United States Department of Labor
Employees' Compensation Appeals Board

W.N., Appellant	)	
and	)	**Docket No. 21-0123**
	)	**Issued: December 29, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Mechanicsburg, PA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On November 4, 2020 appellant, through counsel, filed a timely appeal from an October 1, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

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[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.*

[3] The Board notes that, following the October 1, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include post-traumatic right radial tunnel syndrome, spinal stenosis, and cervical spondylosis causally related to her accepted June 15, 2017 employment injury.

FACTUAL HISTORY

On June 21, 2017 appellant, then a 48-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 15, 2017 she sustained pain in her head, knees, right ankle, shoulder, arm, hand, and the right side of her neck when she was involved in a motor vehicle accident (MVA) while in the performance of duty. She stopped work on June 21, 2017 and returned to part-time modified employment on September 8, 2017.

On June 29, 2017 Dr. Timothy Ackerman, an osteopath, noted that appellant complained of pain in her right shoulder, left knee, and right hand following the June 15, 2017 work-related MVA.

A June 23, 2016 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated degenerative disc disease at C4-5 and C6-7 and a small central disc protrusion at C3-4 indenting the ventral aspect of the thecal sac.

In a report dated February 5, 2018, Dr. Robert J. Maurer, a Board-certified orthopedic surgeon, evaluated appellant for right hand pain after a June 15, 2017 MVA. He diagnosed post-traumatic radial neuritis and cervical spondylosis with possible worsening degenerative disc disease after an MVA.

On March 12, 2018 Dr. Maurer discussed appellant's complaints of right hand pain and headaches after her MVA on June 15, 2017. He diagnosed right radial tunnel syndrome, spinal stenosis at C5-6, and cervical spondylosis at C4-7.

In a June 13, 2018 report, Dr. Maurer reviewed appellant's history of a June 15, 2017 work injury and the results of diagnostic testing. He diagnosed post-traumatic right radial tunnel syndrome and C5-6 spinal stenosis and found that appellant's "current symptoms are the direct result of the [MVA]." Dr. Maurer additionally diagnosed cervical spondylosis at C4-7 and a right index sprain injury.

A July 30, 2018 MRI scan of the right hand revealed no evidence of a tendon injury or fracture and possible early arthrosis-related changes at the second and third metacarpal heads.

On November 20, 3018 OWCP referred appellant to Dr. Robert F. Draper, Jr., a Board-certified orthopedic surgeon, for a second opinion examination to determine whether she had sustained an injury on June 15, 2017 and, if so, the nature and extent of any causally related disability. In a report dated December 11, 2018, Dr. Draper diagnosed left knee osteoarthritis post total knee replacement and a traumatic injury to the left knee on June 15, 2017 requiring a patella revision, cervical strain, right shoulder strain, and a right hand contusion. He further opined that appellant had sustained a right shoulder strain, left knee contusion, and dyskinesis due to her employment injury without evidence of permanent aggravation.

On December 27, 2018 OWCP accepted appellant's claim for resolved right shoulder strain, a resolved knee contusion, resolved left knee dyskinesis, and mechanical loosening of the internal left knee prosthetic joint.

In a supplemental report dated March 10, 2019, Dr. Draper diagnosed a right shoulder strain/sprain, a right shoulder suprascapular rotator cuff tendon tear, right shoulder subdeltoid bursitis tendinopathy, a left knee contusion, and a left knee total knee arthroplasty with loose patellar components due to trauma as employment-related conditions.

On April 1, 2019 OWCP expanded its acceptance of appellant's claim to include a suprascapular rotator cuff tendon tear and subdeltoid bursitis tendinopathy of the right shoulder.

Thereafter, OWCP received an MRI scan of appellant's cervical spine dated February 2, 2018, which demonstrated spondylosis from C4 to C7, a protrusion at C4-5 without stenosis, mild central and bilateral foraminal stenosis at C5-6, and a shallow posterior protrusion without stenosis at C6-7.

