

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include right L5 radiculopathy causally related to her accepted November 13, 2004 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On November 13, 2004 appellant, then a 45-year-old part-time flexible letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained low back pain and a spinal contusion when a dog jumped on her knocking her to the ground while in the performance of duty. She stopped work on November 13, 2004 and returned to limited-duty work on March 21, 2005. OWCP accepted the claim, assigned OWCP File No. xxxxxx373, for a back contusion. It subsequently expanded its acceptance of the claim to include a compression fracture at L2 and the temporary aggravation of osteoporosis and degenerative disc disease of the spine. OWCP paid appellant wage-loss compensation on the supplemental rolls for intermittent wage loss from December 29, 2004 to February 9, 2007.⁴

By decision dated November 26, 2007, OWCP terminated appellant's wage-loss compensation and medical benefits effective November 26, 2007 as she had no further disability or residuals of her accepted back contusion, compression fracture at L2, and temporary aggravation of osteoporosis and degenerative disc disease of the spine.

A May 4, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated interval worsening of anterolisthesis of L5 over S1 with new narrowing of the left lateral recess and slight worsening of foraminal stenosis.

An electromyogram of the lower extremities, performed on May 11, 2017, revealed chronic to remote right lumbar radiculopathy.

In an impairment rating dated April 11, 2018, Dr. Sami E. Moufawad, a Board-certified physiatrist, discussed appellant's history of a fracture her L2 vertebra when a dog jumped on her, and she fell backward into the ground. He reviewed her current complaints of low back pain and muscle spasms radiating into the lower limbs bilaterally. Dr. Moufawad diagnosed a back contusion, stress fracture, osteomalacia, degeneration of a lumbar or lumbosacral intervertebral disc, and bilateral lumbar radiculopathy at L5. He attributed the diagnoses to the November 13,

³ Docket No. 22-1092 (issued November 8, 2022).

⁴ OWCP additionally accepted that appellant sustained a crush injury to her left foot and left ankle sprain on February 25, 2002, assigned OWCP File No. xxxxxx757, right ankle and wrist sprain on September 15, 2004, assigned OWCP File No. xxxxxx345, acute lumbosacral strain on February 12, 2008, assigned OWCP File No. xxxxxx941, and a right hip contusion and lumbosacral sprain on April 16, 2013, assigned OWCP File No. xxxxxx519. It administratively combined these claims with the current claim, with the latter serving as the master file.

2004 employment injury. Referencing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)⁵ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), Dr. Moufawad determined that appellant had 11 percent permanent impairment of each lower extremity due to sensory and motor deficits at L5.

On November 15, 2019 appellant filed a schedule award claim (Form CA-7).

On November 20, 2019 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), concurred with Dr. Moufawad's finding that appellant had 11 percent permanent impairment of each lower extremity due to lumbar radiculopathy.

By decision dated February 10, 2020, OWCP denied appellant's schedule award claim. It found that the evidence failed to support a permanent impairment causally related to the accepted employment injury.

On February 18, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on June 8, 2020. By decision dated August 24, 2020, OWCP's hearing representative vacated the February 10, 2020 decision. He noted that Dr. Moufawad had provided an impairment rating based on the diagnosis of L5 radiculopathy, which was not an accepted condition. The hearing representative found that Dr. Moufawad's opinion that the bilateral L5 radiculopathy was causally related to the accepted employment injury was sufficient to warrant further development of the evidence. He instructed OWCP to refer appellant for a second opinion examination to determine if the claim should be expanded to include lumbar radiculopathy and for a *de novo* decision on the issue of whether she was entitled to a schedule award.

On September 9, 2020 OWCP referred appellant to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated October 9, 2020, Dr. Obianwu discussed appellant's history of multiple employment injuries and current complaints of low back pain. He noted that after straining her back in 2008 she had performed predominately sedentary work until her retirement in 2015. Dr. Obianwu listed the accepted conditions in appellant's claims as a back contusion, compression fracture at L2, a temporary aggravation of osteoporosis and lumbar degenerative disc disease, a left foot crush injury and sprain of the left ankle, a right ankle and wrist sprain, acute lumbosacral strain, and a right hip contusion and lumbosacral sprain. He provided his review of the medical records. On examination Dr. Obianwu found a negative straight leg raising test bilaterally and a "slight diminution of sensation over L5 dermatomes on the left lower extremity when compared to the right." He diagnosed L5 sensory radiculopathy of the left lower extremity and a permanent aggravation of lumbar degenerative disc disease. Dr. Obianwu noted that the June 1, 2017 MRI scan had demonstrated a progression of degenerative disease and compression of the L5 nerve root on the left side. He attributed the L5 radiculopathy to appellant's employment injury.

