

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

_____)	
T.T., Appellant)	
)	
and)	Docket No. 24-0538
)	Issued: June 25, 2024
U.S. POSTAL SERVICE, WATSONVILLE)	
POST OFFICE, Watsonville, CA, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 25, 2024 appellant, through counsel, filed a timely appeal from a March 26, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ 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 an 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.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include a cervical condition as causally related to the accepted September 5, 2016 employment injury.

FACTUAL HISTORY

On September 7, 2016 appellant, then a 44-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that on September 5, 2016 she injured both shoulders when she used her hands to stop a moving cage while in the performance of duty. OWCP accepted the claim for an unspecified sprain of the left and right shoulder joints.³ It paid appellant wage-loss compensation for total disability on the supplemental rolls beginning November 25, 2016 and on the periodic rolls beginning July 23, 2017.

On June 30, 2017 appellant underwent an OWCP-authorized right rotator cuff repair and subacromial bursectomy with extensive debridement. She returned to limited-duty work on October 18, 2017. On December 13, 2017 appellant underwent an extensive debridement of the left shoulder. OWCP paid she wage-loss compensation on the periodic rolls from January 7 through December 16, 2018. On December 17, 2018 appellant returned to a modified customer service position with the employing establishment.

A March 29, 2018 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated no significant central canal stenosis or impingement on exiting nerve roots and a three-millimeter paracentral protrusion at C5-6 on the right with mild right foraminal stenosis and narrowing of the right central canal.

In a report dated April 11, 2018, Dr. Faisal M. Mirza, a Board-certified orthopedic surgeon, diagnosed left-side radicular symptoms with neuroforaminal stenosis and disc bulge effects. He noted that a magnetic resonance imaging (MRI) scan provided objective evidence of neurological compromise. Dr. Mirza advised that appellant's symptoms of radiculopathy had been aggravated by the accident with the cart.

In a statement received by OWCP on July 19, 2018, appellant related that OWCP had received information from her physician supporting that her neck condition was related to her employment injury.

On July 19, 2018 OWCP referred appellant to Dr. Bruce R. Huffer, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated August 13, 2018, Dr. Huffer discussed appellant's history of injury and subsequent bilateral shoulder pain which was treated with surgery. He noted that she also experienced bilateral hand weakness and numbness and neck discomfort extending into the bilateral trapezii. Dr. Huffer provided findings on examination and opined that appellant had

³ OWCP also accepted appellant's February 4, 2019 occupational disease claim (Form CA-2) for a herniated lumbar disc at L5-S1 and lumbar intervertebral disc disorder at L5-S1 under OWCP File No. xxxxx685. It administratively combined OWCP File No. xxxxxx685 with the current claim, OWCP File No. xxxxxx329, serving as the master file.

continued objective residuals of the work injury based on her reduced left shoulder motion. He related that he did not believe that her complaints were “necessarily related to the cervical spine. Appellant has the typical degenerative changes to the cervical spine that can occur at her age group and I do not feel that the MRI [scan] findings are contributing to continuing complaints.” Dr. Huffer opined that appellant might have either thoracic outlet syndrome or brachioplexus inflammation contributing to her symptoms. He provided work restrictions.

In a report dated January 7, 2019, Dr. Parish Vaidya, a Board-certified physiatrist, reviewed appellant’s history of injury and current complaints of pain, numbness, and tingling of the upper extremities. He diagnosed left and right arm and shoulder pain, cervicgia, cervical radiculopathy, chronic pain due to trauma, and cervicothoracic myalgia. Dr. Vaidya reviewed the medical reports of record, including Dr. Huffer’s August 13, 2018 report. He noted that appellant had complained of cervical radiculopathy or peripheral nerve symptoms soon after her injury. Dr. Vaidya provided a similar report on July 1, 2019.

By decision dated August 9, 2019, OWCP denied appellant’s request to expand the acceptance of her claim to include a consequential cervical spine condition.

