

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

C.M., Appellant)	
)	
and)	Docket No. 25-0568
)	Issued: June 17, 2025
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Miami, FL, Employer)	
)	
)	

Appearances:

Capp P. Taylor, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JURISDICTION

On May 21, 2025 appellant, through counsel, filed a timely appeal from a May 12, 2025 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.

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 has met his burden of proof to expand the acceptance of his claim to include additional cervical conditions as causally related to the accepted September 3, 2014 employment injury.

FACTUAL HISTORY

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

On September 12, 2014 appellant, then a 54-year-old mail handler equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on September 3, 2014 he sustained injuries to his left ear, nose, and right eye socket when an overhead automatic door fell and struck his head while in the performance of duty. He stopped work on September 4, 2014. OWCP accepted the claim for face, scalp, and neck abrasions without infection; left face, scalp, and neck contusions, and post-traumatic headache.

In a report dated May 24, 2021, Dr. Robert R. Reppy, an osteopathic physician specializing in family medicine, recounted appellant's history of injury, reviewed diagnostic studies, and provided physical examination findings. He related that appellant had undergone a C3-C4 discectomy while in the Marine Corps. Dr. Reppy noted the progression of appellant's cervical conditions in diagnostic studies performed in 2015, 2016, and 2021. He reported that appellant had migraine headaches for the six years since his accepted September 3, 2014 employment injury. On examination, Dr. Reppy reported extremely limited cervical spinal range of motion (ROM) and significant left upper extremity strength deficits. He diagnosed severe anterolisthesis of C2 on C3 and C4, severe C2-C3 foraminal stenosis, severe bilateral C4-C5 foraminal stenosis, C6-C7 herniated disc, and cervical radiculopathy. Based on the objective evidence and appellant's symptoms, Dr. Reppy concluded that these conditions were consequentially related to the accepted September 3, 2014 employment injury.

On June 2, 2021 appellant, through counsel, requested expansion of appellant's claim to include the diagnoses offered by Dr. Reppy.

In a development letter dated November 22, 2021, OWCP informed appellant that the evidence of record was insufficient to establish expansion of his claim. It advised him of the additional medical evidence required and afforded him 30 days to submit the requested evidence.

In a February 6, 2023 report, Dr. Reppy reviewed diagnostic studies and noted that a cervical spine computerized tomography (CT) scan dated January 13, 2015 showed C2-C5 anterolisthesis of less than 2 millimeters (mm), by June 2, 2016 that anterolisthesis had increased to 3.8 mm, a fairly rapid increase. An April 29, 2016 magnetic resonance imaging (MRI) scan, showed C3-C4 severe disc height loss, C6-C7 cord compression, C3-C4 severe left foraminal stenosis, bilateral C4-C5 severe foraminal stenosis, and C6-C7 herniated disc resulting in

³ Docket No. 24-0560 (issued July 5, 2024).

moderate-to-severe thecal sac stenosis. Results from appellant's May 24, 2021 upper extremity nerve conduction velocity (NCV) study revealed abnormal findings of cervical radiculopathy. Dr. Reppy concluded that appellant's claim should be expanded to include these conditions as consequential to the accepted September 3, 2014 employment injury.

In a February 23, 2023 report, Dr. Reppy requested that OWCP expand the acceptance of appellant's claim to include his additional cervical diagnoses. He stated that appellant's continued symptomatology was not caused by a contusion and that the diagnosis of contusion was not intended to be a final diagnosis. Dr. Reppy related that appellant's diagnoses were confirmed by diagnostic testing. He opined that the accepted September 3, 2014 employment injury was the direct and proximate cause of appellant's diagnosed conditions, and that these diagnosed conditions were mechanically related to the accepted September 3, 2014 employment injury.

On June 23, 2023 OWCP referred appellant for a second opinion evaluation, together with the medical record, a statement of accepted facts (SOAF), and series of questions, to Dr. Peter J. Millheiser, a Board-certified orthopedic surgeon, to determine the nature and extent of his accepted conditions and whether he developed any additional medical conditions causally related to the September 3, 2014 employment injury.

In a report dated July 11, 2023, Dr. Millheiser discussed appellant's history of injury and medical treatment. He noted that he had reviewed a June 22, 2010 CT scan of appellant's cervical spine and an April 8, 2014 MRI scan of appellant's cervical spine, but had not received any medical examination reports for review dated prior to the September 3, 2014 employment injury. On physical examination, Dr. Millheiser observed markedly restricted cervical spine ROM with minimal flexion, extension, rotation, and lateral bend. He opined that appellant's accepted conditions were "at a plateau," and that there was no need for any further medical treatment. Dr. Millheiser noted that appellant did have cervical spine degenerative disease, which was a preexisting condition. He noted that appellant's foraminal stenosis and disc herniation at C6-C7 were preexisting conditions. Appellant's severe anterolisthesis of C2 on C3 was not present on the April 28, 2014 MRI scan, however, no flexion/extension views were done. Dr. Millheiser concluded that if there was no prior mention of anterolisthesis prior to the employment injury, then this condition would be causally related to the employment injury. He indicated that he would need to see the records prior to the date of injury. Dr. Millheiser also related that if there was an increase in appellant's anterolisthesis, this would be an aggravation of the preexisting condition. He also noted that new imaging and diagnostic studies were necessary to determine whether or not there was an increase in appellant's anterolisthesis.

