

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

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S.L., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, Palm Springs, CA, )  
Employer )  
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**Docket No. 23-0152  
Issued: May 16, 2023**

*Appearances:*

*Brett E. Blumstein, Esq., for the appellant<sup>1</sup>  
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 November 10, 2022 appellant, through counsel, filed a timely appeal from a June 8, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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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.

Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional right shoulder and cervical conditions as causally related to the accepted February 6, 2017 employment injury.

### FACTUAL HISTORY

On February 7, 2017 appellant, then a 54-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2017 she experienced sore hands and pain in her neck, right shoulder, and right arm when she tripped over a bag and fell on her face as she placed bins into a cart while in the performance of duty.<sup>4</sup> On July 24, 2017 OWCP accepted the claim for other sprain of right shoulder joint, strain of muscle(s) and tendon(s) of right shoulder rotator cuff, and sprain of ligaments of cervical spine. It paid appellant wage-loss compensation on the supplemental rolls commencing March 26, 2017 and on the periodic rolls commencing November 12, 2017.

In a primary treating physician's progress report dated February 1, 2019, Dr. William Christensen, an attending physician Board-certified in internal and occupational medicine and pulmonary disease, diagnosed the accepted conditions of sprain of ligaments of cervical spine, subsequent encounter; strain of muscle(s) and tendon(s) of the rotator cuff of right shoulder, subsequent encounter; and other sprain of right shoulder joint, subsequent encounter. He also diagnosed primary osteoarthritis of right shoulder and radiculopathy of cervical region.

On August 15, 2019 OWCP received an August 31, 2017 letter, wherein appellant, through counsel, requested that OWCP expand the acceptance of her claim to include primary osteoarthritis of right shoulder; and radiculopathy of cervical region.

In support of her request, appellant submitted an additional primary treating physician's progress report dated June 27, 2017 from Dr. Christensen, who reviewed medical records, discussed his findings on physical examination, and reiterated the accepted diagnoses of sprain of ligaments of cervical spine, subsequent encounter; strain of muscle(s) and tendon(s) of the rotator cuff of right shoulder, subsequent encounter; and other sprain of right shoulder joint, subsequent

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the issuance of the June 8, 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.*

<sup>4</sup> OWCP assigned the present claim OWCP File No. xxxxxx275. Appellant has prior claims. In OWCP File No. xxxxxx961, OWCP accepted her November 18, 2013 traumatic injury for neck and right shoulder sprain, and disorder of bursae and tendons in right shoulder. In OWCP File No. xxxxxx516, OWCP accepted appellant's September 24, 2013 traumatic injury for sprain of neck/trapezius and right shoulder. OWCP has not administratively combined these claims. (RD 7/9/21) On return of the case record OWCP should combine OWCP File No. xxxxxx275 with OWCP File No. xxxxxx961 and OWCP File No. xxxxxx516.

encounter. Dr. Christensen also reiterated the additional diagnoses of right shoulder primary osteoarthritis and cervical radiculopathy. He advised that appellant should remain off work until August 29, 2017.

In a development letter dated August 15, 2019, OWCP informed appellant of the deficiencies of her expansion claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond. No response was received.

By decision dated September 17, 2019, OWCP denied the expansion of the acceptance of appellant's claim, finding that the medical evidence of record, including Dr. Christensen's June 27, 2017 and February 1, 2019 progress reports, was insufficient to establish that the additional claimed medical conditions of right shoulder primary osteoarthritis and cervical radiculopathy were causally related to the February 6, 2017 employment injury.

On September 1, 2020, appellant, through counsel, requested reconsideration and submitted an August 12, 2020 report from Dr. John B. Dorsey, a Board-certified orthopedic surgeon. Dr. Dorsey noted the accepted conditions of other sprain of right shoulder joint, sprain of ligaments of cervical spine, and sprain of muscles and tendons of the rotator cuff of right shoulder, and a history of appellant's September 24 and November 18, 2013, and February 6, 2017 employment injuries. He also noted a history of appellant's medical treatment, reported her current neck, right arm, and hand complaints, reviewed medical records including diagnostic test results, and provided his findings on physical and x-ray examination. Dr. Dorsey diagnosed the accepted conditions of other sprain of right shoulder joint; sprain of muscles and tendons of the rotator cuff of right shoulder; and sprain of ligaments of cervical spine. He also diagnosed additional conditions of right shoulder primary osteoarthritis and cervical radiculopathy. Dr. Dorsey advised that appellant's subjective neck and right shoulder complaints were consistent with objective findings from magnetic resonance imaging (MRI) scan testing and an electromyogram/nerve conduction velocity (EMG/NCV) study. He further advised that appellant's current diagnosed conditions were related to the February 6, 2017 employment injury, and aggravated the November 18, 2013 employment injury. Dr. Dorsey noted that appellant had disc protrusions/herniations that were impinging on nerve roots in the neck causing radiculopathy, and further tearing of tendons in the shoulder. However, he recommended additional MRI scan testing of the neck and right shoulder, and an EMG/NCV study of the neck and upper extremities to determine the exact nature of appellant's conditions. Dr. Dorsey maintained that the accepted conditions had not resolved based on appellant's continuing complaints, but he expected further recovery with appropriate treatment. He concluded that appellant could not perform her date-of-injury position as a transportation security officer, but she could work in a light-duty position with restrictions.<sup>5</sup>

