

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 conditions as causally related to, or consequential to, his accepted August 12, 2022 employment injury.

FACTUAL HISTORY

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

On August 15, 2022, appellant, then a 40-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2022 he injured his left side, from his back to his leg, when he tripped on a curb and a piece of loose asphalt landed on top of him, while in the performance of duty. He stopped work on August 12, 2022. OWCP accepted the claim for multiple fractures of the pelvis without disruption of the pelvic ring. It paid appellant wage-loss compensation on the supplemental and periodic rolls.

Appellant subsequently requested expansion of the acceptance of his claim. In support thereof he submitted progress notes dated November 23, 2022, from Dr. Terry Pexton, an osteopathic physician Board-certified in physiatry, who noted that appellant was seen for neck and low back pain complaints. Dr. Pexton recounted appellant's history of injury and provided examination findings. He diagnosed cervicalgia, cervicogenic headache, myofascial pain, left side occipital neuralgia, and post-traumatic pain. Dr. Pexton related that appellant had suffered from headaches all of his life, which were associated with neck pain, but that they had recently significantly worsened. He explained that appellant had a history of traumatic brain injuries from explosives while stationed in Afghanistan; however, appellant's headaches had been fairly well controlled without medication. Dr. Pexton recommended cervical paraspinal trigger point injections.

In a report dated November 10, 2022, Dr. Mark T. Caylor, a Board-certified orthopedic surgeon, noted that appellant was seen that day. Appellant related that he was having left-sided neck issues which were causing headaches. He noted that he had experienced neck problems since his time in the Army, but he was unsure if it had anything to do with his current issues. Dr. Caylor diagnosed pelvic ring and acetabular fractures, knee contusion, and neck pain.

Dr. Pexton, in progress notes dated January 11, 2023, reiterated findings and diagnoses from his prior report. He noted that appellant's cervical x-ray was normal. Dr. Pexton concluded that appellant's cervicogenic headache was a direct result of his accepted employment injury.

In a development letter dated February 16, 2023, OWCP informed appellant that the evidence was insufficient to warrant expansion of the acceptance of his claim to include additional

³ Docket No. 24-0863 (issued November 14, 2024).

conditions. It advised him of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated March 29, 2023, OWCP denied appellant's request to expand the acceptance of his claim to include cervicalgia and cervicogenic headache.

In a report dated June 5, 2023, Dr. Marc Uscola, a chiropractor, diagnosed cervicalgia, cervicothoracic region cervical disc degeneration, low back pain (lumbar region); other intervertebral disc disorders, and left hip pain.

In an August 22, 2023 report, Dr. John W. Ellis, a Board-certified family medicine physician, requested expansion of the acceptance of appellant's claim to include cervical strain/whiplash injury, lumbar spine strain, acute post-traumatic headache, right acetabulum fracture, left acetabulum fracture, aggravation of preexisting lumbar spinal stenosis, aggravation of preexisting lumbar disc disease, aggravation of preexisting lumbar radiculopathy, consequential bilateral shoulder impingement syndrome, consequential bilateral elbow lateral epicondylitis, and consequential bilateral carpal tunnel syndrome. He recounted appellant's history of injury and summarized the medical evidence he had reviewed. Dr. Ellis explained that fractures of the left and right acetabulum were objectively identified by computerized tomography (CT) scan on the date of injury. Regarding appellant's cervical strain, he related that appellant's fall, followed by a hard impact on the ground, caused a sudden acceleration/deceleration injury and caused a sudden jerking of appellant's neck. Dr. Ellis opined that appellant's preexisting neck, back, and shoulder musculoskeletal system conditions had been aggravated by the August 12, 2022 fall. Next, he opined that appellant sustained consequential left and right shoulder conditions from his prolonged walking with crutches because of his non-weight bearing status. Dr. Ellis explained that significant pressure can be placed on the underarm from the crutch saddle when using crutches for an extended period of time, and pressure over time can cause nerve damage and lead to compressive neuropathy or crutch palsy of the brachial plexus and ulnar nerve in some cases.

On October 23, 2023, Dr. Caylor advised that he had referred appellant to Dr. Ellis for an orthopedic evaluation. He explained that appellant had been treated and monitored for left intra-articular acetabular fracture and mildly displaced left inferior rami fracture with concomitant lumbar and cervical spine injuries from the accepted August 12, 2022 employment injury.

By decision dated October 25, 2023, OWCP denied appellant's request to expand the acceptance of his claim to include additional conditions.

