

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

<p><b>M.C., Appellant</b></p> <p><b>and</b></p> <p><b>DEPARTMENT OF VETERANS AFFAIRS, EDITH NOURSE ROGERS MEMORIAL VETERANS' HOSPITAL, Bedford, MA, Employer</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. 23-0229</b></p> <p><b>Issued: August 9, 2023</b></p>
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*Appearances:*  
*Marc J. Levy, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
 JANICE B. ASKIN, Judge  
 VALERIE D. EVANS-HARRELL, Alternate Judge  
 JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On December 5, 2022 appellant, through counsel, filed a timely appeal from a November 30, 2022 decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> The case record also contains an October 13, 2022 decision of OWCP. As counsel did not appeal from this decision, the Board will not consider it in this appeal. *See* 20 C.F.R. § 501.3; *see also D.E.*, Docket No. 21-0531 (issued June 16, 2021).

Pursuant to the Federal Employees' Compensation Act<sup>3</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 expand the acceptance of her claim to include additional right upper extremity and cervical conditions causally related to her accepted November 7, 2018 employment injury.

### **FACTUAL HISTORY**

On November 28, 2018 appellant, then a 57-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on November 7, 2018 she sustained a concussion and pain in her face, head, knees, right shoulder, neck, and wrist when she was involved in a motor vehicle accident (MVA) while in the performance of duty. She stopped work on November 8, 2018 and was released to modified-duty work on November 26, 2018. OWCP accepted appellant's claim for concussion without loss of consciousness.

Appellant submitted hospital discharge instructions and summary report dated November 7, 2018, which noted discharge diagnoses of back pain, cervical spine pain, contusion of the knee, right shoulder, face and scalp, and cervical degenerative disc disease.

In a December 24, 2018 treatment note, Dr. Scott A. Sigman, a Board-certified orthopedic surgeon, recounted appellant's complaints of right shoulder pain after she was rear-ended by another vehicle. On examination of her right shoulder, he observed tenderness of the acromial and greater tuberosity, and of the supraspinatus tendon on palpation. Dr. Sigman indicated that an x-ray scan showed some acromioclavicular (AC) joint arthritis. He diagnosed shoulder pain.

A February 28, 2019 right shoulder magnetic resonance imaging (MRI) scan showed supraspinatus tendinosis and partial-thickness bursal-sided tearing, infraspinatus and supraspinatus tendinosis, mild subacromial subdeltoid bursitis, mild-to-moderate AC joint osteoarthritis, long head biceps intertubercular tendinosis and fraying, and high signal intensity at the superior labrum.

In treatment notes dated February 25 through March 13, 2019, Dr. Sigman indicated that appellant was treated for complaints of continued right shoulder pain after an MVA. He reviewed her history and provided examination findings. Dr. Sigman diagnosed right shoulder joint pain.

On April 30, 2019 appellant underwent right shoulder arthroscopy and rotator cuff repair. The operative report noted a diagnosis of right shoulder rotator cuff tear.

In treatment notes dated May 10, 2019 to July 1, 2020, Dr. Sigman indicated that appellant was evaluated for follow up after right shoulder arthroscopic surgery. He reviewed her history and provided examination findings. Dr. Sigman diagnosed right shoulder joint pain and status post

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

rotator cuff repair. In the July 1, 2020 report, he opined that appellant's car accident was the causal reason for her continued shoulder pain and discomfort.

On October 6, 2020 appellant underwent right shoulder arthroscopy and traditional rotator cuff repair. The operative report noted diagnosis of right shoulder rotator cuff tear.

A December 8, 2020 cervical spine MRI scan demonstrated multilevel cervical spondylosis with mild cervical stenosis at C5-6 and C6-7, varying degrees of foraminal narrowing, greatest at C5-6 on the right more than the left, with suspected impingement of the exiting right C6 nerve root, and possible impingement of the exiting left C6 nerve root.

Appellant continued to receive medical treatment. In a letter dated December 18, 2020, Dr. Margaret Mills, a Board-certified family medicine specialist, described that appellant was involved in an MVA, in which she suffered a number of injuries, including concussion, neck, and right shoulder injuries. She explained that appellant had fully recovered from her concussion without loss of consciousness, but still had ongoing complications, including the need for right shoulder surgery as a consequence of injuries sustained in the accident. Dr. Mills opined that appellant's work-related injuries remained active regarding the use and condition of her neck and right upper extremity.

