

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

S.J., Appellant)	
)	
and)	Docket No. 24-0408
)	Issued: July 26, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Coppell, TX, Employer)	
)	

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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 9, 2024 appellant filed a timely appeal from a January 8, 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 January 8, 2024 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.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On January 28, 2018 appellant, then a 58-year-old automated markup clerk, filed an occupational disease claim (Form CA-2) alleging that she developed pain, numbness, and tingling in her neck, back, shoulders, and hands due to factors of her federal employment.⁴ She noted that she first became aware of her condition on January 5, 2018 and realized its relationship to her federal employment on January 15, 2018. Appellant explained that, for almost 21 years, her job required her to perform repetitive motions that caused pain in her hands, neck, and shoulders. This included working on a delivery bar code sorter machine, performing nixie taping, sorting and casing mail, keying on machines, using a computer mouse, and lifting flat buckets, within her work restrictions. Appellant did not stop work.

By decision dated December 13, 2018, OWCP accepted appellant's claim for bilateral carpal tunnel syndrome.

By separate decision of even date, OWCP denied expansion of the acceptance of the claim to include additional cervical spine, shoulder, and knee conditions, finding that the medical evidence of record was insufficient to establish causal relationship between the additional diagnosed conditions and the accepted employment injury.

In a report dated September 23, 2019, Dr. Albert Vu, an osteopath specializing in physical medicine and rehabilitation, recounted appellant's work duties and discussed her diagnostic testing. He requested expansion of appellant's claim to include cervical radiculopathy, other cervical disc displacement, bilateral shoulder complete rotator cuff tear or rupture, spontaneous disruption of left knee anterior cruciate ligament, and right knee medial meniscus tear. Dr. Vu

³ *Order Remanding Case*, Docket No. 21-0633 (issued December 1, 2021).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx179. On her Form CA-2, appellant indicated that her back pain was related to her claim under OWCP File No. xxxxxx445, which OWCP accepted for lumbar sprain, lumbosacral radiculitis, displacement of intervertebral disc, complications of bone marrow transplant, and degeneration of lumbosacral intervertebral disc. She also has a claim for a February 11, 2021 traumatic injury under OWCP File No. xxxxxx897. OWCP accepted that claim for bilateral shoulder effusion, unspecified injury of the muscles/tendons of the right rotator cuff, bilateral shoulder impingement syndrome, right shoulder bursitis, neck strain, and left shoulder rotator cuff strain. On January 7, 2023 appellant filed a traumatic injury claim for right shoulder, lower back, and neck injuries sustained on January 4, 2023. OWCP assigned that claim OWCP File No. xxxxxx496 and accepted it for right upper arm contusion, bilateral hip sprain, right thigh contusion, temporary aggravation of lumbar spine ligaments sprain, and temporary aggravation of cervical ligaments sprain. Appellant's claims have been administratively combined, with OWCP File No. xxxxxx445 serving as the master file.

explained that these conditions were due to repetitive fine manipulation, frequent overhead reaching, repetitively flexing and hyperextending her neck, and an altered gait impacting her knees due to a work-related lumbar injury and how she performed her work duties.

On October 21, 2019 OWCP referred the case record, along with a statement of accepted facts (SOAF) to a district medical adviser (DMA) for review.

In a November 18, 2019 report, Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a DMA, reviewed the medical evidence of record and the SOAF and opined that there was no opinion based on scientific research to support the claim that any of appellant's alleged additional conditions were work related. He opined that appellant's additional conditions were degenerative and nonwork related.

By decision dated December 16, 2019, OWCP denied expansion of the acceptance of the claim to include additional conditions, finding that the medical evidence of record was insufficient to establish that they were caused or aggravated by her accepted employment injury.

On December 16, 2020 appellant requested reconsideration.

By decision dated February 9, 2021, OWCP denied modification.

On March 15, 2021 appellant filed an appeal with the Board.⁵ By order dated December 1, 2021, the Board set aside the February 9, 2021 decision and directed OWCP to administratively combine appellant's neck, right shoulder, and back claims and to issue a *de novo* decision. OWCP administratively combined appellant's claims on December 22, 2021.

On July 20, 2023 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions, to Dr. George Cole, an osteopath and Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated August 16, 2023, Dr. Cole noted appellant's history of injury and treatment and diagnosed bilateral carpal tunnel syndrome. He explained that appellant's subjective complaints did not correspond with his objective findings, noting that she did have reduced bilateral shoulder range of motion (ROM). Dr. Cole found the etiology for the reduced bilateral shoulder ROM was unclear. He also noted, however, that the magnetic resonance imaging (MRI) scans of the shoulders did show small tears on the supraspinatus which were consistent with the degenerative changes in the acromioclavicular joint. Dr. Cole also noted that appellant had undergone multiple lumbar procedures and that she complained of pain in those areas; however, most of her subjective complaints were related to her lumbar conditions. He found that appellant's accepted diagnosis was bilateral carpal tunnel syndrome, and that there were no current diagnoses connected to the accepted bilateral carpal tunnel syndrome. Dr. Cole explained that the objective clinical findings did not correlate with Dr. Vu's diagnoses as appellant was neurologically intact in the upper extremities, and there was no evidence of cervical radiculopathy. He added that the small tears would not routinely produce the reduced ROM present in the shoulder. Next, Dr. Cole attributed the right knee medial meniscus tear to the aging process as it was a routine finding in a

⁵ *Id.*

mature adult. He concluded that there was no medical evidence supporting a causal relationship between appellant's work environment and the right knee medial meniscus tear, or the spontaneous rupture of the left knee anterior ligament. Dr. Cole also concluded that appellant's prognosis was very poor due to her lumbar conditions, with another surgery scheduled for the following week.

