

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

D.W., Appellant)

and)

DEPARTMENT OF AGRICULTURE,)
AGRICULTURAL RESEARCH SERVICE,)
Houma, LA, Employer)
-----)

Docket No. 23-0498
Issued: August 21, 2023

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 23, 2023 appellant filed a timely appeal from a November 29, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include complex regional pain syndrome (CRPS) and an aggravation of left shoulder osteoarthritis causally related to the accepted September 12, 2017 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 29, 2022 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.*

FACTUAL HISTORY

On September 21, 2017 appellant, then a 42-year-old biological science aide, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2017 she fractured her left ankle when she tripped in an uneven field while in the performance of duty. She stopped work on September 12, 2017. OWCP accepted the claim for a closed nondisplaced fracture of the lateral malleolus of the left fibula. It paid appellant wage-loss compensation on the supplemental rolls effective October 28, 2017, and on the periodic rolls effective June 23, 2019.

In a progress report dated May 8, 2018, Dr. William H. Kinnard, an orthopedic surgeon, diagnosed a closed nondisplaced fracture of the lateral malleolus of the left fibula with routine healing. He advised that the results of a functional capacity evaluation (FCE) showed suboptimal effort. Dr. Kinnard released appellant to resume work without restrictions.

On August 1, 2018 Dr. Bryan Frentz, a Board-certified orthopedic surgeon, evaluated appellant for left ankle pain after a September 12, 2017 fall. On examination of the left ankle, he found no erythema or swelling, full range of motion without crepitus, and hypersensitivity and tenderness over the lateral aspect. Dr. Frentz diagnosed sequela of a displaced fracture of the lateral malleolus of the left fibula, pain in the left ankle and foot joints, and Type 1 CRPS of the left lower limb. He opined that appellant “may develop [CRPS] following this left ankle fracture. She has exquisite hypersensitivity of the area and dysesthesias.”

In an August 29, 2018 progress report, Dr. Frentz provided the same diagnoses as in his August 1, 2018 report and advised that he suspected that appellant had CRPS resulting from her ankle fracture.³ He noted that she related that she had discoloration of the skin and an altered hair growth pattern. Dr. Frentz recommended a bone scan.

An August 28, 2018 bone scan showed mild degenerative changes of the shoulder, but was otherwise normal.

In a report dated September 14, 2018, Dr. Michael S. Haydel, a Board-certified anesthesiologist, indicated that Dr. Frentz had referred appellant to him for pain management. He noted that her symptoms had begun on September 12, 2017 after a fall. On examination Dr. Haydel found pain with palpation, allodynia, and hyperalgesia of the left ankle with limited range of motion.⁴ He further advised that the ankle was cool to touch. Dr. Haydel diagnosed pain in the left lower leg and CRPS status post ankle fracture. He provided similar progress reports dated October 11, 2018 to January 17, 2019.

An October 10, 2018 magnetic resonance imaging (MRI) scan of the left ankle revealed no fracture.

On February 19, 2019 Dr. Haydel noted that on September 12, 2017 appellant had twisted her ankle and fallen to the ground onto her left shoulder and arm while at work. He advised that she had continued ankle pain with a burning sensation that was exacerbated by exposure to cold, extended standing and walking, temperature changes, and light touch. Dr. Haydel discussed his

³ Dr. Frentz submitted similar progress reports on September 19 and October 17, 2018.

⁴ Dr. Haydel mentioned right ankle, but this appears to be a typographical error as the case record indicates that he examined the left.

findings on examination of the left lower extremity of “swelling, discoloration, cool[ness] to touch with temperature differentiation, pain on palpation, allodynia, and hyperalgesia.” He asserted that appellant was temporarily totally disabled beginning September 17, 2017 and continuing. Dr. Haydel opined that the accepted employment injury had caused CRPS and an aggravation of left shoulder osteoarthritis. In an addendum to his report, he indicated that CRPS typically occurred after “forceful trauma to the affected area.” Dr. Haydel advised that appellant had experienced forceful trauma to the left ankle and that her condition of CRPS caused “a constant burning sensation with numbness and hypersensitivity in her left foot.” He attributed her CRPS to the September 12, 2017 employment injury. Dr. Haydel further related that a jarring injury to a joint caused swelling and inflammation that had caused cartilage deterioration in appellant’s left shoulder. He opined that the fall had caused an aggravation of left shoulder osteoarthritis.⁵

On March 22, 2019 appellant’s counsel requested that OWCP expand its acceptance of the claim to include CRPS and an aggravation of left shoulder osteoarthritis.

