

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include bilateral occipital neuralgia, as causally related to, or consequential to, the accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.⁴ 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 February 22, 2005 appellant, then a 65-year-old lead screener, filed a notice of recurrence (Form CA-2a) alleging that on January 1, 2005 he experienced a recurrence of a previously accepted cervical spine condition.⁵ He stopped work on February 12, 2005 and did not return. OWCP developed the claim as a new occupational disease claim (Form CA-2) assigned OWCP File No. xxxxxx840 and, on May 5, 2005, accepted it for cervical thoracic strain, lumbar strain, and lumbar radiculopathy. It subsequently expanded its acceptance of the claim to include the additional diagnosis of an L4-5 disc herniation. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing February 20, 2005, and on the periodic rolls commencing February 19, 2006.

In reports dated June 22, 2018 through July 20, 2020, Dr. Richard Wohns, a Board-certified neurosurgeon, noted appellant's accepted employment injury and diagnosed cervical stenosis, cervical radiculopathy, cervical pain, and bilateral occipital neuralgia. He opined that the accepted employment injury aggravated or activated these latent, asymptomatic conditions. Dr. Wohns recommended a C5-6 and C6-7 microdiscectomy and fusion.

In an August 13, 2020 letter, counsel requested that OWCP expand its acceptance of the conditions in appellant's claim to include the additional conditions, including bilateral occipital neuralgia, as noted by Dr. Wohns. She submitted August 4 and November 17, 2020 notes by Dr. Wohns, who reiterated that the accepted employment injury directly caused or aggravated appellant's preexisting bilateral occipital neuralgia.

On November 17, 2020 OWCP referred the medical record and a statement of accepted facts (SOAF) to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), for an opinion on whether the accepted employment injury caused additional conditions.

In a November 19, 2020 report, Dr. Katz noted his review of the medical record and SOAF and found that the case record did not support expansion of the claim to include additional conditions. He specifically opined that appellant's bilateral occipital neuralgia was due to the

⁴ Docket No. 17-1423 (issued November 8, 2017); Docket No. 20-1442 (issued February 9, 2022); and Docket No. 21-0493 (issued March 4, 2022).

⁵ Under OWCP File No. xxxxxx865, OWCP accepted appellant's traumatic injury claim for a July 7, 2004 cervical strain.

aging process and the progression of degenerative conditions, unrelated to the accepted employment injury.

By decision dated December 17, 2020, OWCP denied expansion of the acceptance of the claim to include additional conditions, such as bilateral occipital neuralgia.

Appellant filed a timely appeal to the Board. By decision dated March 4, 2022,⁶ the Board set aside the December 17, 2020 decision, finding that a conflict existed between the medical opinions of Dr. Wohns, appellant's treating physician, and Dr. Katz, OWCP's DMA, regarding expansion of the claim to include additional conditions as causally related to, or consequential to, the accepted employment injury. The Board remanded the case to OWCP for an impartial medical evaluation.

On remand, OWCP referred appellant to Dr. Robin Simon, an osteopathic physician Board-certified in orthopedic surgery, for an impartial medical evaluation. In a report dated June 15, 2022, Dr. Simon, serving as the impartial medical examiner (IME), deferred his opinion regarding appellant's bilateral occipital neuralgia to a neurologist.

On August 12, 2022 OWCP referred appellant to Dr. Nicholas Absalom, a Board-certified neurologist, for a second opinion evaluation. In an August 26, 2022 second opinion report, Dr. Absalom attributed appellant's occipital headaches to degenerative disc disease.

By *de novo* decision dated October 17, 2022, OWCP denied expansion of the acceptance of the claim to include additional conditions, such as bilateral occipital neuralgia. It accorded the weight of the medical evidence to Dr. Absalom's opinion.

On November 16, 2022 appellant, through counsel, requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated April 19, 2023, the OWCP hearing representative set aside the October 17, 2022 decision, and remanded the case for an impartial medical evaluation to resolve the conflict in the medical evidence regarding expansion of the claim.

On remand, OWCP referred appellant to Dr. Ash C. Patel, a Board-certified orthopedic surgeon, for an impartial medical evaluation regarding expansion of the acceptance of the claim.

In a report dated September 19, 2023, Dr. Patel, the IME, found that appellant did not have any additional conditions causally related to his accepted employment injury.

By *de novo* decision dated October 18, 2023, OWCP denied expansion of the acceptance of the claim to include additional conditions, such as bilateral occipital neuralgia. It accorded the special weight of the medical evidence to Dr. Patel's opinion.

On November 16, 2023 appellant, through counsel, requested review of the written record by a representative of OWCP's Branch of Hearings and Review.

⁶ Docket No. 21-0493 (issued March 4, 2022).

By decision dated March 14, 2024, the hearing representative set aside the October 18, 2023 decision and remanded the case for OWCP to obtain a supplemental report from Dr. Patel.

In an April 22, 2024 supplemental report, Dr. Patel found that appellant did not have any additional conditions causally related to his accepted employment injury. He deferred his opinion regarding appellant's bilateral occipital neuralgia condition to a neurologist.

By *de novo* decision dated May 9, 2024, OWCP denied expansion of the claim to include additional conditions, finding that the medical evidence of record was insufficient to establish causal relationship between additional conditions and the accepted employment injury.

On June 6, 2024 appellant through counsel, again requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated July 31, 2024, OWCP's hearing representative vacated the May 9, 2024 decision, finding that the case was not in posture for decision. The hearing representative found that cervical radiculopathy and cervical stenosis were previously accepted, and low back and cervical pain is just a symptom. The hearing representative noted that the only condition remaining with regard to expansion was the bilateral occipital neuralgia. He remanded the case for OWCP to refer appellant to a neurologist for an impartial medical examination regarding whether appellant's bilateral occipital neuralgia was causally related to the accepted employment injury.