By *de novo* decision dated September 20, 2023, OWCP denied appellant's request for expansion of her claim.

Appellant subsequently requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated November 29, 2023, OWCP's hearing representative, following a preliminary review, vacated the September 20, 2023 decision, and remanded the case for further development of the medical evidence. On remand, OWCP was to prepare a complete and accurate updated SOAF, which was to include all accepted conditions, reference specific work injuries, and describe the duties appellant performed from 2017 to the present. It was to submit the updated SOAF and medical records from all four of appellant's claims to Dr. Cole for a supplemental report. Dr. Cole was thereafter to review the medical records from all four of appellant's claims and address whether appellant's upper extremity, neck, knee, and lumbar conditions were causally related to the accepted injuries.

In a supplemental report dated December 14, 2023, Dr. Cole reviewed the updated SOAF and additional medical records. He opined that there was no evidence establishing that appellant's upper extremity radiculopathy and neck conditions had been caused or aggravated by the accepted employment injury. Dr. Cole explained that all findings on the MRI scans of appellant's cervical spine and bilateral shoulders were chronic and preexisting, and not caused or aggravated by the work environment in any way. He further opined that the medical evidence of record did not demonstrate a direct relationship between any lumbar conditions and appellant's knee conditions. Dr. Cole concluded that appellant's accepted lumbar condition did not cause or aggravate her bilateral degenerative knee conditions, which he found to be age-related.

By decision dated January 8, 2024, OWCP denied appellant's request for expansion of the acceptance of her claim to include additional cervical, shoulder, and knee conditions as causally related to her accepted employment injury.

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.⁶

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and

⁶ *L.M.*, Docket No.23-0605 (issued December 5, 2023); *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

medical background, supporting such a causal relationship.⁷ The opinion of the physician must be one of reasonable certainty, and must explain the nature of the relationship between the diagnosed condition and the accepted employment injury.⁸

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.⁹

ANALYSIS

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

In support of her claim for expansion, appellant submitted a September 23, 2019 report, wherein Dr. Vu diagnosed cervical radiculopathy, other cervical disc displacement, bilateral shoulder complete rotator cuff tear or rupture, spontaneous cervical disc displacement, spontaneous disruption of left knee anterior cruciate ligament, and right knee medial meniscus tear. Dr. Vu attributed these conditions to repetitive fine manipulation, frequent overhead reaching, repetitively flexing and hyperextending her neck, and an altered gait due to a work-related lumbar injury, and how she performed her work duties. However, he did not provide sufficient medical rationale explaining, physiologically, how appellant's additional diagnosed conditions were caused or aggravated by the accepted employment injury. The Board has held that medical reports lacking rationale are of diminished probative value.¹⁰ The Board, therefore, finds that this evidence is insufficient to establish expansion of the claim.

In denying appellant's expansion claim, OWCP relied on the opinion of Dr. Cole, OWCP's second opinion physician. In his initial August 16, 2023 report, Dr. Cole related that appellant's MRI scans of the shoulders did show small tears on the supraspinatus which were consistent with the degenerative changes in the acromioclavicular joint. Dr. Cole found that appellant's accepted diagnosis was bilateral carpal tunnel syndrome, and that there were no current diagnoses connected to the accepted bilateral carpal tunnel syndrome. He explained that the objective clinical findings did not correlate with Dr. Vu's diagnoses as appellant was neurologically intact in the upper extremities, and there was no evidence of cervical radiculopathy. Dr. Cole added that the small

⁷ *L.M., id.; B.W.*, Docket No. 21-0536 (issued March 6, 2023); *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

⁸ *Id.*

⁹ *See L.M., id.; D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

¹⁰ *J.H.*, Docket No. 24-0415 (issued May 23, 2024); *C.C.*, Docket No. 15-1056 (issued April 4, 2016); *see T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it is unsupported by sufficient medical rationale).

tears would not routinely produce the reduced ROM present in the shoulder. Next, he attributed the right knee medial meniscus tear to the aging process as it was a routine finding in a mature adult.

In his December 14, 2023 supplemental report, Dr. Cole noted his review of the SOAF and additional medical records. He concluded that there was no evidence that appellant's upper extremity, neck, and bilateral knee conditions had been caused or aggravated by her employment or accepted conditions. Dr. Cole related that all findings on the MRI scan studies of appellant's cervical spine and bilateral shoulders were chronic and preexisting, and not caused or aggravated by the work environment in any way. He also concluded that appellant's accepted lumbar condition did not cause or aggravate her bilateral degenerative knee conditions, which he found to be age related.

As Dr. Cole's opinion, has reliability, probative value, and convincing quality with respect to whether appellant's claim should be expanded to include additional conditions, the Board finds that it constitutes the weight of the medical evidence.¹¹

As the medical evidence of record is insufficient to establish that the acceptance of the claim should be expanded to additional cervical, shoulder, and knee conditions as causally related to the accepted employment injury, the Board finds that appellant 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 cervical, shoulder, and knee conditions as causally related to her accepted employment injury.

¹¹ See *S.T.*, Docket No. 23-0610 (issued April 8, 2024); *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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