

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

C.N., Appellant)	
)	
and)	Docket No. 24-0913
)	Issued: December 5, 2024
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Jacksonville, FL, 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 September 10, 2024 appellant filed a timely appeal from a September 10, 2024 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the September 10, 2024 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include complex regional pain syndrome (CRPS), right forearm, causally related to the accepted December 2, 2023 employment injury.

FACTUAL HISTORY

On December 5, 2023 appellant, then a 41-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2023 he injured his right wrist, hand, fingers, and forearm when a parcel locker door fell and struck him as he was servicing a location while in the performance of duty. He stopped work on that date.

On December 5, 2023 Brittany Bergamo, a physician assistant, examined appellant and diagnosed contusion of the right forearm. On December 12, 2023 appellant underwent magnetic resonance imaging (MRI) scans of his right forearm and wrist which suggested a partial triangular fibrocartilage complex (TFCC) tear. On December 19, 2023 Ms. Bergamo diagnosed TFCC tear on the right.

OWCP accepted the claim for contusion of the right forearm.

Dr. Chris Goll, a Board-certified orthopedic surgeon, examined appellant on January 18, 2024 and described the December 2, 2023 employment injury. He diagnosed right forearm contusion with exacerbation of preexisting CRPS. Dr. Goll also completed a January 18, 2024 work capacity evaluation (Form OWCP-5c) and a duty status report (Form CA-17) finding that appellant could not use his right arm but could perform heavy strength level work with his left arm. He prescribed occupational therapy, which appellant began on January 31, 2024 with Sarah Mersch, an occupational therapist.

On March 1, 2024 appellant filed a claim for compensation (Form CA-7) for disability from work commencing January 20, 2024.

In a March 8, 2024 development letter, OWCP informed appellant that the evidence was insufficient to establish disability from work commencing January 20, 2024. It advised him of the factual and medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

Thereafter, OWCP received a February 19, 2024 narrative report and Form OWCP-5c from Dr. Goll diagnosing work-related right forearm contusion with exacerbation of preexisting CRPS. Dr. Goll opined that appellant could not use his right arm and could perform his work duties solely with his left arm.

In a March 20, 2024 report, Dr. Goll related appellant's accepted employment injury and opined that the forearm contusion that he sustained limited his job functions. He further found that his ongoing CRPS was likely to prohibit him from returning to his date-of-injury position.

On April 3, 2024 OWCP referred appellant, a statement of accepted facts (SOAF) and a series of questions to Dr. Arnold G. Smith, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Goll completed a narrative report and a Form OWCP-5c on May 20, 2024. He found that CRPS prevented appellant from using his right arm, but that he had full use of his left upper extremity. Dr. Goll determined that appellant had reached maximum medical improvement.

In a May 4, 2024 report, Dr. Smith described appellant's December 2, 2023 employment injury and related that he had previously undergone right wrist surgery and had developed CRPS, postoperatively. He explained that appellant returned to full-duty work at the employing establishment and then sustained an accepted right forearm contusion on December 2, 2023. Dr. Smith reviewed Dr. Goll's reports and performed a physical examination finding limited range of motion of the right upper extremity. He diagnosed bruised forearm complicated by exacerbation of appellant's previously diagnosed CRPS. Dr. Smith explained that the cause of CRPS was not fully understood, but resulted in abnormal inflammation or nerve dysfunction with greater pain than would be expected from the injury that caused it. He opined that appellant had fully recovered from his forearm contusion and that the upper limb function deterioration was not related to his forearm contusion. Dr. Smith agreed with Dr. Goll that the acceptance of the claim should be expanded to include aggravation of CRPS as causally related to the December 2, 2023 employment injury. He further found that it was not possible to determine whether this aggravation was temporary or permanent. Dr. Smith completed a Form OWCP-5c and found that, while appellant was not capable of performing his date-of-injury position, he could not work eight hours a day, and provided restrictions on reaching, reaching above the shoulder, repetitive movements of wrists and elbows, pushing, pulling and lifting.

On May 16, 2024 appellant underwent electromyogram and nerve velocity conduction (EMG/NVC) studies, which were normal.

On June 20, 2024 OWCP requested additional medical evidence from appellant addressing his nonemployment-related right wrist surgery and resulting CRPS.

In a supplemental report dated June 25, 2024, Dr. Smith related that he was unable to determine whether the aggravation of CRPS was temporary or permanent. He further reported that appellant was capable of fully using his left upper extremity. Dr. Smith completed a June 24, 2024 Form OWCP-5c and indicated that appellant's restrictions on lifting, reaching, pushing, pulling and repetitive movements applied only to his right upper extremity.