On September 25, 2024 OWCP referred appellant, along with the medical record, an updated SOAF, and a series of questions to Dr. Lynne Bell, a Board-certified neurologist serving as the IME, for an impartial evaluation and opinion to resolve the conflict of medical opinion between Dr. Wohns, appellant's treating physician, and Dr. Katz, OWCP's DMA, with regard to expansion of the acceptance of the claim to include bilateral occipital neuralgia as causally related to the accepted employment injury.

In a November 19, 2024 report, Dr. Bell reviewed the medical record and SOAF, and related appellant's symptoms of severe pain in the back of his neck. On examination, she found tenderness to palpation of the lower cervical facets, restricted ranges of cervical spine motion, no specific tenderness in the bilateral suboccipital area, no hypoesthesia or indication of a potential Tinel's sign in the occipital nerve distribution, and no occipital region hypersensitivity. Dr. Bell diagnosed cervical sprain, cervical radiculopathy, temporary aggravation of preexisting cervical stenosis, cervical spondylosis, cervicogenic headaches related to nonoccupational cervical spondylosis, and "possible analgesic rebound headaches" due to prolonged use of prescribed narcotics. Dr. Bell opined that there was no clinical evidence to support a diagnosis of bilateral occipital neuralgia as there was no characteristic sensory loss or altered sensitivity in the occipital nerve distribution. She found that appellant's occipital symptoms were typical of cervicogenic headaches due to referred pain from longstanding, nonoccupational degenerative changes in the cervical spine and severe cervical facet joint arthritis.

By *de novo* decision dated January 14, 2025, OWCP denied expansion of the acceptance of the claim to include bilateral occipital neuralgia. It accorded the special weight of the medical evidence to the opinion of Dr. Bell, the IME.

On January 31, 2025 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

An oral hearing was held on April 16, 2025.

By decision dated June 24, 2025, OWCP's hearing representative affirmed the January 14, 2025 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.⁷

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁸ The opinion of the physician must be one of reasonable certainty, and must explain the nature of the relationship between the diagnosed condition and the accepted employment 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 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

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.¹¹ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of

⁷ *N.M.*, Docket No. 26-0021 (issued March 11, 2026); *S.P.*, Docket No. 25-0669 (issued November 25, 2025); *S.L.*, Docket No. 24-0220 (issued May 15, 2024); *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁸ *S.L.*, *id.*; *B.W.*, Docket No. 21-0536 (issued March 6, 2023); *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

⁹ *Id.*

¹⁰ *See L.M.*, Docket No. 23-0605 (issued December 5, 2023); *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

¹¹ 5 U.S.C. § 8123(a). *See N.M.*, *supra* note 7; *D.M.*, Docket No. 25-0317 (issued April 15, 2025); *R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include bilateral occipital neuralgia, as causally related to, or consequential to, the accepted employment injury.

The Board, in its March 4, 2022 decision, determined that there was a conflict in the medical opinion evidence between Dr. Wohns, appellant's treating physician, and Dr. Katz, OWCP's DMA, regarding expansion of the acceptance of the claim to include additional conditions as causally related to, or consequential to, the accepted employment injury. On remand, following additional development, OWCP ultimately referred appellant, the medical record, and a SOAF to Dr. Bell for an impartial evaluation and opinion.

In a November 19, 2024 report, Dr. Bell reviewed the medical record and SOAF and presented her findings on examination. She opined that the medical record and clinical findings on examination did not support a diagnosis of bilateral occipital neuralgia. Dr. Bell explained that appellant did not exhibit the distinctive altered sensitivity and sensory loss in the occipital nerve distribution. She diagnosed cervical sprain, cervical radiculopathy, temporary aggravation of preexisting cervical stenosis, cervical spondylosis, cervicogenic headaches related to nonoccupational cervical spondylosis, and "possible analgesic rebound headaches" due to prolonged use of prescribed narcotics. Dr. Bell opined that there was no clinical evidence to support a diagnosis of bilateral occipital neuralgia as appellant did not have sensory loss or altered sensitivity in the occipital nerve distribution as characteristic of bilateral occipital neuralgia. She explained that the location and quality of appellant's occipital symptoms were instead characteristic of cervicogenic headaches caused by referred pain from nonoccupational degenerative and arthritic changes in the cervical spine.

Dr. Bell based her opinion on a SOAF, a proper factual and medical history, physical examination findings and the diagnostic testing of record. She performed a thorough clinical examination and noted detailed findings. Dr. Bell provided a well-rationalized opinion that appellant did not have bilateral occipital neuralgia. The Board therefore finds that Dr. Bell's opinion is entitled to the special weight accorded to an IME.¹³

As the medical evidence of record is insufficient to establish expansion of the claim to include bilateral occipital neuralgia as causally related to, or consequential to, the accepted employment injury, the Board finds that appellant has not met his burden of proof.

¹² 20 C.F.R. § 10.321. See also *D.M., id.; J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

¹³ *O.R.*, Docket No. 25-0070 (issued January 13, 2025); *A.P.*, Docket No. 24-0170 (issued March 26, 2024); *M.G.*, Docket No. 23-0674 (issued October 3, 2023); *F.A.*, Docket No. 20-1652 (issued May 21, 2021).

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 bilateral occipital neuralgia, as causally related to, or consequential to, the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2025 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 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