Subsequently, OWCP received a July 29, 2019 report from Dr. Vaidya, who advised that a record review indicated that appellant had cervical and lumbar symptoms warranting treatment after her injury. Dr. Vaidya advised that her condition was “related to mechanism described.”

On August 16, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review. A telephonic hearing was held on December 10, 2019.

By decision dated February 12, 2020, OWCP’s hearing representative vacated the August 9, 2019 decision. He noted that appellant was not claiming a consequential injury to her neck but instead that her cervical symptoms were directly related to the accepted employment injury. The hearing representative determined that a conflict in medical opinion existed between Dr. Huffer and Drs. Vaidya and Mirza regarding whether appellant sustained cervical radiculopathy due to her September 5, 2016 employment injury.

On January 28, 2021 OWCP referred appellant to Dr. Terry Beal, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated March 8, 2021, Dr. Beale, the impartial medical examiner (IME), discussed appellant’s history of injury and provided his review of the medical evidence, including the results of diagnostic testing. He concurred with the accepted diagnoses set forth in the statement of accepted facts, and sprains of both the right and left shoulders. Dr. Beale noted that appellant had medically retired in 2020. He advised that she had neurological deficits of the lower extremities and neurological problems with both upper extremities that were due to factors unrelated to the accepted employment injury. Dr. Beale indicated that there was no medical evidence supporting expanding the claim to include a cervical spine injury.

By decision dated March 16, 2021, OWCP denied expansion of the acceptance of appellant’s claim to include an injury to the cervical spine.

On March 22, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated June 2, 2021, OWCP's hearing representative set aside the March 16, 2021 decision. The hearing representative found that Dr. Beale's opinion was speculative in nature and insufficiently rationalized to constitute the special weight of the evidence. The hearing representative remanded the case for OWCP to obtain from Dr. Beale a legible copy of the March 8, 2021 report and a supplemental report containing a reasoned medical opinion regarding whether a cervical diagnosis was caused or aggravated by the accepted employment injury.

On June 14 and July 21, 2021, and January 12, 2022 OWCP requested a supplemental report from Dr. Beale.

In a supplemental report dated August 1, 2022, Dr. Beale advised that appellant had cervical spondylosis at multiple levels and intervertebral disc disease. He indicated that, regarding claim expansion, he agreed with Dr. Huffer's opinion.

On September 26 and November 10, 2022 OWCP again requested a reasoned supplemental report from Dr. Beale explaining why he negated causal relationship between appellant's cervical condition and her employment injury. No response was received.

On November 29, 2022 OWCP referred appellant to Dr. Charles Kennedy, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated March 20, 2023, Dr. Kennedy provided his review of the evidence and appellant's history of injury. On examination he found mildly reduced motion of the cervical spine with negative Spurling's and Hoffman's tests. Dr. Kennedy further found mild tenderness of the low back and an area of reduced sensation but no weakness below the left knee. He found a negative straight leg raise. Dr. Kennedy diagnosed right and left shoulder sprains and advised that only those conditions were causally related to the accepted employment injury. He provided work restrictions, noting that appellant had continued reduced bilateral shoulder motion.

On May 5 and 15, 2023 OWCP requested that Dr. Kennedy submit a supplemental opinion containing all diagnosed cervical conditions and a reasoned opinion regarding whether appellant sustained a cervical condition, including left-sided radicular symptoms with neuroforaminal stenosis and disc bulge causally related to the February 19, 2016 employment injury.

In a supplemental report dated July 6, 2023, Dr. Kennedy advised that the accepted conditions were bilateral shoulder strains and noted that appellant had undergone surgery on both shoulders that was not appropriate and of no benefit. He asserted that the cervical spine condition was unrelated to her employment injury. Dr. Kennedy opined that, based on the medical evidence, the neuroforaminal stenosis and disc bulge were "not caused by nor aggravated by the work injury. These findings are normal findings for a person of her age." Dr. Kennedy indicated that on examination he had not found radiculopathy and found that any arm pain that appellant might be experiencing was not due to radiculopathy.

