

¹ Appellant submitted a timely request for oral argument before the Board, explaining her disagreement with OWCP's June 26, 2024 decision. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because this matter pertains to an evaluation of the weight of the medical evidence presented. As such, the Board finds that the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

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

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include thoracic subluxation, causally related to or as a consequence of her accepted April 21, 2022 employment injury.

FACTUAL HISTORY

On May 9, 2022 appellant, then a 52-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2022 she injured her left sixth and seventh ribs when she tripped, and then fell to the floor while in the performance of duty.

A May 10, 2022 computerized tomography (CT) scan of the chest revealed minimal fractures of the anterior left fifth, sixth, and seventh ribs, and a nondisplaced fracture of the left lateral sixth rib. Vertebral body heights and disc spaces were maintained, with minimal degenerative changes.

In reports dated June 7 through July 27, 2022, Dr. Joseph Brian Parrish, a Board-certified family medicine physician, recounted a history of injury and treatment. He diagnosed fall against object, multiple rib fractures, acute pain of the left shoulder, muscle strains of the thoracic region, and left-sided thoracic back pain and rib pain. Dr. Parrish prescribed medication, physical therapy, and chiropractic care.

In a June 28, 2022 report, Dr. Phillip H. Horne, a Board-certified orthopedic surgeon, recounted a history of injury and treatment. He obtained thoracolumbar x-rays, which revealed slight dextrocurvature, maintained thoracic vertebral and disc space heights, normal coronal plane alignment, and maintained lordotic alignment. Dr. Horne diagnosed acute left-sided thoracic back pain, fall, initial encounter, and closed fracture of one rib, left side, initial encounter.

A June 30, 2022 magnetic resonance imaging (MRI) scan of the thoracic spine demonstrated no acute traumatic findings.

In reports dated July 11 through 29, 2022, Dr. Gregory Barnes, a chiropractor, recounted a history of the April 21, 2022 employment injury, noted findings on examination, and reviewed a May 10, 2022 imaging study. He diagnosed strain of muscle, fascia, and tendon at neck level, subsequent encounter, strain of muscle and tendon of back wall of thorax, subsequent encounter, cervicgia, segmental and somatic dysfunction of the cervical, thoracic, and lumbar regions,

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the June 26, 2024 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.*

segmental and somatic dysfunction of the left shoulder and rib cage, cervical radiculopathy, muscle spasm, lumbar spasm, and pain in the thoracic spine, low back, and left shoulder.

On August 15, 2022 OWCP accepted the claim for multiple rib fractures, left side.

Thereafter, OWCP received a May 10, 2022 report by Dr. Ismael Tamba, an osteopath Board-certified in family medicine, wherein he diagnosed left-sided chest wall pain, and fall, subsequent encounter. It also received a June 13, 2022 report wherein Dr. Thomas Joseph Ellis, a Board-certified family medicine physician, diagnosed acute left-sided thoracic back pain, closed fracture of multiple ribs with routine healing, and vertigo.

Thereafter, OWCP subsequently received reports dated July 5, 2022 through July 13, 2023 wherein Dr. Horne related appellant's worsening back pain. In the July 5, 2022 report, Dr. Horne opined that the June 30, 2022 MRI scan of the thoracic spine demonstrated maintained kyphotic alignment and disc height.

OWCP also received reports dated August 2 through October 24, 2022 wherein Dr. Barnes observed restricted range of motion throughout the spine. Dr. Barnes diagnosed segmental and somatic dysfunction of the thoracic region, lumbar region, rib cage, and upper extremity, cervicalgia, cervical radiculopathy, pain in the chest, thoracic spine, and the bilateral shoulders, intercostal pain, thoracic and lumbar spasm, strain of muscle and tendon of back wall of thorax, multiple rib fractures, left side, and fall subsequent encounter.

In reports dated August 17 through November 2, 2022, Dr. Parrish diagnosed left-sided thoracic pain, sprain of the ribs, intercostal pain, pain of left scapula, and thoracic radiculopathy.

