

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, MADISON SQUARE
STATION POST OFFICE, New York, NY,
Employer**

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**Docket No. 23-1176
Issued: March 19, 2024**

Appearances:

*Thomas S. Harkins, Esq., for the appellant¹
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
JANICE B. ASKIN, Judge

JURISDICTION

On September 18, 2023 appellant, through counsel, filed a timely appeal from an April 12, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (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 April 12, 2023 decision, appellant submitted additional evidence to OWCP. 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 neuropathic pain syndrome, causally related to, or consequential to, her accepted October 22, 2018 employment injury.

FACTUAL HISTORY

On October 24, 2018 appellant, then a 55-year-old customer service supervisor, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2018 she was struck in the front of her head and the left side of her face when an elevator malfunctioned while in the performance of duty. She stopped work on October 22, 2018. OWCP accepted appellant's claim for concussion without loss of consciousness, post-concussion syndrome, and traumatic brain injury without loss of consciousness. It subsequently expanded the acceptance of her claim to include aggravation of cervical and lumbar radiculopathy. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective December 7, 2018, and on the periodic rolls, effective April 26, 2020.

Appellant continued to receive medical treatment. In a report dated June 21, 2021, Dr. Ranga Krishna, a Board-certified neurologist, indicated that she was evaluated for neurological consultation. He described that on October 22, 2018 appellant injured her head, neck, and back when an elevator struck her on the head. Dr. Krishna recounted complaints of difficulty performing repetitive tasks, such as bending, pushing, and pulling. He noted a normal mental status examination and cranial nerve examination. Motor status examination revealed weakness in the deltoid, supraspinatus, and biceps muscles and positive Braxton-Hallpike maneuver with the right head down position. Dr. Krishna indicated that appellant's clinical findings were consistent with traumatic brain injury, cerebral concussion, post-concussion syndrome, cervical radiculopathy, lumbosacral radiculopathy, and neuropathic pain syndrome. He reported that she sustained a job injury on October 22, 2018 "resulting in a traumatic injury to the brain and the above diagnosis of cervical and lumbar radiculopathy." Dr. Krishna explained that, when the elevator door struck appellant's head, she also twisted her neck and back at the time of the incident. He noted that the neck and back injuries resulted in cervical and lumbar radiculopathies.

In a report dated September 23, 2021, Dr. Krishna reviewed appellant's history of injury and provided examination findings. He indicated that appellant's clinical findings were consistent with traumatic brain injury, cerebral concussion, post-concussion syndrome, cervical radiculopathy, lumbosacral radiculopathy, and neuropathic pain syndrome. Dr. Krishna opined that appellant's injuries were related to the October 22, 2018 employment injury when the elevator door struck her on the head.

In a brief dated November 27, 2021, appellant, through counsel, requested that her claim be expanded to include cervical and lumbar radiculopathy as a consequence of her accepted October 22, 2018 employment injury. Counsel asserted that her case must be expanded to include all medical conditions outlined in the medical evidence and contended that appellant had submitted rationalized medical opinion evidence to establish that she sustained injuries as a result of the October 22, 2018 employment injury, in addition to those accepted to date by OWCP.

In a report dated February 28, 2022, Dr. Asha Dua, a Board-certified physiatrist, indicated that appellant was evaluated for complaints of neck and low back pain after an October 22, 2018 employment injury. On examination of appellant's cervical spine, she observed tenderness,

paraspinal muscle spasm, and limited range of motion associated with pain. Examination of appellant's low back revealed spinal tenderness and paraspinal muscle spasm. Dr. Dua diagnosed neck and low back pain due to radiculopathy and indicated that appellant was partially disabled.

In work status notes dated March 28 and April 25, 2022, Dr. Krishna noted a diagnosis of cervical radiculopathy and indicated that appellant was unable to work due to her diagnosis.

In a May 12, 2022 development letter, OWCP informed appellant that the evidence of record was insufficient to establish a consequential condition. It advised her of the type of medical evidence necessary to establish a consequential condition causally related to her accepted October 22, 2018 employment injury. OWCP afforded appellant 30 days to respond.

In a report dated May 23, 2022, Dr. Dua noted appellant's complaints of continued neck pain radiating to the right upper extremity and low back pain status post the October 22, 2018 employment injury. She provided examination findings and diagnosed neck and low back pain due to radiculopathy.

In a report dated May 27, 2022, Dr. Krishna described the October 22, 2018 employment injury and recounted appellant's complaints of headaches, neck pain radiating bilaterally, and right lower back pain radiating to the back of the thigh. He reported that mental status examination showed that her cognition and memory were intact. Dr. Krishna diagnosed traumatic brain injury without loss of consciousness, cervical radiculopathy, and lumbar radiculopathy. He opined that appellant had "neuropathic pain syndrome as a result of injuries sustained to neck and lower back."

In reports dated August 1 through December 28, 2022, Dr. Dua reviewed appellant's history of injury and conducted an examination. She diagnosed neck and low back pain due to radiculopathy.

