

<sup>3</sup> The Board notes that, following the November 19, 2024 decision, a appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 additional medical conditions as causally related to the accepted September 27, 2018 employment injury.

## **FACTUAL HISTORY**

On November 7, 2018 appellant, then a 46-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2018 she sustained injuries when she tumbled and rolled her right ankle while in the performance of duty. She did not stop work. OWCP accepted the claim for acute embolism and thrombosis of unspecified deep veins of the right lower extremity, other pulmonary embolism without acute cor pulmonale, and sprain of unspecified ligaments of the right ankle. It paid appellant wage-loss compensation on the supplemental rolls for the period August 21, 2019 through December 14, 2021.

In a December 1, 2020 report, Dr. Jay M. Beams, a Board-certified orthopedic surgeon, recounted appellant's employment injury and reported the findings of his physical examination. He diagnosed chronic embolism and thrombosis of the right tibial vein, other chronic pulmonary embolism without acute cor pulmonale, right hip pain, other chronic pain, and right-sided lumbago with sciatica. On December 23, 2020 Dr. Beams diagnosed right hip impingement syndrome, degenerative lumbar disc disease, and right hip pain. In a February 2, 2021 report, he initially provided the diagnosis of femoro-acetabular impingement of the right hip. In a March 11, 2021 report, Dr. Beams added the diagnoses of hemarthrosis of an unspecified joint and bilateral hip joint disorders.

In an August 2, 2021 report, Dr. Beams reported the findings of his physical examination and diagnosed several conditions, which had not been accepted as work related, including chronic embolism and thrombosis of the right femoral vein, chronic pulmonary embolism, hemarthrosis involving multiple sites, femoro-acetabular impingement of the right hip, and acute right-sided low back pain with right-sided sciatica. He indicated that appellant reported she jammed her right foot/ankle and twisted her ankle during her employment injury and stated, "I believe that her right hip is also involved in her incident when she was injured." Dr. Beams maintained that appellant's right hip "should be included" in her workers' compensation claim.

In a September 15, 2021 report, Dr. Beams diagnosed chronic embolism and thrombosis of the right femoral vein, chronic pulmonary embolism, and hemarthrosis of an unspecified joint. On November 12 and December 14, 2021 he diagnosed chronic embolism and thrombosis of the right femoral vein, chronic pulmonary embolism, femoral acetabular impingement, lumbago with right-sided sciatica.

In a September 13, 2022 report, Dr. Thomas Gritzka, a Board-certified orthopedic surgeon, discussed appellant's factual and medical history and reported the findings of his physical examination. He indicated that the September 27, 2018 employment incident, as described by appellant, would "likely be injurious to her right ankle where she sustained an entity accepted as sprain of unspecified ligament of the right ankle but would also affect her right hip." Dr. Gritzka noted that gymnasts who performed dismounts and landed with a twisting motion of their hip would develop chronic hip pain and would have magnetic resonance imaging (MRI) scans demonstrating both a femoro-acetabular tear and a proximal femoral boss. He noted that a prior attending physician found that appellant's small femoro-acetabular tear was related to the twisting

injury of the right lower extremity of September 27, 2018. Dr. Gritzka indicated that it was unknown what percentage of people had anatomic variants of coccyx profunda or proximal femoral boss but were asymptomatic. He maintained that the probability was that there were many asymptomatic people without hip symptoms who had these anatomic variants and noted that the “anatomic variants are a risk factor for traumatic tear of the acetabular labrum.” Dr. Gritzka opined that appellant’s September 27, 2018 twisting injury of her right lower extremity “acted on her preexisting hip variant structure to produce the femoro[-]acetabular labral tear[,] which was found on MRI [scan].” He maintained that appellant’s hip condition should be accepted as part of the present claim.

Dr. Gritzka further indicated that appellant had an MRI scan of her right ankle approximately seven months post injury, which demonstrated “previously ligamentous injury without complete disruption” as well as flattening of the peroneus brevis tendon with mild intermalleolar tendinopathies. He opined that this study was consistent with a chronic sequela of the twisting ankle injury or supination injury, which appellant sustained on September 27, 2018. Dr. Gritzka performed a permanent impairment rating and found that appellant had three percent impairment of the right lower extremity due to her acetabular tear, as well as permanent impairment of the right lower extremity due to limited range of right ankle motion. He indicated his awareness that appellant’s hip condition was not an accepted work-related condition, but noted that the mechanism of injury, described by appellant as twisting or supinating her right ankle when she mis stepped on a curb was “consistent with a type of twisting motion at the hip that would likely cause a femoro[-]acetabular impingement.”

On February 8, 2023 appellant, through counsel, requested that the acceptance of her claim be expanded to include the medical conditions of chronic embolism and thrombosis of the right femoral vein, chronic pulmonary embolism, hemarthrosis involving multiple sites, femoro-acetabular impingement of right hip, and acute right-sided low back pain with right-sided sciatica as causally related to the accepted September 27, 2018 employment injury.

In a February 8, 2023 development letter, OWCP notified appellant of the deficiencies of her expansion claim and advised her of the type of factual and medical evidence needed. It afforded her 30 days to submit the necessary evidence.

In a February 16, 2023 statement, appellant discussed the September 27, 2018 employment incident and contended that she sustained additional medical conditions on that date that have not been accepted by OWCP.

On February 22, 2023 OWCP received diagnostic testing reports from 2019 through 2023. A May 10, 2019 computerized tomography (CT) pulmonary angioplasty revealed mild centrilobular emphysema with no evidence of pulmonary embolism. An August 17, 2022 CT image of the chest revealed a ground-glass nodule in the right lower lung lobe. October 6, 2022 and January 9, 2023 CT images of the chest revealed subpleural density of 18 times 9 millimeters in the superior segment of the right lower lung lobe.

