

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

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**B.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Akron, OH, Employer**

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**Docket No. 17-0070  
Issued: September 14, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On October 17, 2016 appellant filed a timely appeal from a September 23, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 establish a left arm condition consequential to her accepted left lower extremity conditions.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On October 25, 1996 appellant, then a 37-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she had developed a fractured sesamoid bone as a result of repeated walking on a concrete surface in the performance of duty. By decision dated November 5, 1996, OWCP accepted her claim for a fractured fibular sesamoid of the left foot. Appellant was placed on the periodic rolls for workers' compensation effective November 8, 1998. On May 19, 1999 OWCP accepted the additional condition of reflex sympathetic dystrophy (RSD). Appellant retired from federal service effective June 17, 2000.

On April 29, 2009 OWCP granted appellant a schedule award for 80 percent permanent impairment of her left lower extremity.

In a report dated October 9, 2012, Dr. Jeffrey Dulik, a Board-certified osteopath, noted that appellant fractured her left wrist as a result of tripping over her grandson on his scooter and falling on October 7, 2012.

In a report of the same date, Dr. Aarsal Ahmad, Board-certified in physical medicine and rehabilitation, remarked that on October 7, 2012, appellant "was getting something out of the back seat of her car and fell as she was turning around. The fall was due to weakness of the left leg. [Appellant] fell onto the arm." Dr. Ahmad reported that appellant suffered a left radial ulnar fracture as a result of this fall.

By letter dated January 2, 2013, appellant filed a claim for consequential injury to her left arm. She noted that "On October 21, 2012, I retrieved some papers from the back seat of my car closed the door, took 2 steps when my left leg buckled causing me to fall forward onto the ground.... There were no obstacles or items that caused me to fall. I fell due to the previous injury to my left foot and leg resulting in weakness, pain, etc...."

On February 11, 2013 OWCP received a Form CA-7, claim for compensation commencing October 21, 2012. Appellant continued to submit Forms CA-7 for continuing compensation.

By decision dated March 25, 2013, OWCP denied appellant's claim for recurrence. It found that she had not submitted sufficient medical evidence to establish a consequential left arm injury as a result of the buckling of her left leg on October 21, 2012. OWCP noted that it had not received a rationalized medical opinion linking her left arm injury to the originally accepted condition.

On April 5, 2013 appellant requested reconsideration. By decision dated June 25, 2013, OWCP reviewed the merits of her claim and denied modification of the March 25, 2013

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<sup>2</sup> Docket No. 16-0352 (issued April 14, 2016); Docket No. 13-0696 (issued April 8, 2013).

decision. It noted that appellant's physician, Dr. Ahmad, had claimed that the consequential injury occurred on October 7, 2012, whereas appellant claimed it occurred on October 21, 2012.

On July 11, 2013 appellant requested reconsideration of the June 25, 2013 decision. With her request, she submitted progress notes from Dr. Ali Shakir, Board-certified in pain medicine, and Dr. Ahmad, dated January 20 through June 28, 2013.

By decision dated July 19, 2013, OWCP denied appellant's request for reconsideration without reviewing the merits of her claim.

On August 15, 2013 appellant again requested reconsideration. With her request, she submitted additional progress notes from Dr. Shakir and Dr. Ahmad, dated August 28 through November 4, 2013.

In a letter dated September 26, 2013, Dr. Ahmad explained that appellant had RSD, and that this condition caused her to fall and fracture her left radius and ulna.

On October 28, 2013 OWCP forwarded appellant's claim to a district medical adviser (DMA) to resolve the issue of whether she had a consequential condition related to the accepted employment-related condition.

In a report dated November 4, 2013, the DMA reviewed appellant's medical records and concluded that she had not sustained a consequential condition. He noted that the RSD was no longer used as a diagnosis, having been replaced with complex regional pain syndrome (CRPS). Nonetheless, the DMA found that the medical records provided established neither RSD nor CRPS.

By decision dated November 5, 2013, OWCP reviewed the merits of appellant's claim, but denied modification of the June 25, 2013 decision.

On January 13, 2014 appellant again requested reconsideration. With her request, she submitted progress notes from Dr. Dulik and Dr. Ahmad, dating from December 30, 2013 through March 24, 2014.

