-5 disc when he lifted a heavy package while in the performance of duty.³ He stopped work on July 26, 2022. OWCP accepted the claim for lumbar radiculopathy.

An August 22, 2022 report of a magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated minimal discogenic change at L4-5 resulting in minimal bilateral foraminal narrowing.

In an August 26, 2022 report, Tawney Maul, a nurse practitioner, noted that appellant related complaints of left leg numbness for the past two months. She performed a physical examination, reviewed the lumbar MRI scan results, and diagnosed right-sided lumbar radiculopathy in the L4 dermatomal pattern and thoracic spondylosis with radiculopathy.

Appellant underwent an injection to his thoracic spine on August 31, 2022.

In a December 14, 2022 medical report, Dr. Andrew M. Clary, Board-certified in pain medicine and anesthesiology, noted that appellant related complaints of mid-back pain and severe hypersensitivity following an injection to his thoracic spine. He performed a physical examination, which revealed limited range of motion of the thoracic spine due to stiffness and pain. Dr. Clary reviewed the August 22, 2022 lumbar MRI scan and diagnosed upper lumbar/thoracic CRPS, thoracic spondylosis without myelopathy, and lumbar radiculopathy. He recommended a thoracic MRI scan, pain medication patches, and consideration for a SCS trial.

In a partially legible letter dated January 13, 2023, a physician assistant noted that appellant was unable to work from January 13 through 19, 2023 and that he had been scheduled for surgery with Dr. Clary.

In a January 18, 2023 report, Jody M. Schoenecker, a nurse practitioner, determined that there were no concerns from a psychiatric standpoint for severe mental illness that would preclude

³ OWCP assigned the present claim OWCP File No. xxxxxx281. Appellant has a previous claim for a January 5, 2016 traumatic injury, which OWCP accepted for contusion of lower back under OWCP File No. xxxxxx555. He also has a previous claim for a June 16, 2017 traumatic injury, which OWCP accepted for left ankle sprain, sprain of calcaneofibular ligament of left ankle, and left ankle abrasion under OWCP File No. xxxxxx089. Appellant also has a previous claim for a December 10, 2019 traumatic injury, which OWCP accepted for a thoracic strain under OWCP File No. xxxxxx826. OWCP administratively combined OWCP File Nos. xxxxxx555, xxxxxx089, xxxxxx826, and xxxxxx281, with the latter serving at the master file. Appellant further filed a prior claim for a November 30, 2019 occupational disease involving his lower back, which he indicated had been an ongoing issue since the January 5, 2016 injury and was aggravated by increased workload and recent weather conditions. OWCP denied November 30, 2019 claim under OWCP File No. xxxxxx061. Appellant also filed a subsequent claim for an August 7, 2023 traumatic injury to his mid/upper back region, which OWCP assigned File No. xxxxxx627. OWCP has not administratively combined OWCP File Nos. xxxxxx061 or xxxxxx627 with the other claims.

appellant from being a candidate for a trial SCS implant. She noted a diagnosis of chronic pain syndrome.

A January 20, 2023 report of MRI scan of the thoracic spine demonstrated minimal multilevel thoracic spondylosis without stenosis, small paracentral disc protrusions at T7-8 and T9-10 with narrowing of the spinal canal, and a small dorsal annular fissure at T9-10.

In a March 6, 2023 development letter under OWCP File No. xxxxxx826, OWCP noted that it had received notification of a possible consequential condition in relation to the accepted July 25, 2022 employment injury. It indicated that the claims had been accepted for strain of muscle and tendon of back wall of thorax, thoracic intervertebral disc displacement, and lumbar radiculopathy and advised appellant of the type of medical evidence needed to establish a claim for expansion of the accepted injuries. OWCP afforded him 30 days to respond.

In a separate letter to Dr. Clary under OWCP File No. xxxxxx826, dated March 6, 2023, an OWCP medical bill processor advised Dr. Clary that his request for authorization for an SCS implant could not be approved without further medical development by OWCP.