On August 16, 2018 Dr. Steven Morganstein, an osteopath, discussed appellant's complaints of headaches and neck, right shoulder, and left knee pain. He noted that her headaches and right shoulder pain increased after a June 15, 2017 MVA at work. Dr. Morganstein noted that the MVA had occurred following a left total knee arthroscopy.[4] He diagnosed cervicalgia and pain in the right shoulder and left knee.

In a March 8, 2019 report, Dr. Maurer obtained a history of appellant jamming her left index finger on the steering wheel at the time of her June 15, 2017 MVA. He diagnosed right post-traumatic radial tunnel syndrome, spinal stenosis at C5-6, and cervical spondylosis at C4 to C7. Dr. Maurer attributed appellant's symptoms to her 2017 MVA.

On April 24, 2019 OWCP requested that Dr. Draper review Dr. Maurer's June 13, 2018 and March 8, 2019 reports and address whether appellant had sustained post-traumatic right radial tunnel syndrome, C5-6 spinal stenosis, C4-7 cervical spondylosis, or any other additional conditions causally related to her accepted employment injury.

On June 29, 2019 Dr. Draper opined that appellant's post-traumatic right radial tunnel syndrome and tennis elbow were not causally related to the June 2017 employment injury. He opined that she had preexisting spinal stenosis at C5-6 and cervical spondylosis at C4-7 well documented by a June 23, 2016 MRI scan that predated the injury. Dr. Draper indicated that the accepted employment injury had not permanently aggravated or caused a material change to any cervical spine condition. He opined that OWCP should not expand the acceptance of the claim to include any additional conditions.

By decision dated August 7, 2019, OWCP denied appellant's request to expand the acceptance of her claim to include post-traumatic right radial tunnel syndrome, spinal stenosis, and cervical spondylosis causally related to the June 15, 2017 employment injury.

[4] Appellant underwent a left knee replacement on August 6, 2018.

On August 16, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on December 10, 2019. By decision dated February 13, 2020, OWCP's hearing representative set aside the August 7, 2019 decision. He found that a conflict in medical opinion existed between Dr. Maurer and Dr. Draper regarding whether OWCP should expand the acceptance of the claim to include right radial tunnel syndrome, cervical spondylosis, and stenosis.

On February 28, 2020 OWCP referred appellant to Dr. John F. Perry, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated April 9, 2020, Dr. Perry reviewed appellant's history of injury and her complaints of left knee numbness, right arm pain, headaches, and neck pain. He provided his review of the medical evidence. On examination, Dr. Perry found normal sensation of the upper extremities, normal range of motion of the cervical spine, and questionable positive medial nerve compression of the right wrist. He found "no justification for expanding the claim to include cervical spondylosis and stenosis or right radial tunnel syndrome." Dr. Perry indicated that he could not diagnose radial tunnel syndrome based on the normal neurological findings. He advised that appellant had degenerative C5-6 spinal stenosis and C4-7 cervical spondylosis unrelated to trauma. Dr. Perry related, "I found no objective evidence of any aggravation of any preexisting conditions, based on any objectively validated structural or measurable physiologic change that may have occurred at the time of the June 14, 2017 motor vehicle accident." He concluded that OWCP should not expand its acceptance of the claim to include right radial tunnel syndrome, right tennis elbow (post-traumatic), spinal stenosis at C5-6, or cervical spondylosis at C4 to C7.

By decision dated May 8, 2020, OWCP denied appellant's request to expand the acceptance of her claim to include cervical spondylosis and stenosis and right radial tunnel syndrome causally related to the accepted June 15, 2017 employment injury. It found that the opinion of Dr. Perry, the impartial medical examiner (IME), represented the special weight of the evidence.

On May 13, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on August 11, 2020. Appellant related that her neck issues had resolved before she resumed work in June 2017. She advised that after her accident she had constant headaches.

