

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

S.M., Appellant)
and)
DEPARTMENT OF THE NAVY, NORFOLK)
NAVAL SHIPYARD, Portsmouth, VA, Employer)

)
)

Docket No. 26-0010
Issued: January 28, 2026

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
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 October 7, 2025 appellant, through counsel, filed a timely appeal from a September 25, 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 conditions as causally related to, or consequential to, the accepted September 21, 2012 employment injury.

FACTUAL HISTORY

This case was previously before the Board on different issues.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On September 21, 2012 appellant, then a 43-year-old marine electrician, filed a traumatic injury claim (Form CA-1) alleging that on that date a one-half inch steel plate fell onto his right leg causing a right lower leg contusion. OWCP accepted the claim, assigned OWCP File No. xxxxxx449, for a contusion of the right knee and lower leg.⁴ Appellant stopped work on September 22, 2012, and returned to work on January 8, 2013.⁵

In a letter dated December 8, 2021, appellant, through counsel, requested expansion of the acceptance of his claim to include an aggravation of lumbar intervertebral disc disorder, lumbar radiculopathy, lumbar spondylosis, spinal stenosis of the lumbar region, lumbar spondylolisthesis, lumbar postlaminectomy syndrome, cervical spondylosis, cervical spinal stenosis, and a synovial cyst of the lumbar spine. In support thereof, appellant submitted a September 15, 2021 report, wherein Dr. John Shutack, a Board-certified neurosurgeon, diagnosed chronic low back pain, degeneration of a lumbar intervertebral disc, a history of surgery on the lumbar spinal structure, lumbar radiculopathy, lumbar spondylosis, spinal stenosis of the lumbar region, lumbar spine instability, lumbar spondylolisthesis, lumbar postlaminectomy syndrome, cervical spondylosis, neck pain, cervical spinal stenosis, and a lumbar synovial cyst.

In a development letter dated December 15, 2021, OWCP informed appellant of the deficiencies of his claim for expansion. It advised him of the factual and medical evidence necessary to establish his claim and afforded him 30 days to respond.

OWCP subsequently received additional medical evidence.

By decision dated February 8, 2023, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions as causally related to, or consequential to, the

³ Docket No. 24-0692 (issued August 29, 2024); Docket No. 22-0723 (issued October 12, 2022); Docket No. 16-1142 (issued March 15, 2017).

⁴ OWCP previously accepted under OWCP File No. xxxxxx817 that appellant sustained a traumatic injury on July 26, 2008, causing right lateral collateral ligament sprain and a right medial meniscus tear. Appellant also filed a traumatic injury claim, assigned OWCP File No. xxxxxx188, alleging an injury to his neck and lower back on February 15, 2008. OWCP denied the claim.

⁵ Appellant retired from federal service effective January 12, 2016.

accepted September 21, 2012 employment injury. It found that a January 24, 2023 report by Dr. Ajit Chary, a Board-certified internist, wherein she opined that appellant's diagnosed cervical and lumbar conditions were causally related to the accepted September 21, 2012 employment injury, was based on an incomplete factual and medical history.

On February 14, 2023, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated June 26, 2023, OWCP's hearing representative vacated the February 8, 2023 decision, finding that the statement of accepted facts (SOAF) provided to Dr. Chary was incomplete as it failed to include a history of appellant's 1991 service-related motor vehicle accident and diagnosis of C7 spinous fracture. The hearing representative instructed OWCP, on remand, to administratively combine OWCP File Nos. xxxxxx817, xxxxxx188, and xxxxxx449, prepare an updated SOAF, and issue a new development letter, followed by a *de novo* decision.

OWCP administratively combined OWCP File Nos. xxxxxx449, xxxxxx188, and xxxxxx817, with the latter serving as the master file.

In a development letter dated June 30, 2023, OWCP again informed appellant of the deficiencies of his expansion claim. It advised him of the type of factual and medical evidence needed to establish his claim, and afforded him 30 days to submit the necessary evidence.

In a July 26, 2023 report, Dr. Chary provided diagnoses and findings consistent with those set forth in his January 24, 2023 report. He related that appellant fell due to the weight of the heavy metal sheet and landed on his back. Dr. Chary noted that appellant did not receive timely treatment for his cervical or lumbar spine complaints, and that he continued working full duty, which caused wear and tear on his body and multiple cervical and lumbar conditions.

