United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 26-0536**
	)	**Issued: September 25, 2026**
U.S. POSTAL SERVICE, PLEASANTVILLE POST OFFICE, Pleasantville, NJ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 25, 2026 appellant filed a timely appeal from an April 7, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to, or consequential to, the accepted December 6, 2018 employment injury.

FACTUAL HISTORY

On December 8, 2018 appellant, then a 58-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 6, 2018 she injured her lower back when she fell

[1] 5 U.S.C. § 8101 *et seq*.

backwards on ice while in the performance of duty. She stopped work on December 8, 2018. OWCP accepted the claim for lumbar strain (strain of muscle, fascia and tendon of lower back).[2] Appellant returned to modified duty effective February 21, 2019 for five hours a day. OWCP paid her wage-loss compensation on the supplemental rolls commencing January 23, 2019.

A December 6, 2018 magnetic resonance imaging (MRI) scan of appellant's lumbar spine related an impression of degenerative changes with no acute fracture. A February 8, 2019 MRI scan report of appellant's lumbar spine related an impression of degenerative disc space narrowing and disc bulge at L5-S1 without stenosis, with a moderate progression of disc space narrowing compared to 2012 prior examination.

In reports dated from March 1 through August 16, 2019, Dr. Kimberley Y. Smith, a Board-certified physiatrist, noted appellant's history of injury and current symptoms. She diagnosed lumbar herniated nucleus pulposus. Dr. Smith opined in July 12, September 6, and October 4, 2019 reports, that appellant's disc herniation was causally related to the December 6, 2018 employment injury.

In December 31, 2019 and March 10, 2020 reports, Dr. Howard Sharf, a Board-certified orthopedic surgeon, diagnosed lumbar disc bulging.

In a December 1, 2020 report, Dr. Sharf noted that appellant had a long history of neck and shoulder problems, which he opined were exacerbated to some degree by her slip and fall injury. He stated that appellant's cervical MRI scan demonstrated disc protrusions at C4-5 and C5-6 with cervical kyphosis and central and foraminal stenosis, worse on left. Dr. Sharf diagnosed cervical radiculopathy due to disc herniation, with stenosis, and "some left ulnar neuritis as well." In a January 12, 2021 report, he opined that appellant should continue with work restrictions due to significant limitations and a disc herniation at L5-S1 with discogenic pain.

On January 19, 2021, OWCP referred appellant, together with a December 23, 2020 statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. John Bannon, a Board-certified orthopedic surgeon, for a second opinion regarding the nature and extent of her accepted employment injury, any additional conditions that are causally related to the December 6, 2018 employment injury, and her work capacity.

In a February 4, 2021 report, Dr. Bannon noted his review of the medical record and opined that the accepted lumbar strain had resolved. He noted that appellant had no radicular symptoms into the left lower extremity. Dr. Bannon compared appellant's 2012 and 2019 MRI scans and related that there was a disc bulging and degenerative changes at L5-S1 on each MRI scan.

[2] OWCP assigned the present claim OWCP File No. xxxxxx522. Appellant also has an accepted subsidiary claim under OWCP File No. xxxxxx304, for right knee contusion and other tear of lateral meniscus, right knee of January 11, 2021, for which she underwent a right knee arthroscopy on June 30, 2021. She stopped work on January 12, 2021 and has not returned.

In March 29 and May 18, 2021 reports, Dr. Sharf opined that the acceptance of appellant's claim should be expanded to include disc herniation at L5-S1 as the herniation was consistent with the reported December 6, 2018 mechanism of injury.

By decision dated May 21, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits with regard to the December 6, 2018 employment injury.

On May 27, 2021 appellant, through counsel, requested that the acceptance of her claim be expanded to include the conditions set forth in Dr. Sharf's reports. In a June 8, 2021 report, Dr. Sharf requested that OWCP expand the case to include the diagnosis of disc herniation at L5-S1 directly related to appellant's December 6, 2018 work injury.