⁵ A.M.A., *Guides* (6th ed. 2009).

Dr. Obianwu opined that, pursuant to *The Guides Newsletter*, appellant had four percent permanent impairment of the left lower extremity due to her sensory deficit at L5. He disagreed with Dr. Moufawad's finding of right lower extremity radiculopathy based on appellant's intact strength and sensation.

On December 23, 2020 OWCP expanded its acceptance of the claim to include left L5 sensory radiculopathy and a permanent aggravation of lumbar degenerative disc disease.

By decision dated December 23, 2020, OWCP denied appellant's request to expand the acceptance of her claim to include right lumbar radiculopathy causally related to her accepted employment injury.

On December 29, 2020 Dr. Harris found that appellant had no ratable impairment of the right lower extremity due to radiculopathy. He concurred with Dr. Obianwu's finding of four percent permanent impairment of the left lower extremity.

On January 8, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated February 10, 2021, OWCP granted appellant a schedule award for four percent permanent impairment of the left lower extremity. It further found that she had no impairment of the right lower extremity.

Following a preliminary review, by decision dated March 5, 2021, OWCP's hearing representative vacated the December 23, 2020 decision. The hearing representative found that a conflict existed between Dr. Obianwu and Dr. Moufawad regarding whether appellant had right radiculopathy at L5 and remanded the case for OWCP to refer her for an impartial medical examination.

On April 8, 2021 OWCP referred appellant to Dr. Jeffrey Lawley, an osteopath Board-certified by the American Osteopathic Association in orthopedic surgery, for an impartial medical examination.

In a report dated May 14, 2021, Dr. Lawley discussed appellant's history of injury and provided his review of the medical evidence. On examination, he observed a negative straight leg raise and intact sensation and motor findings. Dr. Lawley further found no swelling, bruising, or atrophy of the lower extremity, full range of motion of the hips, and no back spasm. He determined that appellant had some reduced motion of the lumbar spine. Dr. Lawley diagnosed a healed L2 vertebral body compression fracture without neurological deficit and mild lumbar spondylosis unrelated to appellant's employment. He attributed the degenerative changes in her back to the normal aging process rather than her employment injuries or work duties. Dr. Lawley opined that appellant had not sustained right radiculopathy at L5 causally related to the accepted employment injury. He asserted that her EMG had not found lumbar radiculopathy and that she had an "intact normal neurological examination to both lower limbs."

By decision dated December 16, 2021, OWCP denied expansion of appellant's claim to include right L5 radiculopathy causally related to her accepted November 13, 2004 employment injury. It further noted that she had not established an impairment of the right lower extremity.

On December 28, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on April 13, 2022. Appellant advised that her right leg and hip both hurt.

By decision dated June 28, 2022, OWCP's hearing representative affirmed the December 16, 2021 decision.

Appellant appealed to the Board. By decision dated November 8, 2022, the Board set aside the June 28, 2022 decision.⁶ The Board found that Dr. Lawley's opinion was inconsistent with the SOAF and thus of diminished probative value and insufficient to resolve the conflict in medical opinion. The Board remanded the case for OWCP for further development to resolve the conflict in medical opinion.

On January 18, 2023 OWCP referred appellant to Dr. Stanley Lee, a Board-certified orthopedic surgeon, for an impartial medical examination. It provided a SOAF setting forth the accepted conditions of an L2 compression fracture, a permanent aggravation of lumbar degenerative disc disease, a temporary aggravation of osteoporosis, back contusion, and left L5 sensory radiculopathy.