In a December 5, 2022 report, Dr. Franklin M. Epstein, a Board-certified neurologist serving as an OWCP district medical adviser (DMA), indicated that he had reviewed the statement of accepted facts (SOAF) and appellant's medical records. He listed her accepted conditions and reported that his review of the medical record corroborated the diagnoses of chronic cervical and lumbar radiculopathy. Dr. Epstein explained that these conditions were "inherently 'neuropathic pain syndromes.'" He opined that, on the other hand, there was no evidence of additional traumatic neuropathic pain syndromes, such as painful neuroma formation, phantom limb pain, chronic regional pain syndrome, post-traumatic consequential painful peripheral neuropathy, and microvascular compressive cranial neuropathy. Dr. Epstein concluded that appellant's claim should not be expanded to neuropathic pain syndrome because to do so would be redundant.

On December 27, 2022 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. Jack Stern, a Board-certified neurosurgeon, for a second opinion examination regarding whether she sustained a consequential neuropathic pain syndrome causally related to her October 22, 2018 employment injury. In a February 15, 2023 report, Dr. Stern noted his review of the SOAF and discussed her medical records, including diagnostic testing. On physical examination, he observed normal muscle strength bilaterally of the upper and lower extremities. Dr. Stern reported that range of motion of the cervical and lumbar spines revealed normal findings. He noted no sensory defect to pinprick and light touch. Dr. Stern indicated that appellant's primary deficits were cognitive. He opined that there was no evidence that she had neuropathic pain syndrome. Dr. Stern explained that neuropathic pain was defined by the

International Association for the Study of Pain as pain caused by a lesion or disease of the somatosensory nervous system and pointed out that appellant had no symptoms related to the somatosensory nervous system.

In a report dated February 27, 2023, Dr. Dua indicated that appellant still complained of neck pain radiating to the right upper extremity and low back pain following an October 22, 2018 employment injury. She conducted an examination and diagnosed neck and low back pain due to internal derangement.

By decision dated April 12, 2023, OWCP denied expansion of the acceptance of appellant's claim to include consequential neuropathic pain. It found that the weight of the medical evidence rested with the February 15, 2023 opinion of Dr. Stern, OWCP's second opinion examiner.

LEGAL PRECEDENT

Where 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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁵ A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.⁶ Additionally, the physician's opinion 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.⁷

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 a claimant's own intentional misconduct.⁸ 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.⁹

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 *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁷ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *C.W.*, Docket No. 18-1536 (issued June 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019); *Albert F. Ranieri*, 55 ECAB 598 (2004).

⁹ *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *R.M.*, Docket No. 18-1621 (issued August 23, 2019); *Debra L. Dilworth*, 57 ECAB 516 (2006).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include neuropathic pain syndrome, causally related to, or consequential to, her accepted October 22, 2018 employment injury.

In a February 15, 2023 report, Dr. Stern, an OWCP second opinion examiner, opined that, after a review of appellant's medical records and clinical examination, there was no evidence that she had neuropathic pain syndrome. He explained that neuropathic pain was defined by the International Association for the Study of Pain as pain caused by a lesion or disease of the somatosensory nervous system and pointed out that appellant had no symptoms related to the somatosensory nervous system. Dr. Stern provided a well-rationalized medical opinion based on an accurate history of injury and clinical examination findings.¹⁰ Therefore, the Board finds that his report constitutes the weight of the medical evidence.¹¹

The evidence submitted in support of the appellant's expansion claim is insufficient to overcome the weight accorded to Dr. Stern as the second opinion physician, or to create a conflict in medical opinion.

Appellant submitted reports dated June 21, 2021 through May 27, 2022 from Dr. Krishna. Dr. Krishna described the October 22, 2018 employment injury and conducted an examination. She reported that appellant's clinical findings were consistent with traumatic brain injury, cerebral concussion, post-concussion syndrome, cervical radiculopathy, lumbosacral radiculopathy, and neuropathic pain syndrome. Dr. Krishna opined that appellant had "neuropathic pain syndrome as a result of injuries sustained to neck and lower back." However, she did not provide sufficient medical rationale to explain how the neuropathic pain syndrome was causally related to the accepted October 22, 2018 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.¹² Therefore, these reports are insufficient to establish appellant's expansion claim.

The reports by Dr. Dua are likewise insufficient to establish appellant's expansion claim as none of them address the issue of whether her neuropathic pain syndrome was causally related to the accepted October 22, 2018 employment injury. As the Board has held, medical evidence that does not provide an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ Therefore, these reports are insufficient to establish appellant's claim.

¹⁰ Medical opinion regarding causal relationship must be based on a complete factual and medical background, one of reasonable medical certainty, and supported by rationale explaining the nature of the relationship between the diagnosed condition and employment factors. *See M.D.*, 59 ECAB 211 (2007).

¹¹ *See L.L.*, Docket No. 22-0733 (issued May 9, 2023); *A.C.*, Docket No. 21-1093 (issued July 21, 2022).

¹² *L.G.*, Docket No. 21-0770 (issued October 13, 2022); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *S.Y.*, Docket No. 20-0347 (issued March 31, 2023); *T.H.*, Docket No. 18-0704 (issued September 6, 2018); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

As the medical evidence of record is insufficient to establish causal relationship between appellant's neuropathic pain syndrome and the accepted October 22, 2018 employment injury, the Board finds that she 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 neuropathic pain syndrome, causally related to, or consequential to, her accepted October 22, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board