In a March 10, 2023 narrative letter, Dr. Clary noted the January 20, 2023 MRI scan findings, and indicated that appellant's physical examination revealed hypersensitivity of the right leg with evolving allodynia and motor changes in the thoracic spine. He opined that, "given these symptoms, he has developed a new diagnosis of lumbar CRPS on top of the previous thoracic symptoms." Dr. Clary explained that the diagnosis of strain of muscle and tendon was a superficial presentation of an underlying pathology and that appellant's actual diagnosis was a disc herniation that led to chronic nerve injury. He further explained that appellant had abnormally severe flare ups of his thoracic symptoms following a thoracic interlaminar epidural injection and medial branch block, which Dr. Clary indicated supported a finding of an acquired hypersensitivity condition. Dr. Clary noted that appellant had evolved significant allodynia and severe quality of life concerns and related that a recent SCS trial had provided an 80 percent therapeutic benefit. He requested authorization for an SCS implant.

In a March 20, 2023 letter, Dr. Clary related that appellant had been out of work since January 13, 2023 due to worsening thoracic and lumbar symptoms relating to muscle strain, disc herniation, and radiculopathy. On examination, he documented significant allodynia, decreased range of motion, weakness, instability, contractures, and spasms. Dr. Clary again noted that the diagnosis of strain was a "superficial presentation of an underlying pathology and note the sole diagnosis until itself." He requested that the acceptance of appellant's claim be expanded to include a diagnosis of lumbar CRPS.

In work notes dated April 4 and May 3, 2023, Dr. Clary recommended that appellant remain off work through June 21, 2023.

On May 17, 2023 OWCP referred appellant to Dr. Douglas Becker, a Board-certified orthopedic surgeon, along with the medical record, a series of questions, and statement of accepted facts (SOAF), for a second opinion evaluation. The May 8, 2023 SOAF listed the accepted conditions under the present claim as lumbar radiculopathy and aggravation of intervertebral disc

displacement of the thoracic region. It also noted that strain of muscle and tendon of back wall of thorax and thoracic disc displacement had been accepted under OWCP File No. xxxxxx826.

In a May 24, 2023 report, an OWCP district medical adviser (DMA) diagnosed lumbar bulging at L4-5 with bilateral foraminal narrowing and thoracic protrusions at T7-8 and T9-10 with annular fissuring. The DMA opined that there was insufficient information in the available medical records to establish a diagnosis of thoracic radiculopathy, lumbar radiculopathy, or CRPS.

In a June 30, 2023 report, Dr. Becker reviewed the medical records and SOAF and noted the history of the December 10, 2019 and July 25, 2022 injuries. He indicated that appellant related complaints of pain throughout his thoracic spine and weakness in his legs. Dr. Becker conducted a physical examination and found significant pain behavior, give way weakness, and shaking, but no reproducible tenderness, spasm, asymmetry, atrophy, or neurological findings throughout the spine. He diagnosed permanent aggravation of thoracic spine degenerative disease and opined that there was no evidence of additional conditions related to the accepted injuries. Dr. Becker found that appellant's subjective complaints were disproportionate to the objective findings, noting that his "indirect lumbar spine and thoracic spine range of motions are full, and pain complaints are out of proportion to mobility and objective MRI [scan] findings." He opined that appellant had reached maximum medical improvement relative to the July 25, 2022 employment injury and that no further treatment, including an SCS implant, would be of any benefit.

In a decision dated August 9, 2023, OWCP denied expansion of the acceptance of appellant's claim to include lumbar spondylosis without myelopathy, lumbar CRPS, and thoracic spondylosis and hypersensitivity causally related to his accepted July 25, 2022 employment injury.⁴ It noted that his claim remained accepted for thoracic intervertebral disc displacement and lumbar radiculopathy.

In a separate decision of August 9, 2023, OWCP denied authorization for an SCS implant, finding that the medical evidence of record was insufficient to establish that it was medically necessary to treat his work-related injury.⁵

LEGAL PRECEDENT -- ISSUE 1

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.⁶

⁴ OWCP indicated that appellant had requested expansion under the present claim. The August 9, 2023 decision denying expansion was issued under both the present claim and OWCP File No. xxxxxx826.

⁵ The August 9, 2023 decision denying authorizing for an SCS implant was issued under the present claim and OWCP File No. xxxxxx826.

⁶ *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).

