

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board on a different issue.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On January 22, 1992 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 15, 1992 she sustained a foot condition in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx102 and accepted it for bilateral frostbite of the feet and bilateral plantar fibromatosis. On October 7, 1992 she underwent OWCP-authorized bilateral foot surgery, including excision of heel spurs with plantar fasciotomies. OWCP later expanded its acceptance of the claim to include bilateral tarsal tunnel syndrome and bilateral lesions of the plantar nerves.<sup>3</sup>

On August 17, 2022 OWCP referred appellant and the case record, including a statement of accepted facts and a series of questions, to Dr. Steven Milos, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation. It requested that he address the nature of her accepted conditions and discuss whether she sustained any work-related condition other than those already accepted.

In a December 6, 2022 report, Dr. Allan Burke, a Board-certified neurologist, indicated that appellant had just received chemotherapy for breast adenocarcinoma cancer. Appellant reported that, after receiving chemotherapy, she developed bone pain, joint pain, and headache. She further advised that she was too weak to walk more than 25 feet at a time, and used a walker, cane, or wheelchair in various circumstances as an aid to her mobility. Dr. Burke noted that, upon examination, appellant exhibited weakness upon dorsiflexion of the right toes/feet, and that she had vibratory sense in the bilateral toes, which brought on dysesthesia. He stated, "I think [appellant] has developed increased polyneuropathy due to chemotherapy. There is distal weakness, sensory loss, and pain in feet all consistent with polyneuropathy."

In a December 14, 2022 report, Dr. Olwen Hahn, a Board-certified oncologist and internist, advised that appellant was under her care for breast cancer and was experiencing neuropathy, which was aggravated by the chemotherapy she had received for that condition.

In a December 28, 2022 letter to Dr. Milos, appellant reported that the chemotherapy she received for breast cancer had vastly impacted her accepted conditions of bilateral tarsal tunnel syndrome, bilateral lesions of the plantar nerves, frostbite of bilateral feet, and bilateral plantar

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<sup>2</sup> Docket No. 14-1689 (issued July 2, 2015); Docket No. 16-1826 (issued May 15, 2017).

<sup>3</sup> On December 28, 1998 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 26, 1998 she sustained a right knee injury when she slipped and fell to the floor while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx040, and accepted it for right knee contusion and right knee strain. It later expanded acceptance of this claim to include right knee chondromalacia. Appellant resigned from the employing establishment in February 2002. She also has a prior claim for a traumatic injury on April 12, 1985, which was accepted under OWCP File No. xxxxxx224 for lumbosacral strain. OWCP has administratively combined OWCP File Nos. xxxxxx224, xxxxxx102, and xxxxxx040, with OWCP File No. xxxxxx102 serving as the master file.

fibromatosis. She advised that she was diagnosed with breast cancer in February 2022, and indicated that her chemotherapy created side effects, which had particularly affected the plantar and tibial nerves of her feet. In a December 30, 2022 report, Dr. Milos referenced appellant's claim that her chemotherapy for breast cancer caused bone pain and neuropathy in her feet and hands. He determined that she did not sustain any additional conditions casually related to the January 15, 1992 or December 26, 1998 employment injury.

In a March 13, 2023 development letter, OWCP notified appellant of the deficiencies of her expansion 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 submit the necessary evidence. In response, appellant submitted medical records dated from March 2002 through January 2023, including chemotherapy management records, biopsy/pathology reports, and progress reports regarding the treatment of her breast cancer. She also submitted a March 25, 2023 statement wherein she expressed her opinion that OWCP should accept her peripheral neuropathy condition because the condition negatively impacted the accepted nerve lesions of her bilateral legs.

In an April 12, 2023 letter, Dr. Christine Heck, a podiatrist, advised that she had been provided with records from appellant's attending physicians. She indicated that, based on these records and her own examination findings, she concurred with appellant's attending physicians that the diagnosis of peripheral neuropathy in the legs, feet and hands was a side-effect of chemotherapy for breast cancer. Dr. Heck discussed the effects of appellant's peripheral neuropathy and noted that the condition had "never been added as another condition along with the accepted conditions." However, she noted that "the resulting effects of chemotherapy now makes [sic] it necessary and essential as a consequential condition can arise for any reason which establishes as being medically linked to a previously accepted condition that is work related." Dr. Heck indicated that appellant had asserted in her December 28, 2023 letter to Dr. Milos "that a chain of causation can result in a series of injuries, illnesses, impairments or diseases, which are a direct consequence of an accepted work-related illness." She advised that appellant consistently complained about numbness, tingling, and burning in her feet.