Dr. Reppy, in a September 14, 2023 report, again requested expansion of the claim. He noted his disagreement with Dr. Millheiser's opinion that appellant's current C6-C7 disc herniation with left-sided thecal sac stenosis was preexisting since he had not reviewed medical examination reports prior to the employment injury. Dr. Reppy concluded that the evidence of record clearly demonstrated an aggravation of appellant's preexisting C6-C7 disc herniation.

By decision dated October 24, 2023, OWCP denied expansion of the claim to include C2-C5 severe anterolisthesis, C3-C4 severe left foraminal stenosis, C4-C5 bilateral severe left foraminal stenosis, and C6-C7-disc herniation, with radiculopathy as causally related to the accepted employment injury.

In reports dated November 9, 2023 and March 4, 2024, Dr. Reppy reiterated his opinion that appellant's claim should be expanded to include consequential conditions of severe anterolisthesis of C2-C5, severe C3-C4 left foraminal stenosis, severe bilateral C4-C5 foraminal stenosis, C6-C7 herniated disc and cervical radiculopathy.

On May 1, 2024 appellant, through counsel, appealed to the Board.

A May 29, 2024 report from Dr. Reppy was repetitive of his prior reports. Dr. Reppy also submitted a petition to amend the accepted diagnoses, reiterating his opinion that appellant's claim should be expanded to include additional conditions as they were pathophysiologically related to appellant's employment injury.

By decision dated July 5, 2024,⁴ the Board set aside the October 24, 2024 decision, finding that further development of the evidence was required. The Board remanded the case for OWCP to obtain additional imaging and diagnostic studies as requested by Dr. Millheiser and then refer the complete case record to Dr. Millheiser for a supplemental opinion addressing expansion of the claim.

Following the Board's decision, OWCP received reports dated July 10, September 4, November 4, December 11, 2024 and January 22, 2025 from Dr. Reppy, which were unchanged from his prior reports.

A December 6, 2024 cervical x-ray revealed a 3 mm retrolisthesis on C3-C4 with no change in flexion and extensions, moderate C3-C4, C5-C6, and C6-C7 degenerative disc changes with moderate disc space narrowing, and cervical facet osteoarthritis and joint osteoarthritis.

In a petition dated January 22, 2025, Dr. Reppy again requested OWCP expand appellant's claim to include additional conditions as causally related to the accepted employment injury.

In a supplemental report dated February 7, 2025, Dr. Millheiser related that prior to the 2014 accident appellant had extensive cervical degenerative changes. He had preexisting cervical spondylosis, cervical bulging discs from C2-C5, and had undergone a C3-C4 discectomy. In 1980 appellant experienced a severe impact to the face and neck, due to a facemask injury. At that time, he was told that he had narrowing of the disc spaces, and he underwent cervical spine surgery. Dr. Millheiser explained appellant's cervical degenerative changes took years to develop, noting the natural history cervical degenerative disc disease is gradual progression without further injury. He stated that no records had been presented for his review showing that appellant had a significant head and neck injury, as a result of the September 3, 2014 employment injury, requiring ongoing treatment. Thus, Dr. Milheiser opined that appellant's cervical conditions did not appear to be causally related to the accepted injury, but were instead a natural progression of preexisting cervical conditions. He concluded that there was no evidence showing that being struck on the head on September 3, 2014 caused, accelerated, or precipitated his current cervical conditions.

In reports dated March 5 and April 16, 2025, Dr. Reppy repeated his prior findings and diagnoses.

⁴ *Id.*

Dr. Millheiser, in a second supplemental report dated May 2, 2025, related that appellant's December 6, 2024 cervical spine x-ray showed no increase in cervical abnormalities and that he continued to have multilevel cervical spine disc degeneration. He observed there were no significant changes noted in the 2024 x-ray compared with the 2014 MRI scan. Thus, Dr. Millheiser concluded that appellant's claim should not be expanded to include "various" additional conditions of C2-C5 severe anterolisthesis, with disc herniation, and C6-C7 disc herniation, with radiculopathy. He explained that appellant's complaints and findings were long-standing and were the natural course of his condition.

By decision dated May 12, 2025, OWCP denied expansion of the claim to include additional cervical conditions as causally related to the accepted September 3, 2014 employment injury.

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.⁵ 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 the claimant's own intentional misconduct.⁶ Thus, a subsequent injury, be it 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.⁷

To establish causal relationship between an additional condition, as well as any attendant disability claimed, and the accepted employment injury, an employee must submit rationalized medical evidence.⁸ 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 additional diagnosed condition and the accepted employment injury.⁹

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,

⁵ *J.W.*, Docket No. 25-0011 (issued November 19, 2024); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁶ See *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); see also *Charles W. Downey*, 54 ECAB 421 (2003).