In October 19, 2022 reports, Dr. Barnes explained that he diagnosed spinal subluxation based on examination findings in conformance with Medicare "P.A.R.T." guidelines: pain/tenderness; asymmetry/misalignment; range of motion restriction; tissue. He indicated that he obtained x-rays on October 10, 2022 to confirm thoracic subluxation.⁴

An October 21, 2022 CT scan of the thorax revealed "[h]ealing/healed anterior and lateral left rib fractures without new acute osseous abnormality."

In a December 2, 2022 report, Dr. Parrish opined that the accepted multiple rib fractures caused intercostal neuralgia and thoracic radiculopathy.

In a January 25, 2023 report, Dr. Parrish opined that the five accepted rib fractures likely caused secondary injuries based on the proximity of the intercostal nerves to the fractures. Appellant's physical therapist and chiropractor "have indicated thoracic subluxation, instability, weakness, and neurapraxia. All findings are consistent with my medical observations, exam[ination]s, and diagnosis."

⁴ OWCP received additional treatment notes dated October 31, 2022 through July 14, 2023 wherein Dr. Barnes diagnosed cervical and cervicothoracic radiculopathy.

In a February 11, 2023 statement, appellant noted that she sustained a serious cervical spine injury in a May 19, 2016 motor vehicle accident, with disc herniations revealed by diagnostic imaging.

In a July 5, 2023 report, Dr. James M. Patton, a Board-certified neurologist, indicated that a June 30, 2022 MRI scan demonstrated a normal thoracic spine.

In a July 13, 2023 report, Dr. Horne indicated that a June 30, 2022 thoracic MRI scan and May 16, 2023 thoracolumbar spine x-rays demonstrated maintained spinal alignment.

On October 17, 2023, OWCP expanded its acceptance of appellant's claim to include intercostal neuropathy.

In an October 20, 2023 letter, appellant, through counsel, requested that OWCP expand the acceptance of her claim to include thoracic subluxation.

Thereafter, OWCP received October 10 and 12, 2023 reports wherein Dr. Barnes indicated that October 10, 2022 x-rays revealed thoracic subluxation. Dr. Barnes attached two diagnostic images of appellant's thorax.

In a December 13, 2023 report, Dr. Barnes explained that he diagnosed thoracic subluxation on a July 8, 2022 examination, superimposed on a history of mild S-shaped thoracic scoliosis diagnosed during treatment for a 2016 motor vehicle accident. He opined that the thoracic subluxation was causally related to the accepted April 21, 2022 employment injury.

By decision dated February 2, 2024, OWCP denied appellant's request to expand its acceptance of the claim to include thoracic subluxation causally related to her accepted April 21, 2022 employment injury.

Thereafter, OWCP received a May 16, 2023 thoracolumbar x-ray report, which revealed dextrocurvature of the thoracic spine, with normal sagittal alignment and curvature.

In reports dated February 8 and May 9, 2024, Dr. Parrish diagnosed subluxation complex of thoracic region.

On June 23, 2024 appellant requested reconsideration.

Thereafter, OWCP received an August 8, 2023 report wherein Dr. Parrish diagnosed intercostal neuralgia causally related to the accepted April 21, 2022 employment injury.

OWCP also received reports dated November 30, 2023 through May 1, 2024, wherein Dr. Barnes noted thoracic dextroscoliosis with apex at T7 and T8, diagnosed by November 30, 2023 x-rays.

OWCP also received a February 29, 2024 report wherein Dr. Parrish opined that appellant's S-shaped thoracic scoliosis was asymptomatic prior to the accepted April 21, 2022 employment injury and not clinically significant.

OWCP also received reports dated March 8 and May 13, 2024 wherein Dr. Home diagnosed history of chest wall injury, thoracic spine pain, intercostal neuralgia, and intercostal neuropathy. He opined that appellant required additional treatment.

OWCP also received a June 5, 2024 report wherein Dr. Barnes indicated that appellant's physicians recommended chiropractic care to address spinal misalignment related to the employment injury. Dr. Barnes attached a thoracic x-ray with markings, which he asserted indicated areas of improvement.