By decision dated April 21, 2014, OWCP reviewed the merits of appellant's claim, but denied modification of the November 5, 2013 decision. It noted that the previous decision had been made on the basis of all evidence received to that time and not merely the report of the DMA.

By letter dated June 10, 2014, appellant indicated her election to receive FECA compensation, rather than OPM retirement benefits at the end of her schedule award. She again received wage-loss compensation on the periodic rolls commencing August 10, 2014.

On October 6, 2014 appellant again requested reconsideration. With her request, she submitted progress notes from Dr. Mark Pellegrino, Board-certified in physical medicine and rehabilitation, and Dr. Ahmad, dating between April 17 and September 26, 2014.

By decision dated October 16, 2014, OWCP denied appellant's request for reconsideration without reviewing the merits of her case. It noted that she had not provided any medical reports containing a physician's opinion on the cause of her claimed consequential condition.

On December 11, 2014 appellant requested a hearing before an OWCP hearing representative from a purported decision of November 25, 2014.

On January 7, 2015 the Branch of Hearings and Review responded, noting that there was no final adverse decision dated November 25, 2014, and that as such appellant's case was not in posture for review.

On April 9, 2015 appellant again requested reconsideration of OWCP's April 21, 2014 decision. With her request, she submitted progress notes from Dr. Ahmad dating from January 13 through October 13, 2015.

On June 30, 2015 OWCP referred appellant for a second opinion physician in order to determine whether she continued to suffer residuals from her work-related injury. It sent Dr. Donald Mann, a Board-certified neurologist, an amended statement of accepted facts (SOAF) dated March 31, 1998, in which OWCP noted that her claim had been accepted for a fractured fibula sesamoid of the left foot at the first metatarsal phalangeal joint; surgery to remove the sesamoid bone; surgery for transection of the deep peroneal nerve with resection of mass of the third web space with resection of the interdigital web space; RSD; and insertion/removal of a spinal cord stimulator. In a report dated July 28, 2015, Dr. Mann opined that appellant continued to suffer RSD as a result of her August 9, 1996 work-related injury and was therefore medically unable to return to her date-of-injury position. He concluded that her RSD had migrated from the left foot to the trunk and then, after injury, to her left arm and hand.

By decision dated November 20, 2015, OWCP denied appellant's request for reconsideration of the merits of her claim. In this November 20, 2015 decision, it found that the medical evidence submitted with her request for reconsideration consisted of a report from Jared Stefanko, an osteopath, dated April 1, 2015, and progress notes pertaining to appellant's left shoulder and scapular pain, and left cervical radiculopathy.

On December 18, 2015 appellant appealed to the Board from OWCP's November 20, 2015 decision.

By decision dated April 14, 2016, the Board set aside the November 20, 2015 decision and remanded the case to OWCP for further development. The Board found that OWCP had not analyzed the July 28, 2015 second opinion report of Dr. Mann, or Dr. Ahmad's progress notes, in rendering its November 20, 2015 decision.

Appellant continued to submit progress notes from Dr. Ahmad, dated from May 1 through August 9, 2016, in which he diagnosed her condition as RSD.

By merit decision dated September 19, 2016, OWCP expanded appellant's claim to include the condition of CRPS affecting the left lower extremity. It noted that it had accepted her claim for RSD on May 19, 1999, but since that time RSD had been replaced by the diagnosis

of CRPS. OWCP further noted that, while it had accepted RSD of “other specified sites” on May 19, 1999, the medical evidence demonstrated that her RSD was affecting the lower portion of her left lower extremity and that, as such, her accepted diagnosis for RSD should reflect that specific site.

By decision dated September 23, 2016, OWCP reviewed the merits of appellant’s claim and denied modification of the April 21, 2014 decision. It analyzed Dr. Mann’s July 28, 2015 report, noting that he had not included a detailed history of her left arm injury, as the questions posed to him pertained to her RSD. OWCP observed that the SOAF sent to him was flawed in that the questions posed to him dealt with less specific conditions than the accepted conditions. It determined that because Dr. Mann had responded to OWCP’s erroneous questions regarding less specific conditions, his report could not be found to be based on an accurate factual and medical history. OWCP further noted that he had concluded, with no rationale, that appellant’s RSD had migrated to the left upper extremity following an injury in 2012. It also analyzed Dr. Ahmad’s progress notes, finding that the chief complaint was leg pain, but that he failed to discuss the reported injury to appellant’s left arm. OWCP found that the medical evidence contained a conflicting history of injury, namely that Dr. Dulik reported that appellant had tripped over her grandson on a scooter, whereas Dr. Ahmad reported that she fell due to weakness in her leg, and because this conflicting history had not been corrected or clarified, she had not met her burden of proof to establish a consequential injury.