On April 22, 2019 Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), disagreed that appellant had sustained CRPS or an aggravation of left shoulder osteoarthritis due to the accepted employment injury. He related that CRPS should only be diagnosed using the Budapest criteria and noted that the FCE showed a lack of effort. Dr. Fellars opined that subjective complaints of pain were insufficient to support a diagnosis of CRPS. He further noted that appellant had not complained of shoulder pain initially. Dr. Fellars found no evidence that the employment injury had aggravated a shoulder condition.

On July 8, 2020 OWCP referred appellant to Dr. Simon Finger, a Board-certified orthopedic surgeon, for a second opinion examination regarding her current condition and disability.

By decision dated August 20, 2020, OWCP denied expansion of acceptance of appellant’s claim to include CRPS and an aggravation of left shoulder osteoarthritis causally related to her accepted employment injury.

On August 25, 2020 appellant, through counsel, requested reconsideration. Counsel asserted that newly submitted medical evidence from Dr. Haydel established that she sustained additional conditions causally related to her accepted employment injury. He further contended, in the alternative, that a conflict existed between Dr. Haydel and the DMA, Dr. Fellars.

In support of his request, counsel submitted a May 14, 2020 report from Dr. Haydel. Dr. Haydel disagreed with Dr. Fellars’ finding that appellant did not have CRPS or osteoarthritis of the left shoulder. He reviewed the Budapest criteria for diagnosing CRPS and advised that she had satisfied the criteria due to her debilitating pain, extreme sensitivity and allodynia, complaints of discoloration and temperature asymmetry, burning sensation, reduced range of motion, and weakness of the left foot. Dr. Haydel further related that on examination he found “signs of hyperalgesia, swelling, discoloration, cool to touch with temperature differentiation, pain on palpation, and allodynia.” He advised that no other diagnosis better explained her symptoms. Dr. Haydel further maintained that a bone scan showed findings on mild left shoulder degenerative changes and opined that appellant had exacerbated her left shoulder arthritis.

⁵ Dr. Haydel continued to submit progress reports dated April 2019 through March 2020.

In an August 11, 2020 addendum to his May 14, 2020 report, Dr. Haydel disagreed with Dr. Fellars' finding that appellant had not sustained an aggravation of left shoulder osteoarthritis as she had not initially complained of left shoulder pain. He reiterated that the fall caused an aggravation of left shoulder osteoarthritis.

On August 25, 2020 Dr. Finger advised that on examination of the bilateral extremities he found no blotchiness, temperature changes, or loss of sensation in a dermatomal pattern. He indicated that range of motion measurements were not valid. Dr. Finger diagnosed a lateral malleolus fracture due to the accepted employment injury that had resolved. He found that appellant's subjective symptoms did not correlate with the objective findings. Dr. Finger opined that she could perform at least sedentary employment. He recommended evaluation by a psychologist.

In an attending physician's report (Form CA-20) dated September 2, 2020, a physician assistant for Dr. Haydel diagnosed CRPS and checked a box marked "Yes" that the condition was caused or aggravated by the described employment activity of tripping and falling over a row of sugarcane.⁶

On September 29, 2020 appellant's counsel again requested reconsideration of OWCP's August 20, 2020 decision.

In a memorandum dated November 23, 2020, OWCP determined that a conflict existed between Dr. Haydel and Dr. Fellars, the DMA, regarding whether appellant's claim should be expanded to include CRPS and left shoulder osteoarthritis causally related to the accepted September 12, 2017 employment injury. In a memorandum of telephone call (Form 110) dated April 9, 2021, OWCP advised counsel that it was not referring her to an impartial medical examiner (IME).

By decision dated September 1, 2021, OWCP denied modification of its August 20, 2020 decision.

In a Form CA-20 dated September 30, 2021, Dr. Haydel diagnosed CRPS of the left ankle and checked a box marked "Yes" that the condition was caused or aggravated by employment. He indicated that appellant was disabled from employment.

In a report dated August 23, 2022, Dr. Haydel recounted appellant's history of a September 12, 2017 employment injury and subsequent medical treatment. He discussed her symptoms of CRPS and left shoulder osteoarthritis. Dr. Haydel advised that a spinal cord stimulator implant trial on September 23, 2019 was unsuccessful. He noted that Dr. Finger, an OWCP referral physician, had addressed only the accepted condition of a lateral malleolus fracture. Dr. Haydel discussed appellant's continued complaints of left shoulder pain and burning, numbness, weakness, and hypersensitivity in the left ankle. He diagnosed chronic pain syndrome, a nondisplaced fracture of the lateral malleolus of the left fibula, CRPS, and an aggravation of left shoulder osteoarthritis. Dr. Haydel explained that a traumatic injury such as a fracture could "cause a dysfunctional interaction between the nervous system and inflammatory responses out of proportion with the known injury." He related that after appellant's left ankle fracture had resulted in an "abnormal neurological response to the peripheral or central nervous system and ultimately