On August 3, 2023, OWCP referred appellant along with the medical record, the updated SOAF, and a series of questions to Dr. James R. Schwartz, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated September 22, 2023, Dr. Schwartz noted his review of the SOAF, the history of injury, and the medical evidence of record. He further noted appellant's complaints of pain and paresthesia of the right lower extremity, more than the left. On physical examination, Dr. Schwartz observed lumbar extension barely beyond neutral, a negative straight leg raise, and loss of sensation in the right foot and areas of the right lower leg. He diagnosed right knee lateral collateral ligament sprain and medial meniscus tear. Dr. Schwartz advised that there was "a long gap between any indication of lumbar radiculopathy from the initial injury." He opined that it was difficult to attribute the lumbar spine injury with radiculopathy to the mode of injury. Dr. Schwartz maintained that there was no medical evidence showing "any additional injury to the lumbar intervertebral disc, lumbar radiculopathy, lumbar spondylosis, spinal stenosis, lumbar spondylolisthesis, lumbar post laminectomy syndrome, cervical spondylosis, cervical regional spinal stenosis, and lumbar synovial cyst. Symptoms of axial skeletal problems are not contemporaneous with the medical records following the injury of September 21, 2012." Dr. Schwartz opined that, based on the lack of records showing skeletal problems within months

of the injury, he would not “assume that any of the above diagnosis in the axial skeleton are posttraumatic.” He found that they were preexisting degenerative conditions that were not related to appellant’s 2012 injury.

On October 26, 2023, OWCP requested that Dr. Schwartz clarify his opinion.

In a supplemental report dated December 11, 2023, Dr. Schwartz reviewed additional medical evidence, including Dr. Chary’s July 29, 2023 report. He again noted that there was no medical evidence showing that the September 21, 2012 employment injury caused or aggravated any additional conditions. Dr. Schwartz opined that the additional records failed to address causation between his conditions and the accepted September 21, 2012 knee injury.

By decision dated December 14, 2023, OWCP denied expansion of the acceptance of appellant’s claim to include additional conditions as causally related to, or consequential to, the accepted September 21, 2012 employment injury. It accorded the weight of the medical evidence to the second opinion reports of Dr. Schwartz.

On December 19, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

Thereafter, OWCP received additional medical evidence.

By decision dated May 31, 2024, OWCP’s hearing representative affirmed the December 14, 2023 decision.

On June 17, 2024 appellant, through counsel, appealed to the Board. By decision dated August 29, 2024,⁶ the Board affirmed the May 31, 2024 decision.

On June 30, 2025 appellant, through counsel, requested reconsideration. In support thereof, he submitted a February 4, 2025 report from Dr. Yasmin Ahmed, a physician Board-certified in family medicine. Dr. Ahmed noted that appellant presented with a history of traumatic injury to the back and right knee. She discussed her findings on physical examination and diagnosed lumbar radiculopathy. Dr. Ahmed opined that the diagnosed condition and associated injuries were directly attributable to the September 21, 2012 employment injury. She related that on that date appellant was holding a one-half inch steel plate when it unexpectedly fell forward. Dr. Ahmed further related that as the plate slid down his leg, appellant lost his balance and fell backward, landing forcefully on his back. According to Dr. Ahmed, this fall, coupled with the subsequent impact of the steel plate on appellant’s right lateral knee and calf, resulted in significant trauma to lumbar spine and lower extremities. She noted that lumbar radiculopathy involved the compression or irritation of one or more nerve roots in the lumbar spine. The nerve roots were responsible for transmitting signals between the spinal cord and the rest of the body and any disruption can lead to significant symptoms. Dr. Ahmed explained that in appellant’s case, “the fall onto his back created a compressive force on [his] lumbar spine, leading to the compression of the lumbar nerve roots and the development of lumbar radiculopathy. The impact dynamics, including the forceful landing on his back, are consistent

⁶ *Supra* note 3.

with the symptoms of radiculopathy, such as discomfort radiating down the leg. Additionally, the steel plates impact on his right knee and calf introduced further trauma, likely causing soft tissue injuries.” Dr. Ahmed noted that on examination, appellant exhibited significant discomfort in the lower back region consistent with lumbar radiculopathy. She related that this discomfort was indicative of nerve root irritation or compression resulting from the fall. Dr. Ahmed further related that appellant’s physical examination revealed a restricted range of motion in the lower back, which further supported the diagnosis of lumbar radiculopathy. She maintained that this limitation was often due to the body’s protective response to nerve irritation, where muscles may tighten to guard the affected area. Dr. Ahmed concluded that the September 21, 2012 employment injury, which involved a fall onto the back and the subsequent impact of a steel plate, directly resulted in appellant’s lumbar radiculopathy.