On June 9, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated August 18, 2021, OWCP's hearing representative reversed the May 21, 2021 termination decision, and remanded the case for further development. The hearing representative instructed OWCP to administratively combine the current claim with OWCP File No. xxxxxx304, issue an updated SOAF and request a supplemental report from Dr. Bannon as to whether appellant had any additional lumbar conditions, causally related to the December 6, 2018 work injury either by direct cause, aggravation, precipitation, or acceleration.[3]

On November 9, 2021 OWCP referred appellant, the medical record and an October 22, 2021 updated SOAF to Dr. Lawrence I. Barr, a Board-certified osteopathic orthopedic surgeon, for a second opinion evaluation regarding whether appellant has any additional conditions, causally related to the December 6, 2018 employment injury.

In a December 20, 2021 report, Dr. Barr reviewed appellant's medical history. He performed a physical examination and opined that the accepted lumbar sprain had resolved. In a January 31, 2022 addendum, Dr. Barr opined that appellant's degenerative disc disease findings on her lumbar spine MRI scan were not related to the employment injury as they were longstanding degenerative findings which predated the employment injury. He further opined that appellant's condition was not aggravated or accelerated as a result of the employment injury as the herniated lumbar discs were not a result of her fall.

By decision dated March 4, 2022, OWCP denied appellant's expansion claim. It found that the weight of the medical evidence was represented by Dr. Barr's reports.

On March 22, 2022 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 May 6, 2022, OWCP's hearing representative set aside the March 4, 2022 decision, and remanded the case for Dr. Barr to provide further rationale in support of his opinion that the December 6, 2018 employment injury did not

[3] OWCP administratively combined OWCP File Nos. xxxxxx304 and xxxxxx522, with the latter claim serving as the master file.

result in a herniated disc or cause an aggravation or worsening of the underlying degenerative condition.

On January 28, 2022, OWCP referred the medical record and a May 18, 2022 updated SOAF to Dr. Barr for a supplemental opinion. It noted that appellant's treating physician diagnosed herniated nucleus pulposus; cervical radiculopathy due to disc herniation with stenosis, and left ulnar neuritis.

In a January 31, 2022 supplemental report, Dr. Barr opined that appellant's lumbar condition was not aggravated or accelerated by as a result of the work occurrence. He further opined that she did not sustain herniated discs of the lumbar spine as a result of the fall. Dr. Barr stated that he would not comment on appellant's cervical spine as OWCP did not request that he examine appellant's cervical spine.

In a July 21, 2022 report, Dr. Sharf again requested expansion of the claim for L5-S1 herniated nucleus pulposus with radiculopathy.

On July 22, 2022 OWCP found that a conflict existed between the medical opinions of Dr. Sharf and Dr. Barr as to whether the accepted condition of lumbar sprain had resolved, and whether the December 6, 2018 employment injury aggravated an underlying preexisting condition. It referred appellant, a May 18, 2022 updated SOAF, and the entire record to Dr. Behnam Salari, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion regarding expansion of the acceptance of the claim to include additional conditions as causally related to, or consequential to, the accepted December 6, 2018 employment injury.

In a May 18, 2023 report, Dr. Salari, serving as the impartial medical examiner (IME), noted appellant's history of injury, and his review of the medical records, including a February 8, 2019 MRI scan of the lumbar spine, a March 6, 2020 MRI scan of the left shoulder, and a March 6, 2020 MRI scan of the cervical spine. He provided physical examination findings and diagnosed lumbar strain superimposed on preexisting degenerative changes L5-S1, disc desiccation L5-S1 with broad based herniation, and cervical strain superimposed on preexisting degenerative changes. Dr. Salari opined that the findings of significant preexisting degenerative changes of the cervical spine were not acute and/or traumatic in nature, and the diagnoses of "radiculopathy due to disc herniation" and "herniated nucleus pulposus" and "left ulnar neuritis" were not causally related to the accepted employment injury. He explained that those findings were the result of ongoing degenerative changes.