⁶ Dr. Haydel submitted progress reports describing his treatment of appellant in 2021 and 2022.

led to the development of [CRPS] that is still ongoing.” Dr. Haydel advised that objective findings supported that she had CRPS due to her September 12, 2017 employment injury. He further found that appellant’s fall onto her left shoulder and arm had caused inflammation and swelling, resulting in an aggravation of left shoulder osteoarthritis. Dr. Haydel opined that the degenerative changes were more than would be expected due to aging and that her symptoms were inconsistent with the normal progression of the condition. He related, “Therefore, based on my objective findings and reasonable medical certainty, it is my medical opinion that [appellant’s] September 12, 2017 work injury aggravated her [l]eft [s]houlder [osteoarthritis].” Dr. Haydel disagreed with the findings of the second opinion physician. He opined that appellant was totally disabled.

On August 31, 2022 appellant, through counsel, requested reconsideration. Counsel asserted that a newly submitted August 23, 2022 report from Dr. Haydel established that appellant’s accepted employment injury caused the diagnosed conditions of CRPS and an aggravation of left shoulder osteoarthritis or, in the alternative, created a conflict in medical opinion. He provided his review of the medical evidence.

In a Form CA-20 dated September 20, 2022, Dr. Haydel diagnosed CRPS of the left foot and checked a box marked “Yes” that the condition was caused or aggravated by the described employment activity of a fall in a sugarcane field.

By decision dated November 29, 2022, OWCP denied modification of its September 1, 2021 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

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ 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.⁹ 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.¹⁰

Section 8123(a) of FECA provides, in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the

⁷ *P.T.*, Docket No. 22-0841 (issued January 26, 2023); *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).

⁸ *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *P.T.*, *supra* note 7; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *Id.*

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.¹²

ANALYSIS

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

On February 19, 2019 Dr. Haydel advised that appellant had sustained CRPS and an aggravation of left shoulder osteoarthritis as a result of her fall on September 12, 2017. On examination he found swelling, discoloration, a temperature differentiation, allodynia, hyperalgesia, and pain on palpation of the left lower extremity. Dr. Haydel further opined that the fall had caused swelling and inflammation leading to cartilage damage of the left shoulder and an aggravation of left shoulder osteoarthritis.

On April 22, 2019 Dr. Fellars, a DMA, found that appellant had not sustained either CRPS or an aggravation of left shoulder osteoarthritis due to the accepted September 12, 2017 employment injury. He asserted that she did not satisfy the Budapest criteria for a diagnosis of CRPS. Dr. Fellars further found that appellant had not complained of shoulder pain at the time of her fall and that there was no evidence the injury had aggravated a shoulder condition.

On May 14, 2020 Dr. Haydel disagreed with Dr. Fellars’ conclusions. He related that appellant satisfied the Budapest criteria for diagnosing CRPS. Dr. Haydel noted that on examination he had found hyperalgesia, swelling, discoloration, temperature asymmetry, pain on palpation, and allodynia and that no other diagnosis better explained her symptoms. He further found that a bone scan showed mild left shoulder degenerative changes. In a report dated August 23, 2022, Dr. Haydel asserted that appellant’s left ankle fracture had caused an abnormal neurological response that led to the development of CRPS. He advised that CRPS arose from a dysfunction between the nervous system and inflammatory response after a traumatic injury. Dr. Haydel related that his objective findings on examination supported the diagnosis of CRPS. He further found that appellant’s fall onto her left shoulder and arm had caused swelling and inflammation and an aggravation of her left shoulder osteoarthritis.

The Board finds that a conflict exists between Dr. Haydel, appellant’s treating physician, and Dr. Fellars, the DMA, regarding expansion of the acceptance of her claim to include CRPS and an aggravation of left shoulder osteoarthritis causally related to the accepted September 12, 2017 employment injury.¹³ As noted above, if there is a disagreement between an employee’s physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.¹⁴ The case will therefore be remanded to OWCP for referral of appellant to an IME

¹¹ 5 U.S.C. § 8123(a).

¹² 20 C.F.R. § 10.321; *V.B.*, Docket No. 19-1745 (issued February 25, 2021); *K.C.*, Docket No. 19-1251 (issued January 24, 2020); *R.C.*, 58 ECAB 238 (2006).

¹³ *See S.T.*, Docket No. 21-0906 (issued September 2, 2022).

¹⁴ *See V.B.*, Docket No. 19-1745 (issued February 25, 2021); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

for resolution of the conflict in medical evidence in accordance with 5 U.S.C. § 8123(a).¹⁵ Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 29, 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 21, 2023
Washington, DC

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

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

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

¹⁵ *V.B., id.; S.M.*, Docket No. 19-0397 (issued August 7, 2019).