By decision dated June 26, 2024, OWCP denied modification of the February 2, 2024 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.⁵

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.⁶ 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.⁷ 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.⁸

The employee also bears the burden of proof to establish a claim for a consequential injury.⁹ In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that

⁵ *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).

⁶ *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).

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

⁸ *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).

⁹ *T.A.*, Docket No. 21-0798 (issued January 31, 2023); *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).

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.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include thoracic subluxation, causally related to or as a consequence of her accepted April 21, 2022 employment injury.

Dr. Barnes, in reports dated October 10 through 19, 2022, and June 5, 2024, diagnosed thoracic subluxation based on October 10, 2022 x-rays. He explained in a December 13, 2023 report that appellant had a history of thoracic scoliosis initially diagnosed following a 2016 nonoccupational motor vehicle accident. In reports dated November 30, 2023 through May 1, 2024, Dr. Barnes noted thoracic dextroscoliosis with apex at T7 and T8, revealed by November 30, 2023 x-rays. He opined that the thoracic subluxation was causally related to the accepted April 21, 2022 employment injury. As Dr. Barnes, a chiropractor, diagnosed a spinal subluxation demonstrated by x-ray to exist, he is a physician under FECA for the purposes of this case.¹¹ However, he did not provide sufficient medical rationale explaining how the accepted April 21, 2022 employment injury would cause the diagnosed thoracic subluxation. 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, this evidence is insufficient to establish appellant's expansion claim.

Dr. Parrish, in a January 25, 2023 report, noted that Dr. Barnes' diagnosis of thoracic subluxation was consistent with his own findings. He also diagnosed thoracic subluxation complex in reports dated February 8 and May 9, 2024. However, Dr. Parrish did not provide sufficient medical rationale to explain how the thoracic subluxation was causally related to the accepted April 21, 2022 employment injury.¹³ Such rationale is particularly crucial as the record indicates that appellant had a preexisting condition of the thoracic spine. In any case where a preexisting condition involving the same part of the body is present, the physician must provide a

¹⁰ *A.J.*, Docket No. 23-0404 (issued September 8, 2023); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

¹¹ Section 8101(2) of FECA provides that, "The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." 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). Chiropractors are considered physicians under FECA only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. See *A.M.*, Docket No. 24-0413 (issued July 31, 2024); *S.P.*, Docket No. 19-0573 (issued May 6, 2021); *A.C.*, Docket No. 19-1950 (issued May 27, 2020); *George E. Williams*, 44 ECAB 350 (issued February 24, 1993); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹² *A.M.*, *id.*; *J.T.*, Docket No. 23-1176 (issued March 19, 2024); *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 *Id.*

rationalized medical opinion that differentiates between the effects of the work-related injury and the preexisting condition.¹⁴ Therefore, this evidence is insufficient to establish appellant's expansion claim.

Dr. Horne, in reports dated June 28, 2022 through July 13, 2023, opined that thoracolumbar x-rays and a June 30, 2022 thoracic MRI scan demonstrated slight dextrocurvature. Dr. Patton, in a July 5, 2023 report, indicated that a June 30, 2022 MRI scan demonstrated a normal thoracic spine. As these physicians did not diagnose a thoracic subluxation, their opinions are insufficient to establish appellant's expansion claim.¹⁵

Appellant submitted May 10 and October 21, 2022 thoracic CT scans, a June 30, 2022 thoracic MRI scan, and May 16, 2023 thoracolumbar x-rays. However, diagnostic studies, standing alone, lack probative value on causal relationship as they do not address whether employment factors caused the diagnosed condition.¹⁶ Therefore, this evidence is also insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's thoracic subluxation and the accepted April 21, 2022 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 thoracic subluxation, causally related to or as a consequence of her accepted April 21, 2022 employment injury.

¹⁴ *Supra* note 11 at Chapter 2.805.3e (January 2013); *J.A.*, Docket No. 23-0256 (issued December 10, 2024); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

¹⁵ *B.P.*, Docket No. 20-0820 (issued July 12, 2022).

¹⁶ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2025
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