United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 25-0626**
	)	**Issued: August 6, 2025**
DEPARTMENT OF THE NAVY, MARINE CORPS-STATION, Camp LeJeune, NC, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 16, 2025 appellant, through counsel, filed a timely appeal from a May 20, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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*.

ISSUE

The issue is whether appellant met her burden of proof to expand the acceptance of her claim to include lumbar degenerative disc disease and left hip primary osteoarthritis, as causally related to the accepted April 14, 2021 employment injury.

FACTUAL HISTORY

On April 20, 2021 appellant, then a 58-year-old miscellaneous clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 2021 she injured her right ankle, ribs, head, right wrist, left leg, and left hip when she slipped and fell while descending concrete steps while in the performance of duty. She stopped work on April 14, 2021, but returned to work on April 22, 2021. OWCP accepted the claim for right wrist carpal joint sprain.

In a report dated July 22, 2021, Dr. David J. Kirby, a Board-certified family medicine physician, reported that appellant was seen for left hip pain which began after she fell down four stairs on April 14, 2021. Appellant complained of pain from her left lower back down into her hip and upper thigh region. On physical examination, Dr. Kirby reported tenderness over the trochanteric bursa or lateral myofascial soft tissue structures and reasonably good hip range of motion. He noted that appellant's radiating symptoms and numbness/tingling suggested a lumbar radicular source of pain. Dr. Kirby also related that appellant's computerized tomography (CT) scan revealed significant lumbar degenerative disc disease and arthropathy. He diagnosed lumbar radiculopathy and recommended magnetic resonance imaging (MRI) testing.

A February 18, 2022 MRI scan of appellant's lumbar spine indicated findings of lumbar levoscoliosis, L1-5 moderate lumbar degenerative disc disease, L5-S1 facet arthropathy, lumbar spondylosis, and disc bulge.

In a March 3, 2022 report, David Bertrand, a certified physician assistant, provided appellant's examination findings, and diagnosed low back pain, lumbar facet joint arthropathy, lumbar intervertebral disc degeneration, lumbar radiculopathy.

In a July 12, 2022 report, Dr. Felix Muniz, a Board-certified anesthesiologist, noted appellant had been seen for an epidural injection and diagnosed chronic pain syndrome, lumbar radiculopathy, lumbar facet joint pain, low back pain, and lumbar intervertebral disc degeneration.

A September 6, 2022 MRI scan of appellant's bilateral hips showed moderate left and mild-to-moderate right bilateral hip osteoarthritis, multilevel degenerative disc disease, lumbar facet arthrosis, small bilateral hip joint effusions greater on the left, and small partial-thickness right gluteus minimus tendon tear.

In reports dated April 10 and 24, 2023, Dr. Arthur Barton, a Board-certified orthopedic surgeon, reported that appellant was seen for complaints of left hip and back pain. He noted appellant's history that she injured her lower back and left hip when she fell on April 14, 2021. On physical examination Dr. Barton observed pain with internal hip rotation, left lower back tenderness, antalgic gait, left groin pain, and equivocal straight leg raise. He diagnosed left hip primary osteoarthritis, and lumbar degenerative disc disease.

An April 28, 2023 lumbar MRI scan demonstrated L1-2 disc bulge and no significant stenosis; L2-3 disc bulge, facet arthropathy, and mild spinal stenosis; L3-4 disc bulge, facet arthropathy, and no significant stenosis; L4-5 disc bulge, facet arthropathy, no significant spinal stenosis, and moderate right neural foraminal narrowing; and L5-S1 disc bulge, facet arthropathy, no significant spinal stenosis.

In a note dated September 14, 2023, Mary Bundle, a physician assistant, noted she saw appellant on April 29, 2021 following a fall on concrete steps at work. She reported that appellant continued to have hip, back and sciatic pain.

By decision dated November 7, 2024, OWCP denied expansion of the acceptance of the claim to include lumbar degenerative disc disease and left hip primary osteoarthritis.

OWCP continued to receive medical evidence. In a May 17, 2022 report, Dr. Robert Mark Rodger, a Board-certified orthopedic surgeon, recounted appellant's history of injury and medical treatment. He reviewed appellant's diagnostic studies and diagnosed lumbar radiculopathy and lumbar spine scoliosis.