The claimant bears the burden of proof to establish a claim for a consequential injury.⁷ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.⁸ The opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.⁹

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

OWCP referred appellant to Dr. Becker for a second opinion evaluation. In his June 30, 2023 report, Dr. Becker diagnosed a permanent aggravation of thoracic spine degenerative disease and opined that there was no evidence of additional conditions. While he noted appellant's thoracic condition, he did not acknowledge appellant's accepted lumbar radiculopathy which was listed in the provided SOAF.

Dr. Becker did not reference all of the conditions presented in the SOAF in rendering his medical opinion as he focused only on one of the two accepted employment conditions. OWCP's procedures and Board precedent dictate that, when an OWCP DMA, second opinion specialist, or impartial medical examiner renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.¹⁰

It is well established that, proceedings under FECA are not adversarial in nature, and while the employee has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ Once OWCP undertook development of the evidence, it had an obligation to do a complete job and obtain a proper evaluation and a report that would resolve the issue in this case.¹²

The Board will therefore set aside OWCP's August 9, 2023 decision denying expansion of the claim and remand the case to Dr. Becker for a supplemental opinion. On remand, OWCP shall further develop the evidence to include the administrative combination of all relevant files

⁷ V.K., Docket No. 19-0422 (issued June 10, 2020); A.H., Docket No. 18-1632 (issued June 1, 2020); I.S., Docket No. 19-1461 (issued April 30, 2020).

⁸ F.A., Docket No. 20-1652 (issued May 21, 2021); E.M., Docket No. 18-1599 (issued March 7, 2019); Victor J. Woodhams, 41 ECAB 345 (1989).

⁹ M.M., Docket No. 20-1557 (issued November 3, 2021); M.V., Docket No. 18-0884 (issued December 28, 2018).

¹⁰ See N.P., Docket No. 19-0296 (issued July 25, 2019); M.D., Docket No. 18-0468 (issued September 4, 2018).

¹¹ See W.W., Docket No. 18-0093 (issued October 9, 2018); Donald R. Gervasi, 57 ECAB 281, 286 (2005); William J. Cantrell, 34 ECAB 1233, 1237 (1983).

¹² See 5 U.S.C. § 8101(19); P.T., *supra* note 17; J.K., Docket Nos. 19-1420 & 19-1422 (issued August 12, 2020); Francesco C. Veneziani, 48 ECAB 572 (1997).

pertaining to the present matter. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of FECA¹³ provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.¹⁴ While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.¹⁵

In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority is that of reasonableness.¹⁶ OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal.¹⁷

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹⁸

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for decision.

¹³ 5 U.S.C. § 8103(a).

¹⁴ *Id.* See *O.M.*, Docket No. 20-0640 (issued April 19, 2021); *S.A.*, Docket No. 18-1024 (issued March 12, 2020); *Thomas W. Stevens*, 50 ECAB 288 (1999).

¹⁵ *D.O.*, Docket No. 20-1245 (issued September 20, 2021); *J.L.*, Docket No. 18-0990 (issued March 5, 2019); *R.C.*, 58 ECAB 238 (2006); *Cathy B. Millin*, 51 ECAB 331, 333 (2000).

¹⁶ *M.T.*, Docket No. 20-0321 (issued April 26, 2021); *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *Mira R. Adams*, 48 ECAB 504 (1997).

¹⁷ *P.L.*, Docket No. 18-0260 (issued April 14, 2020).

¹⁸ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *E.L.*, Docket No. 17-1445 (issued December 18, 2018); *L.W.*, 59 ECAB 471 (2008); *P.P.*, 58 ECAB 673 (2007); *Daniel J. Perea*, 42 ECAB 214 (1990).

In light of the Board's disposition of the issue of whether appellant sustained an additional condition as causally related to his accepted employment injury, it is premature to address the issue of whether OWCP properly denied authorization for an SCS implant.¹⁹

CONCLUSION

The Board finds that this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2023 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: March 12, 2024
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

¹⁹ See *M.N.*, Docket No. 22-0488 (issued February 15, 2023); *V.P.*, Docket No. 21-1111 (issued May 23, 2022); *C.N.*, Docket No. 19-0621 (issued September 10, 2019).