In a letter dated December 31, 2020, appellant, through counsel, requested that appellant's claim be expanded to include all the injuries sustained by appellant during the accepted November 7, 2018 employment injury. Counsel indicated that appellant's claim was accepted for concussion without loss of consciousness, but the initial emergency room records showed that she had initial diagnoses of back pain, cervical spine pain, right knee contusion, right shoulder contusion, scalp contusion, facial contusion, and degenerative disc disease.

In a report dated March 6, 2021, Dr. Benjamin Grimmnitz, a Board-certified emergency medicine specialist, indicated that appellant was evaluated for complaints of left wrist and knee pain after she tripped and fell down on March 2, 2021. On physical examination, he observed good sensation in the left hand and ability to wiggle fingers. Dr. Grimmnitz diagnosed left knee abrasion and contusion and left wrist strain.

In a May 16, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised that additional factual and medical evidence was necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

In a report dated September 1, 2022, Dr. Byron V. Hartunian, an orthopedic surgeon, indicated that he evaluated appellant for injuries that she sustained in a work-related MVA on November 7, 2018. He discussed the medical treatment that she received following the work-related injury, and indicated that her symptoms involving her knees, right wrist, and concussion had resolved with the initial conservative treatment. Dr. Hartunian reported that appellant underwent right shoulder surgery on April 30, 2019 and October 6, 2020, but continued to experience pain and restricted mobility of her right shoulder. He noted that she also began to develop pain towards the right side of the neck over the last few years since the MVA. On physical examination of appellant's cervical spine, Dr. Hartunian observed palpable muscular spasm,

particularly on the right side of the cervical spine. Examination of her right shoulder revealed limited mobility due to pain. Dr. Hartunian diagnosed right shoulder rotator cuff tears, status post two surgical procedures, chronic rotator cuff tendinitis, chronic cervical muscle strain, permanent aggravation of preexistent degenerative changes of the cervical spine, and resolved bilateral knee sprains, resolved right wrist concussion, and resolved right wrist sprain.

Dr. Hartunian opined that appellant's diagnosed conditions were the "direct causal result of the November 7, 2018 work-related accident." He reported that the severe cervical whiplash strain that she sustained in the work-related MVA on November 7, 2018 caused cervical paraspinal muscle fibers to tear, which caused an inflammatory reaction around the nerves in that region, especially around the area of documented degenerative disc disease. Dr. Hartunian explained that, since it had been more than six months from the time of injury, it was possible that inflexible scar tissue formed around these torn muscle fibers and led to a chronic inflammatory condition. He also indicated that the pathophysiological reason that appellant continued to experience ongoing right shoulder pain was that the severe right shoulder strain at the moment of vehicular impact caused the rotator cuff muscles to tear, which caused an inflammatory reaction, irritating the surrounding nerves and subacromial bursa. Dr. Hartunian further reported that the supraspinatus muscle initiates the abduction movement of the arm by pulling the humeral head medially towards the glenoid cavity, and that an imbalance in the neural activity of any one of the rotator cuff muscles would cause a misalignment of the humeral head, causing impingement of the subacromial structures during movement. He noted that the superior and anterior translations of the humeral head during movement were the leading biomechanical cause for impingement syndrome, which was what has occurred with appellant, necessitating her treatments, including two surgeries with less-than-ideal outcomes.

By decision dated September 7, 2022, OWCP denied the expansion of the acceptance of appellant's claim to include additional right upper extremity and cervical conditions. It found that the medical evidence of record was insufficient to establish causal relationship between the additional diagnosed conditions and the accepted November 7, 2018 employment injury.

On September 7, 2022 appellant, through counsel, requested reconsideration. Counsel indicated that he was submitting a questionnaire response by appellant and a medical report regarding the expansion of her claim to include right upper extremity and other conditions.

By decision dated November 30, 2022, OWCP denied modification of the prior decision.