#### **LEGAL PRECEDENT**

It is an accepted principle of workers’ compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee’s own intentional conduct.<sup>3</sup> In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, then 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.<sup>4</sup>

A claimant bears the burden of proof to establish his claim for a consequential injury. As part of this burden a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>5</sup> The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>6</sup>

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<sup>3</sup> *Albert F. Ranieri*, 55 ECAB 598, 602 (2004); A. Larson, *The Law of Workers’ Compensation* § 10.01 (2000).

<sup>4</sup> *Charles W. Downey*, 54 ECAB 421-23 (2003).

<sup>5</sup> *Id.*

<sup>6</sup> *G.O.*, Docket No. 16-1113 (issued January 10, 2017).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant sustained a fractured fibular sesamoid of the left foot and RSD affecting the left lower extremity on October 25, 1996. On January 2, 2013 appellant filed a claim for a consequential injury to her left arm as a result of her left leg buckling from weakness. OWCP subsequently denied her claim for consequential injury to her left arm.

The Board finds that OWCP improperly developed the medical evidence in this claim, because it provided an incorrect SOAF to Dr. Mann, and thereafter denied the claim based on aspects of his report which were impacted by the incorrect SOAF.

On January 2, 2013 appellant filed a claim for consequential injury to her left arm. She recalled that “On October 21, 2012, I retrieved some papers from the back seat of my car closed the door, took 2 steps when my left leg buckled causing me to fall forward onto the ground.... There were no obstacles or items that caused me to fall. I fell due to the previous injury to my left foot and leg resulting in weakness, pain, etc....”

On June 30, 2015 OWCP scheduled an appointment with a second opinion physician in order to determine whether appellant continued to suffer residuals from her work-related injury. It sent Dr. Mann an amended SOAF dated March 31, 1998, in which OWCP noted that her claim had been accepted for a fractured fibula sesamoid of the left foot at the first metatarsal phalangeal joint; surgery to remove the sesamoid bone; surgery for transection of the deep peroneal nerve with resection of mass of the third web space with resection of the interdigital web space; RSD; and insertion/removal of a spinal cord stimulator. In a report dated July 28, 2015, Dr. Mann, a Board-certified neurologist, opined that appellant continued to suffer RSD as a result of her August 9, 1996 work-related injury, and was therefore medically unable to return to her date-of-injury position. He concluded that her RSD had migrated from the left foot to the trunk and then, after injury, to her left arm and hand.

OWCP explained on September 19, 2016 that appellant’s claim was updated to reflect acceptance of CRPS affecting the left lower extremity, which since the initial May 19, 1999 acceptance had replaced the RSD diagnosis.

In its decision dated September 23, 2016, OWCP reviewed the merits of appellant’s claim and affirmed its prior decision of April 21, 2014. It analyzed Dr. Mann’s July 28, 2015 report, noting that he had not included a detailed history of her left arm injury, as the questions

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<sup>7</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

posed to him pertained to her RSD. OWCP observed that the SOAF sent to him was flawed in that the questions posed dealt with less specific conditions than the accepted conditions. It determined that because Dr. Mann had responded to OWCP's erroneous questions regarding less specific conditions, his report could not be found to be based on an accurate factual and medical history.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>9</sup> Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>10</sup> In this case, it provided an inaccurate and out-of-date SOAF to the second opinion examiner, then rejected the second opinion examiner's report based on incorrect information OWCP itself had provided to him. As such, OWCP did not do a complete job in procuring medical evidence to resolve the relevant issues in this case, and the case will be remanded for further development.

On remand, OWCP shall prepare a new SOAF and schedule another second opinion appointment with Dr. Mann to answer OWCP's queries based on the new SOAF. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

### **CONCLUSION**

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

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<sup>9</sup> See *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>10</sup> See *M.E.*, Docket No. 16-0770 (issued July 26, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 23, 2016 is set aside, and the case is remanded for further action consistent with this opinion.

Issued: September 14, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees. Compensation Appeals Board

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