

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

U.M., Appellant	)	
	)	
and	)	Docket No. 23-0625
	)	Issued: August 11, 2023
U.S. POSTAL SERVICE, NORTH TEXAS	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Coppell, TX, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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 March 23, 2023 appellant filed a timely appeal from a December 6, 2022 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 medical condition causally related to the accepted factors of her federal employment.

**FACTUAL HISTORY**

On December 21, 2021 appellant, then a 49-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained back, bilateral knee, bilateral shoulder, and

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

bilateral foot conditions causally related to factors of her federal employment. She attributed her condition to repetitive and heavy work activities. Appellant indicated that she first became aware of the conditions and their relationship to factors of her federal employment on November 9, 2021. She did not stop work.

In a development letter dated January 12, 2022, OWCP advised appellant of the deficiencies in her claim and the factual and medical information needed to establish her occupational disease claim. It provided a questionnaire for her completion. In a separate letter of even date, OWCP requested that the employing establishment address the accuracy of appellant's allegations and describe her work duties. It afforded both appellant and the employing establishment 30 days to respond.

Thereafter, OWCP received a December 13, 2021 magnetic resonance imaging (MRI) scan of appellant's right shoulder showing supraspinatus and infraspinatus tendinosis without a discrete tear, tearing of the posterosuperior glenoid labrum with a paralabral ganglion cyst, and moderate subacromial/subdeltoid bursitis.

In a report dated November 9, 2021, Dr. Nara Pravat, an osteopath and Board-certified physiatrist, reviewed appellant's complaints of pain in her low back, knees, feet, and shoulders. He discussed her work on a dumper machine and a jitney. Dr. Pravat noted that appellant's duties included lifting heavy objects off rolling tables and into containers. On examination he found pain at L5-S1 and L4-5 over the intervertebral discs on palpation. Dr. Pravat diagnosed lumbar radiculopathy, lumbar spondylosis, lumbar disc displacement without myelopathy, bilateral primary osteoarthritis of the knee, an acquired valgus deformity of the knee, internal derangement of the knees bilaterally, bilateral plantar fasciitis, impingement syndrome of the bilateral shoulders, and subacromial bursitis of the bilateral shoulders. He advised that he was initiating an "occupational injury claim" and referred appellant for diagnostic testing. Dr. Pravat found that she could continue with her current work status.

On December 17, 2021 Dr. Pravat again described appellant's symptoms of low back pain, bilateral knee pain worse on the left, bilateral feet pain, and bilateral shoulder pain. He noted that she had undergone diagnostic testing and diagnosed lumbar radiculopathy, lumbar spondylosis, lumbar disc displacement without myelopathy, bilateral lateral meniscus tears of the knee, bilateral unilateral primary osteoarthritis of the knees, bilateral Baker's cysts of the knees, an acquired valgus deformity of the knee, bilateral superior glenoid labrum lesions of the shoulders, bilateral rotator cuff tendinopathy, subacromial bursitis of the shoulders, osteoarthritis of the left AC joint, and bilateral plantar fasciitis.

On January 14, 2022 Dr. Pravat listed similar findings and diagnoses. He opined that the diagnosed conditions were causally related to appellant's repetitive work activities and noted that she had "no other predisposing factors for the injuries."

In a January 18, 2022 statement, appellant attributed her problems with her low back, knees, feet, and shoulders to repetitive work duties. She provided a detailed description of her work duties.

By decision dated March 29, 2022, OWCP denied appellant's occupational disease claim. It found that the evidence was insufficient to establish a medical condition causally related to the accepted employment factors.

On April 19, 2022 appellant requested reconsideration. In support of her request, she submitted an April 13, 2022 report from Dr. Pravat. Dr. Pravat discussed OWCP's decision and asserted that he had explained how repetitive work activities caused biomechanical change to the shoulders that over time resulted in scarring, tears, and joint issues. He noted that appellant's work duties required lifting heavy objects, bending and twisting at the waist and knees, and lifting, pushing, and pulling. Dr. Pravat opined that these repetitive work activities had caused, aggravated or accelerated the diagnosed conditions of lateral meniscus tears of the bilateral knees, primary osteoarthritis of the bilateral knees, Baker's cysts of the knees, bilateral superior glenoid labrum lesions of the shoulders, tendinopathy of the bilateral rotator cuffs, bilateral subacromial bursitis, osteoarthritis of the left AC joint, an acquired valgus deformity of the bilateral knees, bilateral plantar fasciitis, and lumbar radiculopathy, spondylosis, and disc displacement without myelopathy. He indicated that appellant had severe degenerative conditions even though she was not yet 50 years old, had no history of trauma, and did not play sports. Dr. Pravat concluded that her employment duties "caused, aggravated, and/or accelerated degenerative or age[-]related changes that without her work activities would not have developed or would have developed many years later."

OWCP referred appellant to Dr. George M. Cole, an osteopath, for a second opinion evaluation. In a report dated June 7, 2022, Dr. Cole discussed appellant's work duties and provided his review of the medical evidence of record, including the results of diagnostic testing. He diagnosed an aggravation of preexisting degenerative conditions in the bilateral shoulders, bilateral knees, and low back. Dr. Cole related that appellant had near normal findings on examination, including full range of motion of the shoulders and knees and no radicular findings of the lumbar spine. He found that her subjective complaints failed to correspond to the objective findings. Dr. Cole opined that appellant "may have sustained a temporary aggravation of the preexisting degenerative conditions in the shoulders, the low back, and the knees but those conditions have resolved with appropriate conservative care." He attributed her lumbar pain to the "normal progression of life and due to the previous lumbar surgery." Dr. Cole found that appellant's work duties had not caused a permanent aggravation of preexisting degenerative bilateral shoulder, bilateral knee, or lumbar spine condition. He determined that her temporary employment-related aggravation had resolved and that she could perform full-time work without restrictions.