In a report dated August 28, 2020, Dr. Maurer evaluated appellant for ongoing pain in the neck and right hand subsequent to a June 14, 2017 MVA. On examination he found a positive Tinel's sign over the supraclavicular fossa of the right neck causing right arm and shoulder pain. Dr. Maurer related that "this likely represents a whiplash-type injury with a sudden forceful bending motion to her neck while tensing the muscles around the right shoulder resulting in traction neuritis in the right brachial plexus. This mechanism could likely account for all the symptoms that she is describing in her neck and right arm." Dr. Maurer indicated that he had found no diagnosis.

By decision dated October 1, 2020, OWCP's hearing representative affirmed the May 8, 2020 decision.[5]

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[9]

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[10] 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.[11] When there exists 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.[12]

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[5] In a separate decision dated October 1, 2020, an OWCP hearing representative vacated an April 10, 2020 schedule award determination and remanded the case for a district medical adviser to review newly submitted evidence.

[6] *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id*.

[10] 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

[11] 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

[12] *K.D.*, Docket No. 19-0281 (issued June 30, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include post-traumatic right radial tunnel syndrome, spinal stenosis, and cervical spondylosis causally related to her accepted June 15, 2017 employment injury.

OWCP properly determined that a conflict in the medical opinion evidence existed between Dr. Maurer, appellant's treating physician, and Dr. Draper, an OWCP referral physician, regarding whether acceptance of appellant's claim should be expanded to include additional employment-related conditions. It referred her to Dr. Perry, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical evidence.

In an April 9, 2020 report, Dr. Perry discussed appellant's complaints of headaches and pain in the right arm and neck. He found normal sensation and motion on examination and possible right wrist median nerve compression. Dr. Perry found no evidence of radial tunnel syndrome as the neurological findings were normal. He further opined that the June 14, 2017 MVA had not aggravated the preexisting conditions of degenerative C5-6 spinal stenosis and C4-7 cervical spondylosis and provided as rationale that there was no evidence showing objective or measurable changes in the condition as a result of the injury.

The Board finds that Dr. Perry accurately described the accepted employment injury and provided his review of the medical record. Dr. Perry performed a thorough clinical examination with detailed examination findings. He is a specialist in the appropriate field and reached a reasoned conclusion regarding whether acceptance of appellant's claim should be expanded, noting that there was no evidence to find causal relationship between right radial tunnel syndrome, right tennis elbow (post-traumatic), spinal stenosis at C5-6, or cervical spondylosis at C4 to C7 and the accepted employment injury.[13] The Board, therefore, finds that Dr. Perry's opinion is entitled to the special weight accorded to an IME with regard to the issue of whether acceptance of appellant's claim should be expanded to include additional conditions.[14]

In a report dated August 28, 2020, Dr. Maurer found a positive Tinel's sign over the supraclavicular fossa of the right neck, which he determined caused appellant's right shoulder and arm pain. He advised that she had "likely" sustained a whiplash injury when her neck forcefully bent forward and her right shoulder muscles tensed, causing right brachial plexus traction neuritis. Dr. Maurer did not offer a diagnosis. However, he was on one side of the conflict resolved by Dr. Perry. The Board has held that reports from a physician who was on one side of a medical conflict are generally insufficient to overcome the special weight accorded to the IME, or to create a new conflict.[15] Additionally, Dr. Maurer's opinion is speculative in nature and thus of diminished probative value.[16]

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[13] *See F.A.*, Docket No. 20-1652 (issued May 21, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021).

[14] *F.A.*, *id*.

[15] *See G.H.*, Docket No. 20-0892 (issued July 9, 2021); *I.J.*, 59 ECAB 408 (2008).

[16] *See L.F.*, Docket No. 20-1021 (issued July 30, 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 her burden of proof to expand the acceptance of her claim to include post-traumatic right radial tunnel syndrome, spinal stenosis, and cervical spondylosis causally related to her accepted June 15, 2017 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 29, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board