OWCP also received an August 29, 2023 note from Dr. Daniel DeLo, a Board-certified internist and rheumatologist, who related that appellant developed hip problems following falls in 2020, and in 2021 she had a substantial fall at work which caused multiple injuries. Appellant related a significant aggravation of lower back and hip pain subsequent to the 2021 fall. He opined that it seemed likely that the 2021 fall either aggravated a preexisting hip arthritic condition and/or back or caused a new injury to those areas.

On May 14, 2025 appellant, through counsel, requested reconsideration of the November 7, 2024 decision.

By decision dated May 20, 2025, OWCP denied modification of its prior 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.[3]

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

[3] *G.C.*, Docket No. 25-0104 (issued March 4, 2025); *Y.B.,* Docket No. 22-0121 (issued November 19, 2024); *J.R.,* Docket No. 20-0292 (issued June 26, 2020); *W.L.,* Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo,* 55 ECAB 200, 204 (2004).

nature of the relationship between the additional diagnosed condition and the accepted employment injury.[4]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[5]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include lumbar degenerative disc disease and left hip primary osteoarthritis, as causally related to the accepted April 14, 2021 employment injury.

Appellant submitted a July 22, 2021 report from Dr. Kirby, a July 12, 2022 report from Dr. Muniz, reports dated April 10 and 24, 2023 from Dr. Barton, and a May 17, 2022 report from Dr. Rodger. However, none of the physicians offered an opinion on the cause of the diagnosed conditions. The Board has held that an opinion which does not address the cause of an employee's condition is of no probative value on the issue of causal relationship.[6] Thus, this evidence is insufficient to establish expansion of the acceptance of the claim.

Dr. DeLo, in an August 29, 2023 note, related that appellant had falls in 2020 where she developed a hip problem, and after a substantial fall at work in 2021, appellant she complained of a significant aggravation of lower back and hip pain. He opined that the fall in 2021 likely aggravated a preexisting hip arthritic condition and/or caused a new injury. However, Dr. DeLo did not explain with sufficient rationale how the accepted April 14, 2021 employment injury resulted in the additional diagnosed conditions. A medical report is of limited probative value on the issue of causal relationship if it contains an opinion regarding causal relationship which is unsupported by medical rationale.[7] The Board has explained that such rationale is especially important in a case involving a preexisting condition.[8] As such, this evidence is insufficient to establish expansion of the acceptance of the claim.

OWCP also received evidence signed solely by a nurse practitioner and/or certified physician assistant. However, certain healthcare providers such as nurse practitioners, physician

[4] *G.C.*, *id.*; *Y.B., id.*; *see also E.J.,* Docket No. 09-1481 (issued February 19, 2010).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[6] *G.C.*, *supra* note 3; *G.M.,* Docket No. 24-0388 (issued May 28, 2024); *C.R.,* Docket No. 23-0330 (issued July 28, 2023); *L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

[7] *See S.W.*, Docket No. 35-0473 (issued May 15, 2025); *C.B., (S.B.),* Docket No. 19-1629 (issued April 7, 2020); *V.T.,* Docket No. 18-0881 (issued November 19, 2018); *S.E.,* Docket No. 08-2214 (issued May 6, 2009); *T.M.,* Docket No. 08-0975 (issued February 6, 2009).

[8] *Id.*

assistants, and physical therapists are not considered physicians as defined under FECA.[9] Thus, this evidence is of no probative value and is insufficient to establish expansion of the acceptance of the claim.

Diagnostic test reports were also submitted. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted employment injury caused or aggravated any of the additional diagnosed conditions.[10]

As the medical evidence of record is insufficient to establish causal relationship between the additional conditions of lumbar degenerative disc disease and left hip primary osteoarthritis and the accepted April 14, 2021 employment injury, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evident 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 lumbar degenerative disc disease and left hip primary osteoarthritis, as causally related to the accepted April 14, 2021 employment injury.

[9] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also M.F.*, Docket No. 19-1573 (issued March 16, 2020) (medical reports signed solely by a physician assistant or a nurse practitioner are of no probative value as these care providers are not considered physicians as defined under FECA).

[10] *S.S.,* Docket No. 23-0391 (issued October 24, 2023); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 6, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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