By decision dated July 6, 2022, OWCP denied modification of its March 29, 2022 decision.

On August 17, 2022 Dr. Jeffery Fritz, a Board-certified anesthesiologist, provided pain management.

On September 13, 2022 Dr. Fritz related that he was treating appellant for an employment injury to her shoulders, low back, knees, and feet. He reviewed her duties as a mail handler and opined that she had sustained an "occupational repetitive use injury." Dr. Fritz described appellant's history of joint pain while performing her various job duties over the years. He reviewed the results of imaging studies and diagnosed a left shoulder sprain, lesions of the superior

glenoid labrum of the bilateral shoulders, other right shoulder lesions, an incomplete rotator cuff tear or rupture of the left shoulder, impingement syndrome of the right shoulder, lumbar radiculopathy, lumbar intervertebral disc displacement, unilateral post-traumatic osteoarthritis of the bilateral knees, a tear of the lateral meniscus of the bilateral knees, and plantar fascial fibromatosis. Dr. Fritz advised that appellant's work duties had resulted in "overuse of her shoulders that causes a strain of the structures of the joint. This strain leads to inflammation and ultimately weakening of the structures of the shoulder that result in tearing of the labrum and tearing/damaging the tendons of the rotator cuff as in the case of [appellant]." Dr. Fritz further related that she had sustained tear of the glenoid labrum due to ongoing repetitive and overuse of the shoulder. He additionally asserted that appellant had sustained an overuse injury of the lumbar spine due to her work duties that had caused the inflammation of the joints, which weakened the lumbar structures and caused disc herniations at L3-4 and L4-5. Dr. Fritz further opined that appellant sustained an overuse injury to her knees and feet due to work duties that included extensive standing, walking on concrete floors, and repetitively going up and down stairs. He related that performing repetitive work duties, including repetitive lifting, and standing on concrete floors, had caused swelling and inflammation of the joints of the lower extremities and plantar fascia of the foot, which resulted in cartilage and meniscal damage.

In a statement dated September 26, 2022, appellant again described her work duties.

On November 1, 2022 appellant requested reconsideration.

By decision dated December 6, 2022, OWCP denied modification of its July 6, 2022 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

In an occupational disease claim, appellant's burden of proof requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or

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<sup>2</sup> *Id.*

<sup>3</sup> *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

Causal relationship is a medical issue that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.<sup>8</sup>

Section 8123(a) of FECA provides, in pertinent part, 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 (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

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

In a report dated April 13, 2022, Dr. Pravat described appellant's work duties, including repetitive bending at the waist and knees and lifting, pushing, and pulling heavy objects. He opined that her repetitive work duties had caused, aggravated, or accelerated the diagnosed conditions of lateral meniscus tears of the bilateral knees, primary osteoarthritis of the bilateral knees, Baker's cysts of the bilateral knees, bilateral superior glenoid labrum lesions of the shoulders, tendinopathy of the bilateral rotator cuffs, bilateral subacromial bursitis, osteoarthritis of the left AC joint, an acquired valgus deformity of the bilateral knees, bilateral plantar fasciitis, and lumbar radiculopathy, spondylosis, and disc displacement without myelopathy. Dr. Pravat further asserted that repetitive lifting caused biomechanical shoulder changes resulting in inflammation and microtrauma which over time caused tearing, scarring, and cartilage changes.

On September 13, 2022 Dr. Fritz diagnosed a left shoulder sprain, lesions of the superior glenoid labrum of the bilateral shoulders, other right shoulder lesions, an incomplete rotator cuff tear or rupture of the left shoulder, impingement syndrome of the right shoulder, lumbar

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<sup>6</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>7</sup> *J.L.*, Docket No. 21-1373 (issued March 27, 2023); *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>8</sup> *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

<sup>9</sup> 5 U.S.C. § 8123(a); *see D.B.*, Docket No. 20-1142 (issued December 31, 2020); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

<sup>10</sup> 20 C.F.R. § 10.321; *C.W.*, Docket No. 20-1582 (issued December 22, 2022); *R.C.*, 58 ECAB 238 (2006).

radiculopathy, lumbar intervertebral disc displacement, unilateral post-traumatic osteoarthritis of the bilateral knees, a tear of the lateral meniscus of the bilateral knees, and plantar fascial fibromatosis. He attributed the diagnosed conditions to appellant's work duties. Dr. Fritz opined that repetitive work duties had caused overuse injuries and inflammation leading to structural damage.

OWCP referred appellant to Dr. Cole for a second opinion examination. In a report dated June 7, 2022, Dr. Cole opined that appellant had sustained a temporary aggravation of preexisting degenerative conditions in the bilateral shoulders, bilateral knees, and low back due to her work duties. He noted that she had postsurgical changes at L5-S1. Dr. Cole found that the evidence failed to support an employment-related permanent aggravation of any preexisting degenerative shoulder, low back, or knee condition. He opined that appellant's temporary aggravation of preexisting degenerative bilateral shoulder, knee, and low back conditions had resolved and that she could work full time without restrictions.

The Board finds that a conflict exists between Dr. Pravat and Dr. Fritz, appellant's physicians, and Dr. Cole, who provided a second opinion examination, regarding whether appellant sustained an aggravation of a medical condition causally related to the accepted factors of her federal employment. As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an impartial medical specialist who shall make an examination.<sup>11</sup> Consequently, the case must be referred to an impartial medical specialist for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).

On remand OWCP shall refer appellant, along with the case file and an updated SOAF, to a specialist in an appropriate field of medicine for an impartial medical examination to determine appellant's conditions causally related to the accepted employment factors. 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.

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<sup>11</sup> *Supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 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 11, 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