On February 27, 2023 OWCP also received narrative medical reports from 2021 and 2022. In a January 6, 2021 report, Dr. Christopher Twombly, a Board-certified physiatrist, diagnosed chronic right hip pain, sacroiliitis (SI), and other forms of scoliosis of the lumbar region. In an April 30, 2021 report, Dr. Christopher Scully, a Board-certified rheumatologist, diagnosed other specific abnormal immunological findings in serum. On April 4, 2022 he again diagnosed other specific abnormal immunological findings in serum, and added the diagnosis of fibromyalgia and

other fatigue. In a September 6, 2022 report, Dr. Jeffrey P. Bacon, a Board-certified pulmonologist, diagnosed hemoptysis and abnormal findings on diagnostic imaging of the lung. In a December 1, 2022 report, Dr. Scully again diagnosed fibromyalgia and other fatigue. In a February 7, 2023 report, Dr. Bacon diagnosed hemoptysis and abnormal findings on diagnostic imaging of the lung.

In a March 1, 2023 report, Dr. Anwar Mack, a Board-certified orthopedic surgeon, noted that appellant reported that she had right hip pain for four years. He detailed physical examination findings and diagnosed pain in the right ankle and joints of the right foot, sprain of other ligaments of the right ankle, fibromyalgia, femoro-acetabular impingement of the right hip, chronic pain syndrome, piriformis syndrome, and iliotibial band syndrome. In a March 23, 2023 report, Dr. Mack detailed his performance of an intra-articular injection in appellant's right hip.

In a March 29, 2023 report, Dr. Gritzka further discussed his September 13, 2022 permanent impairment rating and noted that it was "an error to not include [appellant's] right hip symptomatology in her initial accepted condition."

In a May 4, 2023 report, Corinne Canavero, a registered nurse, detailed physical examination findings and discussed appellant's right hip condition.

By decision September 8, 2023, OWCP denied expansion of the acceptance of the claim, finding that the medical evidence of record was insufficient to establish additional conditions as causally related to the accepted September 27, 2018 employment injury.

On September 14, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the December 6, 2023 hearing, appellant testified regarding her claimed additional work-related conditions.

By decision dated March 1, 2024, OWCP's hearing representative affirmed the September 8, 2023 decision.

In an August 6, 2024 report, Dr. Keith Card, a podiatrist, discussed the history of the accepted September 27, 2018 employment injury and diagnosed closed fracture of calcaneus of the right foot, tendon rupture of the right foot/ankle, and instability of the right ankle joint. On September 1, 3 and 5, 2024 he diagnosed tendon rupture of the right foot/ankle.

On September 20, 2024 Dr. Card performed surgical repair of a right peroneal tendons split tear of the right lateral ankle, and partial excision calcaneus of the right foot. Appellant submitted the surgical report for this procedure. In October 3 and 4, 2024 reports, Dr. Card discussed appellant's care after her September 20, 2024 surgery.

On November 4, 2024 appellant, through counsel, requested reconsideration of the March 1, 2024 decision.

By decision dated November 19, 2024, OWCP denied modification of the March 1, 2024 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.<sup>4</sup> 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 the claimant, 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.<sup>5</sup>

### ANALYSIS

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

In a September 13, 2022 report, Dr. Gritzka noted that the September 27, 2018 employment incident would “likely be injurious to her right ankle where she sustained an entity accepted as sprain of unspecified ligament of the right ankle but would also affect her right hip.” He noted that gymnasts who performed dismounts and landed with a twisting motion of their hip would develop chronic hip pain and would have MRI scans demonstrating both a femoro-acetabular tear and a proximal femoral boss. Dr. Gritzka maintained that many people with asymptomatic anatomic variants of coccyx profunda or proximal femoral boss had traumatic tears of the acetabular labrum. He opined that appellant’s September 27, 2018 twisting injury of her right lower extremity “acted on her preexisting hip variant structure to produce the femoro[-] acetabular labral tear[,] which was found on MRI [scan]” and asserted that the mechanism of injury was “consistent with a type of twisting motion at the hip that would likely cause a femoro-acetabular impingement.” Dr. Gritzka advised that an MRI scan of appellant’s right ankle approximately seven months postinjury demonstrated “previously ligamentous injury without complete disruption” as well as flattening of the peroneus brevis tendon with mild intermalleolar tendinopathies. He opined that this study was consistent with a chronic sequela of the twisting ankle injury or supination injury which appellant sustained on September 27, 2018. The Board finds that the September 13, 2022 narrative report from Dr. Gritzka, while insufficient to establish appellant’s expansion claim, is sufficient to require further development of the medical evidence.<sup>6</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>7</sup> OWCP has an obligation to see that justice is done.<sup>8</sup>

This case must, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with the medical record and a statement of accepted facts, to a specialist in

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

<sup>6</sup> *See Z.S.*, Docket No. 25-0138 (issued January 22, 2025); *R.B.*, Docket No. 20-0498 (issued August 27, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, 41 ECAB 354 (1989); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>7</sup> *Id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>8</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, *supra* note 5; *John J. Carlone*, *supra* note 6.

the appropriate field of medicine for a second opinion examination and report regarding whether appellant sustained additional medical conditions causally related to the accepted September 27, 2018 employment injury.<sup>9</sup> If the referral physician disagrees with the opinion of Dr. Gritzka, he/she must provide a fully-rationalized opinion explaining why the accepted September 27, 2018 employment incident was insufficient to have caused additional medical conditions. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 19, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 4, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> See *R.B.*, *supra* note 6; *C.C.*, Docket No. 19-1631 (issued February 12, 2020).