By *de novo* decision dated June 27, 2023, OWCP denied expansion of the acceptance of the claim to include additional conditions of herniated nucleus pulpous, cervical radiculopathy due to disc herniation with stenosis and left ulnar neuritis. It accorded the special weight of the medical evidence to Dr. Salari's impartial medical opinion.

On July 18, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following preliminary review, by decision dated October 6, 2023, the OWCP hearing representative set aside the June 27, 2023 decision, finding that Dr. Salari's report was insufficiently rationalized regarding expansion of the claim. The hearing representative remanded

the case for OWCP to refer appellant for a new second opinion examination with an appropriate Board-certified specialist to obtain a definite opinion with supportive medical explanation as to whether the diagnosed disc herniation at L5-S1 and/or the preexisting lumbar disc degeneration was related to the December 6, 2018 employment injury by causation, aggravation, acceleration, or precipitation.

OWCP referred appellant, along with an updated January 9, 2024 SOAF, the medical record and a list of questions to Dr. Stephen D. Koss, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a March 6, 2024 report, Dr. Koss noted appellant's history of the injury and findings on examination. Based on his review of her MRI scans, he opined that the significant degenerative disc change at L5-S1 was degenerative in nature and not related to an acute traumatic event. Dr. Koss further stated that appellant's current symptoms were related to the degeneration of the lumbar disc and significant cervical spine degeneration.

By *de novo* decision dated April 19, 2024, OWCP denied appellant's request for expansion of the acceptance of the claim. It accorded the weight of the medical evidence to the second opinion of Dr. Koss.

On May 9, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held August 16, 2024.

Additional reports from Dr. Sharf regarding appellant's condition were received. In an August 26, 2024 report, Dr. Sharf opined that the employment injury caused an aggravation of a preexisting lumbar condition as appellant was not symptomatic prior to the injury.

By decision dated November 1, 2024, OWCP's hearing representative vacated the April 19, 2024 decision, finding that further development of the expansion claim was warranted based on Dr. Sharf's August 26, 2024 medical report.

On November 8, 2024 OWCP requested that Dr. Koss review Dr. Sharf's August 26, 2024 report and provide a supplemental report addressing whether additional lumbar and cervical conditions should be accepted.

In a February 14, 2025 addendum, Dr. Koss noted his review of Dr. Sharf's August 26, 2024 report. Based on his March 6, 2024 examination and review of appellant's lumbar spine MRI scans, he reiterated his prior opinion that appellant had significant degenerative disc changes of the lumbar spine at the L5-S1 level. These changes were degenerative in nature and not related to an acute traumatic event.

By *de novo* decision dated February 26, 2025, OWCP denied expansion of the claim to include the additional conditions of herniated nucleus pulpous, cervical radiculopathy due to disc herniation with stenosis and left ulnar neuritis. It accorded the weight of the medical evidence to the second opinion reports of Dr. Koss.

On March 19, 2025 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 April 10, 2025, OWCP's hearing representative vacated the February 26, 2025 decision, finding a conflict in medical opinion between Dr. Sharf and Dr. Koss regarding whether the additional diagnosed conditions were solely attributable to the underlying conditions or if they have been affected by the December 6, 2018 employment injury.

On May 6, 2025 OWCP referred appellant, together with an April 14, 2025 updated SOAF, the medical record, and a series of questions, to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, for an impartial medical examination regarding expansion of the acceptance of the claim.