On July 9, 2025, OWCP referred appellant, along with the medical record, including Dr. Ahmed’s February 4, 2025 report, a SOAF, and a series of questions to Dr. Schwartz for further clarification.

In a supplemental report dated August 23, 2025, Dr. Schwartz related appellant’s history of injury and noted his review of the SOAF and the medical record. He discussed his findings on physical examination and diagnosed the accepted conditions of right knee lateral collateral ligament sprain, medial meniscus tear, and right leg contusion. Dr. Schwartz opined that there was no indication that appellant’s lumbar radiculopathy was related to his work injury or employment factors. He referenced his explanation set forth in his prior report dated September 22, 2023 that there was “a long gap between any indication of lumbar radiculopathy from the initial injury.”

By decision dated September 25, 2025, OWCP denied modification.

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.⁷ 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.⁸ 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.⁹

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical

⁷ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁸ 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).

⁹ *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

evidence.¹⁰ 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 specific employment factors identified by the claimant.¹¹

Section 8123(a) of FECA provides, in pertinent part: “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 (known as a referee physician or an impartial medical examiner (IME) who shall make an examination.”¹² This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹³ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the May 31, 2024 OWCP decision because the Board considered that evidence in its August 29, 2024 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁵

In a February 4, 2025 report, Dr. Ahmed, appellant’s treating physician, opined that appellant’s lumbar radiculopathy was directly attributable to his September 21, 2012 employment injury. She explained that the mechanism of injury, noting that appellant’s fall coupled with the subsequent impact of the steel plate he was holding on his right lateral knee and calf, resulted in significant trauma to lumbar spine and lower extremities. Dr. Ahmed maintained that in appellant’s case, “the fall onto his back created a compressive force on [his] lumbar spine, leading to the compression of the lumbar nerve roots and the development of lumbar radiculopathy. The impact dynamics, including the forceful landing on his back, are

¹⁰ See *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹¹ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

¹² 5 U.S.C. § 8123(a).

¹³ 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

¹⁴ See *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹⁵ *N.O.*, Docket No. 20-0478 (issued August 22, 2025); *M.V.*, Docket No. 24-0092 (issued March 28, 2024); *R.P.*, Docket No. 23-0638 (issued November 30, 2023); *A.D.*, Docket No. 20-0553 (issued April 19, 2021); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

consistent with the symptoms of radiculopathy, such as discomfort radiating down the leg. Additionally, the steel plates impact on his right knee and calf introduced further trauma, likely causing soft tissue injuries.” Dr. Ahmed related that appellant’s significant discomfort of pain and restricted range of motion in the lower back region on physical examination were consistent with lumbar radiculopathy. She further related that his discomfort was indicative of nerve root irritation or compression resulting from the fall, noting that this limitation was often due to the body’s protective response to nerve irritation, where muscles may tighten to guard the affected area.

OWCP requested clarification from Dr. Schwartz regarding whether appellant’s lumbar radiculopathy was caused or consequential to his accepted employment injuries. In an August 23, 2025 supplemental report, Dr. Schwartz noted his review of the SOAF and the medical record. He noted appellant’s accepted diagnoses of right knee lateral collateral ligament sprain and medial meniscus tear, and right leg contusion. Dr. Schwartz opined that there was no indication that his work injury or employment factors had any relationship to his lumbar radiculopathy. He reiterated that there was “a long gap between any indication of lumbar radiculopathy from the initial injury.”

As explained above, if there is a disagreement between an employee’s physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.¹⁶ The Board finds that a conflict in medical opinion exists between Dr. Ahmed and Dr. Schwartz regarding whether the acceptance of appellant’s claim should be expanded to include lumbar radiculopathy as causally related to, or consequential to, the accepted September 21, 2012 employment injury.

As there is an unresolved conflict in medical opinion regarding whether the acceptance of appellant’s claim should be expanded to include lumbar radiculopathy as causally related to, or consequential to, his accepted September 21, 2012 employment injury, the case must be remanded for OWCP to refer appellant, along with the case record, an updated SOAF, and a series of questions to an IME for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a). Following 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.

¹⁶ See R.C., Docket No. 18-0463 (issued February 7, 2020); S.S., Docket No. 19-1658 (issued November 12, 2020); C.S., Docket No. 19-0731 (issued August 22, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2025 merit 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: January 28, 2026
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