On July 3, 2024 the Department of Veterans Affairs (VA) provided a list of appellant's service-connected disabilities which included right forearm crush injury with supination and pronation impairment, right shoulder strain, CRPS of the right upper extremity, right wrist strain, and right finger strains.

In a July 8, 2024 letter, OWCP provided Dr. Smith with the findings of the VA and asked whether appellant was disabled based on objective findings.

On July 18, 2024 Tara Marchand, an occupational therapist, provided an impairment rating.

In a July 29, 2024 supplemental report, Dr. Smith again opined that appellant had an aggravation of CRPS in his right upper extremity from the December 2, 2023 employment injury. He explained that CRPS was not based on neurological findings, that the diagnosis was based on the presence of ongoing pain and recommended additional treatment.

On August 7, 2024 OWCP requested an additional narrative medical report from Dr. Goll.

Dr. Goll completed an August 1, 2024 note and repeated his diagnosis of right forearm contusion with exacerbation of preexisting CRPS. He opined that these diagnoses and the need for medical treatment were “100%” related to the accepted work injury. Dr. Goll reviewed his May 20, 2024 Form OWCP-5c on August 1, 2024 and adopted those findings.

In an August 12, 2024 note, Dr. Goll related that appellant was performing his full-duty position without restrictions or limitations prior to the December 2, 2023 employment injury. He found that the impact to appellant’s right forearm reignited his quiescent CRPS and that this condition had not subsided. Dr. Goll noted that while it was possible that these symptoms could improve in the future, it was reasonable to assume that this was a permanent condition.

By decision dated September 10, 2024, OWCP denied appellant’s request to expand the acceptance of the claim to include the additional conditions of aggravation of preexisting CRPS causally related to the December 2, 2023 employment injury. It found that Dr. Smith’s reports had limited probative value as they were not based on objective findings, but appellant’s subjective complaints of pain.

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.³

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 medical opinion evidence.⁴ A physician’s opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁵ 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,

³ *T.J.*, Docket No. 24-0705 (issued August 28, 2024); *T.L.*, Docket No. 24-0541 (issued June 28, 2024); *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asarum*, 55 ECAB 200, 204 (2004).

⁴ *S.M.*, Docket No. 24-0692 (issued August 29, 2024); *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.⁶

The employee also bears the burden of proof to establish a claim for a consequential injury.⁷ In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that 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.⁸

ANALYSIS

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

Both Dr. Smith, OWCP's second opinion examiner, and Dr. Goll, appellant's attending physician, found that the accepted December 2, 2023 employment injury of contusion of the right forearm also resulted in an aggravation of appellant's preexisting CRPS. Dr. Smith explained that CRPS was not fully understood, but resulted in abnormal inflammation or nerve dysfunction with greater pain than would be expected from the injury that caused it. He agreed with Dr. Goll that the acceptance of the claim should be expanded to include aggravation of CRPS as causally related to the December 2, 2023 employment injury. Dr. Smith opined that it was not possible to determine whether this aggravation was temporary or permanent. However, OWCP issued its September 10, 2024 decision prior to resolving this issue.

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not 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.⁹ Once it undertakes development of the record by referring appellant for a second opinion examination, it had an obligation to do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁰ While OWCP began to develop the evidence by referring appellant to Dr. Smith for a second opinion examination, it failed to complete its obligation to resolve the issue in the case.¹¹ On remand OWCP shall prepare an updated SOAF setting forth the accepted employment injury and the preexisting CRPS condition, and refer appellant to a new

⁶ *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *T.A.*, Docket No. 21-0798 (issued January 31, 2023); *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁸ *A.J.*, Docket No. 23-0404 (issued September 8, 2023); *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁹ *K.B.*, Docket No. 23-0272 (issued October 26, 2023); *see E.W.*, Docket No. 17-0707 (issued September 18, 2017).

¹⁰ *J.M.*, Docket No. 21-0569 (issued December 6, 2021); *see R.L.*, Docket No. 20-1069 (issued April 7, 2021); *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Peter C. Belkin*, 56 ECAB 580 (2005).

¹¹ *K.B.*, *id.*; *see X.Y.*, Docket No. 19-1290 (issued January 24, 2020); *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

second opinion physician in the appropriate field of medicine for an examination and a rationalized medical opinion as to whether his accepted employment injury aggravated his preexisting CRPS, and if so, whether the aggravation was temporary or permanent.¹² After this and such further development as is deemed necessary, OWCP 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 September 10, 2024 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: December 5, 2024
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

¹² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); C.C., Docket No. 19-1631 (issued February 12, 2020).