In a June 25, 2025 report, Dr. Askin, serving as the IME, noted appellant's history of injury, his review of the medical records and the April 14, 2025 updated SOAF. He reported appellant's physical examination findings and opined that there was no objectively determinable documentation that the December 6, 2018 employment injury or accepted condition aggravated or materially altered appellant's physical being, which warranted a different accepted diagnosis. Dr. Askin concluded that there was no additional diagnosis caused, aggravated, accelerated, or precipitated condition consequential to the accepted work injury. In response to the question of whether the work injury aggravated an underlying condition, he opined that the question of whether the work injury aggravated an underlying condition was not applicable as he did not consider that the work injury aggravated the underlying condition. Dr. Askin explained that back pain, whether described as a strain or as a temporary expression of low back discomfort due to motion of arthritic facet joint, was a benign self-resolving condition. He stated the work injury did not aggravate any underlying condition. Dr. Askin explained that while appellant has some spinal degenerative changes, it was a universal accompaniment of aging.

By *de novo* decision dated August 7, 2025, OWCP denied expansion of the acceptance of the claim to include additional diagnoses of herniated nucleus pulposus, cervical radiculopathy due to disc herniation with stenosis and left ulnar neuritis. It accorded the special weight of the medical evidence to the opinion of Dr. Askin, the IME.

On August 25, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Counsel subsequently requested a review of the written record.

By decision dated April 7, 2026, OWCP's hearing representative affirmed the August 7, 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.[4]

[4] *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).

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.[5] 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.[6]

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.[7]

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, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[8]

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.[9] 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 resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[10]

ANALYSIS

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

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[5] *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).

[6] *Id.*

[7] *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).

[8] *K.W.,* Docket No. 25-0707 (issued September 10, 2025); *D.F.,* Docket No. 25-0528 (issued June 9, 2025); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (version 1, issued March 16, 2026); *M.B.,* Docket No. 20-1275 (issued January 29, 2021); *see R.D.,* Docket No. 18-1551 (issued March 1, 2019).

[9] 5 U.S.C. § 8123(a). *See N.M., supra* note 4; *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).

[10] 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).

OWCP properly determined that there was a conflict in the medical opinion evidence on the issue of expansion to include additional conditions. In order to resolve the conflict, OWCP referred appellant, pursuant to section 8123(a) of FECA, to Dr. Askin for an impartial medical examination and an opinion on the issue.[11]

In his June 25, 2025 report, Dr. Askin opined that there was no objectively determinable documentation that the December 6, 2018 employment injury or the accepted condition aggravated or materially altered appellant's physical being, warranting a different accepted diagnosis. Thus, he concluded that there was no additional diagnosis which caused, aggravated, accelerated or precipitated condition consequential to the accepted work injury. In response to the question of whether the work injury aggravated an underlying condition, Dr. Askin opined that the question was not applicable as he did not consider that the work injury aggravated the underlying condition. However, he did not provide rationale for his conclusion.[12] The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[13]

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.[14] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[15] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the issue in the case.[16]

The case must, therefore, be remanded to OWCP. On remand, OWCP shall prepare an updated SOAF and remand the case to Dr. Askin for a rationalized supplemental opinion regarding expansion of the acceptance of the claim. 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.

[11] *Supra* note 9.

[12] *Id*.

[13] *C.M.,* Docket No. 26-0040 (issued June 1, 2026); *see C.B. (S.B.),* Docket No. 19-1629 (issued April 7, 2020); *V.T.,* Docket No. 18-0881 (issued November 19, 2018); *S.E.,* Docket No. 08-2214 (issued May 6, 2009); *T.M.,* Docket No. 08-0975 (issued February 6, 2009).

[14] *N.L.,* Docket No. 19-1592 (issued March 12, 2020); *M.T.,* Docket No. 19-0373 (issued August 22, 2019); *B.A.,* Docket No. 17-1360 (issued January 10, 2018).

[15] *P.T.,* Docket No. 21-0138 (issued June 14, 2021); *S.S.,* Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi,* 57 ECAB 281, 286 (2005); *William J. Cantrell,* 34 ECAB 1233, 1237 (1983).

[16] *L.N.,* Docket No. 22-0497 (issued September 14, 2023); *G.M.,* Docket No. 19-1931 (issued May 28, 2020); *W.W.,* Docket No. 18-0093 (issued October 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2026 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 25, 2026
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