### **LEGAL PRECEDENT**

Where 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.<sup>4</sup>

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized

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<sup>4</sup> *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

medical opinion evidence.<sup>5</sup> 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.<sup>6</sup> Additionally, the opinion of the physician 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 the specific employment factor(s) identified by the claimant.<sup>7</sup>

### ANALYSIS

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

OWCP accepted that on November 7, 2018 appellant sustained a concussion without loss of consciousness as a result of a work-related MVA. Appellant subsequently requested that OWCP expand the acceptance of her claim to include additional right shoulder and cervical conditions.

Appellant submitted a September 1, 2022 report by Dr. Hartunian, who described the November 7, 2018 employment injury, and discussed the medical treatment that she received following the employment injury. Dr. Hartunian reported that her symptoms involving her knees, right wrist, and concussion had resolved with the initial conservative treatment. He provided examination findings, and diagnosed right shoulder rotator cuff tears, status post two surgical procedures, chronic rotator cuff tendinitis, chronic cervical muscle strain, permanent aggravation of preexistent degenerative changes of the cervical spine, and resolved bilateral knee sprains, resolved right wrist concussion, and resolved right wrist sprain. Dr. Hartunian opined that appellant's diagnoses were all the direct causal result of the November 7, 2018 employment injury. He explained that the severe cervical whiplash strain that she sustained in the MVA caused cervical paraspinal muscle fibers to tear, which caused an inflammatory reaction around the nerves in that region, especially around the area of documented degenerative disc disease. Dr. Hartunian further indicated that appellant's severe right shoulder strain at the moment of vehicular impact caused the rotator cuff muscles to tear, which caused an inflammatory reaction. He explained how the supraspinatus muscle pulls the humeral head to initiate the abduction movement of the arm and that an imbalance in the neural activity of any one of the rotator cuff muscles would cause a misalignment of the humeral head, causing impingement of the subacromial structures during movement. Dr. Hartunian noted that the superior and anterior translations of the humeral head during movement were the leading biomechanical cause for impingement syndrome, which was what occurred with appellant.

The Board finds that, while Dr. Hartunian's report is not completely rationalized, it is sufficient to require further development of the medical evidence to determine whether appellant sustained additional right shoulder and cervical conditions causally related to the accepted

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<sup>5</sup> *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>6</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>7</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment injury.<sup>8</sup> Dr. Hartunian accurately described the November 7, 2018 employment injury and the subsequent medical treatment that she received. He provided an explanation as to how the impact of the MVA caused cervical paraspinal muscle fibers to tear, which caused an inflammatory reaction around the nerves, and how the right shoulder strain developed into impingement syndrome. The Board has held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt. Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.<sup>9</sup> Although Dr. Hartunian's opinion is insufficiently rationalized to establish causal relationship, it does raise an uncontroverted inference regarding causal relationship between the diagnosed condition and the accepted employment injury, sufficient to require that OWCP further develop the medical evidence in the claim.<sup>10</sup>

It is well established that, proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>11</sup> OWCP has an obligation to see that justice is done.<sup>12</sup>

The Board will, therefore, remand the case to OWCP for further development of the medical evidence regarding whether appellant sustained additional medical conditions causally related to the November 7, 2018 employment injury. On remand, OWCP shall refer her, a statement of accepted facts, and the medical evidence of record to a physician in the appropriate field of medicine for a rationalized opinion on whether any of the diagnosed conditions are causally related to the accepted employment incident. If the physician opines that the diagnosed conditions are not causally related, he or she must explain, with rationale, how or why his or her opinion differs from that of Dr. Hartunian. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim.

### CONCLUSION

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

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<sup>8</sup> See *H.M.*, Docket No. 22-0097 (issued October 11, 2022); see also *E.G.*, Docket No. 20-1184 (issued March 1, 2021).

<sup>9</sup> *W.M.*, Docket No. 17-1244 (issued November 7, 2017); *E.M.*, Docket No. 11-1106 (issued December 28, 2011).

<sup>10</sup> *I.S.*, Docket No. 22-1210 (issued December 29, 2022); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>11</sup> See e.g., *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71 (1956).

<sup>12</sup> See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, *supra* note 10 at 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 30, 2022 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: August 9, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board