⁷ *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁸ See *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁹ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional cervical conditions as causally related to the accepted September 3, 2014 employment injury.

OWCP referred appellant to Dr. Millheiser for a second opinion regarding whether the acceptance of appellant's claim should be expanded to include additional cervical conditions. In a report dated July 11, 2023, Dr. Millheiser noted that he had reviewed a June 22, 2010 CT scan of appellant's cervical spine and an April 8, 2014 MRI scan of appellant's cervical spine. He related that appellant's accepted conditions had resolved, but that appellant had cervical spine degenerative disease. Dr. Millheiser noted that appellant's foraminal stenosis and disc herniation at C6-C7 were preexisting conditions. Appellant's severe anterolisthesis of C2 on C3 was not present on the April 28, 2014 MRI scan. Dr. Millheiser concluded that if there was no prior mention of anterolisthesis prior to the employment injury, then this condition would be causally related to the employment injury. He also related that if there was an increase in appellant's anterolisthesis, this would be an aggravation of the preexisting condition. Dr. Millheiser also noted that new imaging and diagnostic studies were necessary to determine whether or not there was an increase in appellant's anterolisthesis.

In a supplemental report dated February 7, 2025, Dr. Millheiser related that prior to the 2014 employment injury appellant had extensive cervical degenerative changes, including preexisting cervical spondylosis, cervical bulging discs from C2-C5. He recounted appellant's prior medical history, noting that he had undergone a C3-C4 discectomy following a 1980 injury, which had caused a severe impact to the face and neck. At that time, appellant was told that he had narrowing of the disc spaces, and he underwent cervical spine surgery. Dr. Millheiser explained appellant's cervical degenerative changes took years to develop, noting the natural history cervical degenerative disc disease is gradual progression without further injury. He stated that no records had been presented for his review showing that appellant had a significant head and neck injury, as a result of the September 3, 2014 employment injury, requiring ongoing treatment. Thus, Dr. Milheiser opined that appellant's cervical problems noted in his report did not appear to be causally related to the accepted injury, but were instead a natural progression of preexisting cervical problems. In a second supplemental report dated May 2, 2025, he reviewed appellant's December 6, 2024 cervical x-ray and the medical record. Dr. Milheiser observed there were no significant changes noted in the 2024 x-ray compared with the 2014 MRI scan. Thus, he concluded that appellant's claim should not be expanded to include appellant's current cervical conditions which were long-standing and the natural course of his condition. The Board finds that the second opinion physician, Dr. Millheiser, properly addressed appellant's history of prior cervical injury and preexisting cervical conditions. Dr. Millheiser reviewed appellant's diagnostic test findings and provided a rationalized opinion, specifically disagreeing with Dr. Reppy's opinion that appellant's current cervical conditions were directly caused by the accepted

¹⁰ 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).

September 3, 2014 employment injury. As such, the Board finds that the opinion of Dr. Millheiser constitutes the weight of the medical evidence.¹¹

Dr. Reppy opined in multiple reports dating from May 24, 2021 that appellant sustained severe anterolisthesis of C2 on C3 and C4, severe C2-C3 foraminal stenosis, severe bilateral C4-C5 foraminal stenosis, C6-C7 herniated disc, and cervical radiculopathy, due to the accepted September 3, 2014 employment injury. He stated that appellant's continued symptomatology was not caused by a contusion, that the diagnosis of contusion was not intended to be a final diagnosis, and diagnostic testing confirmed the additional diagnoses. In his February 23, 2023 report, Dr. Reppy opined that the accepted September 3, 2014 employment injury was the direct and proximate cause of appellant's diagnosed conditions, and that appellant's diagnosed cervical conditions were mechanically related to the accepted September 3, 2014 employment injury. While he concluded that appellant's current cervical conditions were causally related to the accepted employment injury, the Board, however, 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 was causally related to the accepted employment incident.¹² Dr. Reppy provided only a conclusory opinion on causal relationship. He did not provide medical rationale explaining, physiologically, how appellant's additional diagnosed conditions were caused or aggravated by the accepted September 3, 2014 employment injury.¹³ The Board has explained that such rationale is especially important in a case involving a preexisting condition.¹⁴ As such, this evidence is insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between the additional cervical conditions and the accepted employment injury, the Board finds that he has not met his 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 his burden of proof to expand the acceptance of his claim to include additional cervical conditions as causally related to the accepted September 3, 2014 employment injury.

¹¹ *L.M.*, Docket No. 23-1040 (issued December 29, 2023); *see P.M.*, Docket No. 18-0287 (issued October 11, 2018).

¹² *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

¹³ *S.S.*, Docket No. 23-0391 (issued October 24, 2023); *see F.H.*, Docket No. 18-1238 (issued January 18, 2019); *J.R.*, Docket No. 18-0206 (issued October 15, 2018).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2025
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