In a report dated February 24, 2023, Dr. Lee discussed appellant's symptoms of back pain with occasional radiculopathy into the legs bilaterally and reviewed the SOAF noting the accepted conditions of L2 compression fracture, lumbar degenerative disc disease, osteoporosis, and back contusion. He provided his review of the medical evidence. On examination Dr. Lee observed full strength of the lower extremities, normal sensation and range of motion, a negative straight leg raise, no atrophy, and a normal gait. He diagnosed a possible L2 compression fracture that had healed, persistent subjective symptoms in the absence of objective findings, and found that appellant had "reached maximum medical improvement with no objective evidence of ongoing impairment or pathology." Dr. Lee opined that she might have experienced a mild L2 compression fracture at the time of the injury which was a self-limiting condition that healed within eight weeks. He found no further impairment due to the compression fracture and advised that imaging studies demonstrated no "ongoing issue with the spine as it relates to the accident in question." Dr. Lee asserted that appellant had no objective evidence on examination or imaging supporting right L5 radiculopathy. He further found no aggravation of an underlying condition due to the work injury.

By decision dated March 24, 2023, OWCP denied appellant's request to expand the acceptance of her claim to include right L5 radiculopathy causally related to her accepted employment injury. It noted that based on its finding she was also not entitled to a schedule award for right L5 radiculopathy.

On April 7, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

⁶ *Supra* note 3.

A telephonic hearing was held on September 14, 2024. Counsel contended that the impartial medical examiner (IME) failed to sufficiently address appellant's accepted conditions, in particular the lumbar degenerative disc disease.

By decision dated November 27, 2023, OWCP's hearing representative affirmed the March 24, 2023 decision.

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.⁷

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ Additionally, 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 the specific employment factor(s) identified by the claimant.¹⁰

Section 8123(a) of FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.¹¹ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) 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.¹²

⁷ *L.M.*, Docket No. 23-1040 (issued December 29, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁸ *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁹ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ 5 U.S.C. § 8123(a); *see also* 20 C.F.R. § 10.321.

¹² *See D.M.*, Docket No. 22-1139 (issued January 19, 2023); *K.D.*, Docket No. 19-0281 (issued June 30, 2020); *Y.A.*, 59 ECAB 701 (2008).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include right L5 radiculopathy causally related to her accepted November 13, 2004 employment injury.

OWCP properly determined that a conflict existed between Dr. Moufawad, appellant's physician, and Dr. Obianwu, an OWCP referral physician, regarding whether appellant's claim should be expanded to include right radiculopathy at L5. It initially referred her to Dr. Lawley, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination; however, the Board found that Dr. Lawley's opinion was insufficient to resolve the conflict in medical opinion.¹³ OWCP subsequently referred appellant, together with an updated SOAF, to Dr. Lee, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated February 24, 2023, Dr. Lee provided his review of the SOAF and medical evidence of record. He discussed appellant's complaints of back pain occasionally radiating into both lower extremities. On examination Dr. Lee observed full lower extremity strength, no atrophy, normal sensation, normal motion and gait, and a negative straight leg raise. He advised that any L2 compression fractured had healed. Dr. Lee opined that appellant's subjective symptoms were unsupported by objective findings and that she had no further evidence of pathology or impairment. He asserted that she had no ongoing spinal condition due to the accepted employment injury based on imaging studies and findings on examination. Dr. Lee further found no objective evidence on examination or imaging supporting right L5 radiculopathy.

The Board finds that Dr. Lee accurately described the accepted employment injury and noted his review of the medical record. Dr. Lee performed a thorough clinical examination and provided detailed findings. He provided a rationalized opinion regarding whether appellant's claim should be expanded, finding that there was no evidence of right L5 radiculopathy resulting from the accepted November 13, 2004 employment injury based on imaging studies and examination findings. The Board therefore finds that Dr. Lee's opinion is entitled to the special weight accorded to an IME and establishes that appellant has not met her burden of proof to expand the acceptance of her claim to include right L5 radiculopathy.¹⁴

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.

¹³ Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA. *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *D.A.*, Docket No. 19-1965 (issued February 10, 2021); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹⁴ *M.G.*, Docket No. 23-0674 (issued October 3, 2023); *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *W.C.*, Docket No. 19-1740 (issued June 4, 2020); *M.M.*, Docket No. 16-1655 (issued April 4, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include right L5 radiculopathy causally related to her accepted November 13, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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