Dr. Heck opined that appellant suffered from lesions of her plantar nerves that were aggravated by her chemotherapy "thereby resulting in a causal connection between [appellant's] illness of cancer being treated by chemotherapy and the accepted work-related condition of lesion of the planter nerves (bilaterally)." She discussed the effect of appellant's overall medical condition on appellant's daily life and noted that she was "not stating that the consequential condition is due to the accepted condition by your office. I am stating a medical fact, it is established and well settled in the medical community as described by all [physician's] cited above that peripheral neuropathy is a side effect of chemotherapy." Dr. Heck advised that appellant had accepted work-related nerve issues with her feet in the form of plantar nerve lesions or Morton's neuromas, and would continue to chronically experience numbness, tingling, pain, loss of balance, and alteration of her walking. She indicated that chemotherapy treatments caused peripheral neuropathy by damaging the nerves in her extremities and aggravated her symptoms. Dr. Heck noted that appellant sustained cancer, which was "medically linked to a previously accepted work-related injury as described above." She concluded that appellant "was diagnosed with stage III breast cancer, that may or may not be due to estrogen, progesterone, and HER2 factor, I have no

idea. Nevertheless [appellant] had cancer that caused terrible effects on her health and work-related conditions.”

By decision dated July 10, 2023, OWCP found that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as casually related to or consequential to the accepted January 15, 1992 employment injury.

### **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.<sup>4</sup> The claimant bears the burden of proof to establish a claim for a consequential injury.<sup>5</sup> As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, and establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>8</sup> When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant’s own intentional misconduct.<sup>9</sup> The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>10</sup>

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *K.W.*, Docket No. 18-0991 (issued December 11, 2018).

<sup>7</sup> *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

<sup>8</sup> *Id.*

<sup>9</sup> *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

<sup>10</sup> *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n. 7 (2001).

## 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 casually related to or consequential to the accepted January 15, 1992 employment injury.

Appellant submitted an April 12, 2023 letter wherein Dr. Heck, a podiatrist, indicated that, based on the medical reports in the case record and her own examination findings, she concurred with appellant's attending physicians that the diagnosis of peripheral neuropathy in the legs, feet and hands was a side-effect of chemotherapy for breast cancer. Dr. Heck discussed the effects of appellant's peripheral neuropathy and noted that the condition had "never been added as another condition along with the accepted conditions." However, she further stated that "the resulting effects of chemotherapy now makes [sic] it necessary and essential as a consequential condition can arise for any reason, which establishes as being medically linked to a previously accepted condition that is work related." Dr. Heck opined that appellant suffered from lesions of her plantar nerves that were aggravated by her chemotherapy "thereby resulting in a causal connection between [appellant's] illness of cancer being treated by chemotherapy and the accepted work-related condition of lesion of the planter nerves (bilaterally)." She discussed the effect of appellant's overall medical condition on her daily life and noted that she was "not stating that the consequential condition is due to the accepted condition by your office. I am stating a medical fact, it is established and well settled in the medical community as described by all doctors cited above that peripheral neuropathy is a side effect of chemotherapy." Dr. Heck noted that appellant sustained cancer which was "medically linked to a previously accepted work-related injury as described above." She concluded that appellant "was diagnosed with stage III breast cancer, that may or may not be due to estrogen, progesterone, and HER2 factor, I have no idea. Nevertheless [appellant] had cancer that caused terrible effects on her health and work-related conditions."

Dr. Heck's opinion is of limited probative value on the relevant issue of this case because she failed to provide medical rationale explaining how appellant sustained chemotherapy-induced peripheral neuropathy or any other additional medical condition, either casually related to or consequential to an accepted employment injury. She argued that appellant's chemotherapy treatment for breast cancer caused appellant peripheral neuropathy and negatively affected her accepted employment injuries, rather than arguing that a diagnosed medical condition was directly caused by or consequential to an accepted employment injury. Neither appellant's peripheral neuropathy nor her breast cancer would be deemed to constitute an accepted employment injury, or a condition sustained as a consequence of an accepted employment injury. 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.<sup>11</sup> Therefore, Dr. Heck's opinion of April 12, 2023 is insufficient to establish appellant's claim.

In a December 6, 2022 report, Dr. Burke noted that appellant reported that, after receiving chemotherapy, she developed bone pain, joint pain, and headache. He stated, "I think [appellant] has developed increased polyneuropathy due to chemotherapy.... There is distal weakness, sensory loss, and pain in feet all consistent with polyneuropathy." In a December 14, 2022 report,

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<sup>11</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

Dr. Hahn, a Board-certified oncologist and internist, advised that appellant was under her care for breast cancer and was experiencing neuropathy, which was aggravated by the chemotherapy she had received for that condition. In a December 30, 2022 report, Dr. Milos, an OWCP referral physician, referenced appellant's claim that her chemotherapy for breast cancer caused bone pain and neuropathy in her feet and hands. He determined that she did not sustain any additional conditions casually related to the January 15, 1992 or December 26, 1998 employment injury. However, none of the physicians provided an opinion that appellant sustained an additional condition directly causally related to or a consequence of an accepted employment injury. 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>12</sup> Therefore, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish an additional condition casually related to or consequential to the accepted January 15, 1992 employment injury, the Board finds that appellant 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 casually related to or consequential to the accepted January 15, 1992 employment injury.

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<sup>12</sup> See *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 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