By decision dated October 1, 2020, OWCP denied modification of its September 17, 2019 decision, finding that Dr. Dorsey's August 12, 2020 report was insufficient to establish that appellant's current diagnoses of right shoulder primary osteoarthritis and cervical radiculopathy were causally related to her February 6, 2017 employment injury.

In a letter dated August 16, 2021 and received by OWCP on August 17, 2021, appellant, through counsel requested reconsideration. In support of the request, counsel submitted an

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<sup>5</sup> On September 30, 2020 counsel informed OWCP that the employing establishment terminated appellant's employment, effective September 21, 2020.

April 18, 2021 report from Dr. Dorsey. Dr. Dorsey explained that appellant's subjective complaints and his objective findings on physical examination indicated that her claim should be expanded to include cervical radiculopathy and right shoulder primary osteoarthritis. He noted, however, that since his opinion was based on a physical examination, additional MRI scan testing of the neck and right shoulder, and an EMG/NCV study of the neck and upper extremities were necessary to determine whether the diagnosed conditions were causally related to the February 6, 2017 employment injury.

OWCP, by decision dated November 15, 2021, denied modification of the October 1, 2020 decision.

By decision dated June 8, 2022, OWCP again denied modification of its October 1, 2020 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.<sup>6</sup>

To establish causal relationship, the employee must submit rationalized medical opinion evidence.<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 accepted employment injury.<sup>8</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional right shoulder and cervical conditions as causally related to the accepted February 6, 2017 employment injury.

In an August 12, 2020 report, Dr. Dorsey discussed the history of appellant's September 24 and November 18, 2013, and February 6, 2017 employment injuries. He reviewed medical records and provided his examination findings. Dr. Dorsey diagnosed the accepted conditions of other sprain of the right shoulder joint; strain of muscle(s) and tendon(s) of the right shoulder rotator cuff; and sprain of ligaments of the cervical spine. He opined that these conditions had not resolved based on appellant's continuing complaints. Dr. Dorsey also diagnosed right shoulder primary

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<sup>6</sup> *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *see T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> *D.T.*, *id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

<sup>8</sup> *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *Id.*

osteoarthritis and cervical radiculopathy, but he recommended additional MRI scan testing of the neck and right shoulder, and an EMG/NCV study of the neck and upper extremities to determine the exact nature of appellant's conditions. He opined that the additional right shoulder and cervical conditions were causally related to the February 6, 2017 employment injury, and aggravated the November 18, 2013 employment injury. In an April 18, 2021 report, Dr. Dorsey explained that appellant's claim should be expanded to include cervical radiculopathy and right shoulder primary osteoarthritis based on her subjective complaints and his objective findings on physical examination, but related that additional MRI scan testing of the neck and right shoulder and an EMG/NCV study of the neck and upper extremities were necessary to support his physical examination findings, and that the diagnosed conditions were causally related to the February 6, 2017 employment injury. The Board finds that in rendering his opinion, Dr. Dorsey introduced an equivocal aspect to his opinion by recommending additional MRI scan testing of the neck and right shoulder and an EMG/NCV study of the upper extremities to determine causal relationship. The Board has long held that an opinion which is equivocal or speculative in nature is of limited probative value regarding the issue of causal relationship.<sup>10</sup> As such, Dr. Dorsey's reports were insufficient to meet appellant's burden of proof.

In primary treating physician's progress reports dated June 27, 2017, and February 1, 2019, Dr. Christensen diagnosed right shoulder primary osteoarthritis and cervical radiculopathy. However, he did not provide an opinion that the diagnosed conditions were causally related to the accepted February 6, 2017 employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>11</sup> Therefore, these reports are insufficient to meet appellant's burden of proof regarding expansion of the claim.

As appellant has not submitted rationalized medical evidence establishing that the acceptance of her claim should be expanded to include additional conditions as causally related to the accepted February 6, 2017 employment injury, the Board finds that she has not met her burden of proof.

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 additional right shoulder and cervical conditions as causally related to the accepted February 6, 2017 employment injury.

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<sup>10</sup> See *L.L.*, Docket No. 21-0981 (issued July 1, 2022); *C.A.*, Docket No. 21-0601 (issued November 15, 2021); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>11</sup> *J.H.*, Docket No. 21-1255 (issued April 28, 2022); *D.T.*, Docket No. 22-0031 (issued May 24, 2022); *T.T.*, Docket No. 20-0687 (issued December 11, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 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