On November 9, 2023, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a November 10, 2023 report, Dr. Ellis related that appellant had been assessed for disability retirement on July 19, 2023. During this examination, he stated that it became apparent appellant was incapable of performing the physical requirements of his date-of-injury job due to the injuries he sustained on August 12, 2022. Dr. Ellis explained that the August 12, 2022 employment injury resulted in consequential injuries as well as aggravation of underlying conditions, which had not been considered in evaluating appellant's claim. He related that appellant's preexisting bilateral hip cam deformities had been aggravated by the traumatic injury

sustained on August 12, 2022. Dr. Ellis further noted that appellant suffered a fractured pelvis as a result of the accepted August 12, 2022 employment injury requiring his prolonged use of crutches, which caused a consequential shoulder injury.

A hearing was held on February 7, 2024.

By decision dated April 24, 2024, OWCP's hearing representative set aside the October 25, 2023 decision and remanded the case for further development of the medical evidence.

On May 3, 2024, OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. James R. Schwartz, a Board-certified orthopedic surgeon, for an opinion on whether the acceptance of appellant's claim should be expanded to include additional conditions.

In a report dated June 6, 2024, Dr. Schwartz recounted appellant's history of injury and medical treatment. He reviewed the SOAF and list of questions, and noted preexisting conditions of lumbar spinal stenosis, lumbar degenerative disc disease, lumbar radiculopathy, military service-connected traumatic brain injury, and cervical conditions. Dr. Schwartz diagnosed multiple pelvic fractures without pelvic ring disruption. He also diagnosed cervical degenerative disc disease with small central disc herniation, which he opined was not causally related to the accepted August 12, 2022 employment injury. Dr. Schwartz explained that appellant did not complain or visit a physician for neck and upper back pain for three months following the August 12, 2022 employment injury, and complaints of upper back and neck pain three months after the injury did not make physiological sense. He further explained that appellant's explanation that his back and neck symptoms were not apparent because he was on bedrest also made no physiological sense. Appellant's physical examination demonstrated mildly-restricted lumbar spine motion and some hamstring tightness. Overall, Dr. Schwartz found that appellant had a good recovery from his pelvis fracture. He opined that the accepted work injury did not cause or aggravate appellant's preexisting lumbar stenosis, lumbar degenerative disc disease, lumbar radiculopathy or migraines. Dr. Schwartz further opined that the diagnosed cervical spondylosis was not causally related to the pelvic fracture since appellant's complaints of upper back and midline pain began long after the accepted August 12, 2022 employment injury. Next, he opined that appellant did not sustain consequential conditions of bilateral shoulder impingement, carpal tunnel syndrome, and bilateral elbow epicondylitis due to the accepted August 12, 2022 employment injury. In support of this conclusion, Dr. Schwartz explained that these conditions were diagnosed a year after the injury and after appellant had returned for two months to full duty, before retiring. Additionally, the onset of these conditions came far too late to be causally related to the accepted pelvic fractures.

By *de novo* decision dated June 26, 2024, OWCP denied expansion of the acceptance of appellant's claim to include cervical and lumbar conditions, post-traumatic headaches, bilateral hip fractures, bilateral shoulder impingement, bilateral carpal tunnel syndrome, bilateral elbow lateral epicondylitis, and aggravation of preexisting lumbar spinal stenosis, lumbar degenerative disc disease, and lumbar radiculopathy.

OWCP subsequently received a March 21, 2024 report from Michael D. Craig, a physician assistant. Mr. Craig related that, following his August 12, 2022 work injury, appellant developed

neck and upper back pain, but those symptoms were overshadowed by his pelvic injuries. He detailed physical examination findings, reviewed diagnostic tests, and diagnosed neck and midback pain.

On July 2, 2024, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 7, 2024.

In a July 9, 2024 addendum report, Dr. Schwartz reviewed Dr. Ellis' November 10, 2023 report and disagreed that appellant sustained a consequential shoulder injury from using crutches. He explained that appellant's shoulder symptoms were nonspecific, noting that appellant stated the shoulder symptoms were not initially apparent because he had been on bed rest. While Dr. Ellis attributed appellant's shoulder symptoms to overuse caused by crutch use, appellant appeared to contradict this by stating he had been on bed rest. Dr. Schwartz reiterated his opinion that appellant's preexisting cervical and lumbar spondylosis, prior head injury and hip cam deformity with degenerative changes had not been caused or aggravated by the accepted August 12, 2022 employment injury because the symptoms occurred months following the injury. He further reiterated that there was no direct causation or aggravation of appellant's cervical or lumbar conditions, as the onset of his symptoms was too distant to the original injury to have caused or aggravated the conditions.