On April 24, 2023 Dr. Muhammad Arif, Board-certified in family medicine, diagnosed chronic pain syndrome, low back pain, left shoulder joint pain, subacromial bursitis of the left

shoulder. He continued to provide progress reports. In a report dated June 26, 2023, Dr. Arif diagnosed chronic pain syndrome, low back pain, lumbar intervertebral disc disorder with myelopathy, left shoulder joint pain, and back spasms. He indicated that he would start “approval process for lumbar radiculopathy.”

By decision dated October 5, 2023, OWCP denied appellant’s request to expand the acceptance of her claim to include a cervical spine condition as causally related to her accepted employment injury.

On October 12, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

A telephonic hearing was held on January 12, 2024.

By decision dated March 26, 2024, OWCP’s hearing representative affirmed the October 5, 2023 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.⁴

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 medical background, supporting such a causal relationship.⁵ 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.⁶

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.⁷ Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁸

⁴ *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).

⁵ *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).

⁶ *Id.*

⁷ 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

⁸ 20 C.F.R. § 10.321; *T.D.*, Docket No. 17-1011 (issued January 17, 2018); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a cervical condition causally related to the accepted September 5, 2016 employment injury.

OWCP determined that a conflict arose between appellant's attending physicians, Dr. Mirza and Dr. Vaidya, and OWCP's referral physician, Dr. Huffer, regarding whether acceptance of the claim should be expanded to include cervical radiculopathy due to the accepted September 5, 2016 employment injury. It initially referred her to Dr. Beal for an impartial medical examination; however, he was unresponsive to OWCP's requests for clarifications of his report. OWCP consequently properly referred appellant to Dr. Kennedy, for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a) to resolve the issue of claim expansion.⁹

When a case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁰

In a report dated March 20, 2023, Dr. Kennedy discussed appellant's history of injury and the medical evidence of record, including the results of diagnostic testing. He found on examination of the cervical spine mild motion loss and negative Spurling's and Hoffman's test. Dr. Kennedy opined that appellant had sustained only bilateral shoulder sprains due to the accepted employment injury. In a supplemental report dated July 6, 2023, he asserted that the findings of neuroforaminal stenosis and disc bulging were normal findings for a person of appellant's age and not caused or aggravated by the February 19, 2016 employment injury. Dr. Kennedy further related that he had not found evidence of radiculopathy on examination.

The Board finds that Dr. Kennedy accurately described the accepted employment injury and noted his review of the medical record. He performed a thorough clinical examination and provided detailed findings. Dr. Kennedy provided a rationalized opinion regarding whether appellant's claim should be expanded, explaining that there was no evidence of radiculopathy on examination and that the imaging studies revealed age-related findings. The Board finds that his opinion is entitled to the special weight accorded to an IME; consequently, appellant has not met her burden of proof to expand the acceptance of her claim to include a cervical condition.¹¹

Appellant submitted progress reports from Dr. Arif dated April 24 through October 5, 2023. Dr. Arif did not, however, provide an opinion regarding whether the acceptance

⁹ When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in the medical evidence, and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion. If the referral physician fails to respond or does not provide an adequate response, OWCP should refer appellant for a new impartial medical examination. *K.W.*, Docket No. 23-1103 (issued February 6, 2024); *R.W.*, Docket No. 18-1457 (issued February 1, 2019); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

¹⁰ *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); *James P. Roberts*, *supra* note 8.

¹¹ *A.P.*, Docket No. 24-0170 (issued March 26, 2024); *M.G.*, Docket No. 23-0674 (issued October 3, 2023).

of her claim should be expanded to include a cervical condition. His opinion, therefore, is of no probative value and is insufficient to expand the acceptance of appellant's claim.¹²

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 a cervical condition as causally related to the accepted September 5, 2016 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 2024
Washington, DC

Alec J. Koromilas, 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

¹² See *R.C.*, Docket No. 21-1018 (issued September 1, 2023); *R.P.*, Docket No. 22-1349 (issued June 12, 2023); *F.S.*, Docket No. 23-0112 (issued April 26, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).