In an April 4, 2024 report, Dr. Curtis A. Mina, a Board-certified orthopedic surgeon, recounted the August 12, 2022 employment injury and diagnosed cervical foraminal stenosis and cervical disc herniation. He related that appellant initially injured his neck when a ladder fell from a loader bucket and a large amount of asphalt fell on him, following which he was placed on bed rest for approximately two months. Dr. Mina noted appellant's complaints of neck pain radiating into his arm following the injury and his positive physical examination findings. A review of appellant's April 2, 2024 magnetic resonance imaging (MRI) scan revealed C6-7 disc herniation and central disc protrusion. Dr. Mina diagnosed cervical foraminal stenosis and disc herniation. In reports dated June 20 and September 10, 2024, he reiterated findings from his April 4, 2024 report.

In a September 26, 2024 report, Dr. Mina indicated that appellant had been under his care for the last five months. He summarized appellant's history of injury, and noted that appellant related that his cervical disc herniation symptoms began at the time of the August 12, 2022 employment injury. Dr. Mina explained that acute disc herniations are typically traumatic in nature and trauma was a common mechanism for disc herniations. Thus, he concluded it was very likely that appellant's acute disc herniation occurred due to the accepted August 12, 2022 employment injury.

By decision dated December 6, 2024, OWCP's hearing representative affirmed the June 26, 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.⁴

To establish causal relationship between any additional diagnosed conditions and the accepted employment injury, an employee must submit rationalized medical evidence.⁵ 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 an additional diagnosed condition and the accepted employment injury.⁶ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷

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 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.⁸

In a 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.⁹

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ The implementing regulations

⁴ *D.M.*, Docket No. 24-0512 (issued December 9, 2024); *L.F.*, Docket No. 20-0359 (issued January 27, 2021); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *D.M.*, *id.*; *L.F.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁶ *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See D.T.*, *id.*; *P.M.*, Docket No. 18-0287 (issued October 11, 2018).

⁸ *F.R.*, Docket No. 24-0075 (issued March 4, 2024); *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁹ *D.G.*, Docket No. 23-1192 (issued March 20, 2024); *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023).

¹⁰ 5 U.S.C. § 8123(a); *see P.S.*, Docket No. 22-0358 (issued March 31, 2023); *Y.A.*, 59 ECAB 701 (2008).

state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.¹¹

ANALYSIS

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

In support of his claim appellant submitted reports dated August 22 and November 10, 2023 from Dr. Ellis. Based upon appellant's medical history and his review of appellant's medical record, Dr. Ellis opined that appellant's preexisting neck and back conditions had been aggravated by the accepted August 12, 2022 fall. Dr. Ellis explained that appellant's fall, followed by a hard impact on the ground caused a sudden acceleration/deceleration injury that also caused a sudden jerking of appellant's neck. He further explained that appellant sustained consequential left and right shoulder conditions from his prolonged walking with crutches due to his accepted pelvic fracture.

OWCP referred appellant to Dr. Schwartz for a second opinion regarding whether his additional diagnosed conditions were causally related to, or consequential to, the accepted August 12, 2022 employment injury. In a June 6, 2024 report, Dr. Schwartz noted his review of the SOAF and the medical record. He noted appellant's accepted diagnosis of multiple pelvic fractures. Dr. Schwartz explained that appellant did not relate neck or lumbar complaints until three months after the injury; therefore, they were not causally related to the accepted employment injury. Dr. Schwartz also opined that appellant did not sustain bilateral shoulder impingement syndrome as a consequence of the accepted August 12, 2022 employment injury. In an addendum report dated July 9, 2024, he reviewed Dr. Ellis' report, noting that while Dr. Ellis attributed appellant's shoulder symptoms to overuse caused by crutch use, appellant appeared to contradict this by stating he had been on bed rest. Dr. Schwartz reiterated his opinion that appellant's preexisting cervical and lumbar spondylosis, prior head injury, and hip cam deformity with degenerative changes had not been caused or aggravated by the accepted August 12, 2022 employment injury because the symptoms occurred months following the injury.

As explained above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or impartial medical specialist who shall make an examination.¹² The Board finds that a conflict remains between Dr. Ellis and Dr. Schwartz regarding whether the acceptance of appellant's claim should be expanded to include aggravation of cervical, shoulder, lumbar, and hip conditions as causally related to the accepted August 12, 2022 employment injury, or as a consequence of the accepted employment injury.

As there is an unresolved conflict in medical opinion regarding whether the acceptance of appellant's claim should be expanded to include additional conditions as causally related to or consequential to his accepted August 12, 2022 employment injury, the case must be remanded for

¹¹ 20 C.F.R. § 10.321; *see also* *R.E.*, Docket No. 25-0223 (issued April 24, 2025); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹² *See S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

OWCP to refer appellant, along with the case record, an updated SOAF, and a series of questions to an impartial medical specialist for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).¹³ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding expansion.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 6, 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: May 13, 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

¹³ *S.M.*, Docket No. 19-0397 (issued August 7, 2019).