

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

V.A., Appellant)	
)	
and)	Docket No. 24-0601
)	Issued: September 27, 2024
U.S. POSTAL SERVICE, FALMOUTH POST)	
OFFICE, Fredericksburg, VA, 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 May 10, 2024 appellant filed a timely appeal from March 8, April 22, and 29, 2024 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ 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.³

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, she asserted that oral argument should be granted because she was found without fault in creating the overpayment. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the April 29, 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.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,354.04, for the period March 1 through August 12, 2023, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits, without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; (3) whether appellant has met her burden of proof to expand the acceptance of her claim to include a right ulnar nerve condition causally related to her accepted January 3, 2011 employment injury; and (4) whether appellant has met her burden of proof to expand the acceptance of her claim to include a consequential emotional condition due to her accepted January 3, 2011 employment injury.

FACTUAL HISTORY -- ISSUES 1 & 2

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the prior Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On April 1, 2011 appellant, then a 54-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that her right hand conditions of carpal tunnel syndrome and trigger finger were caused or aggravated by the factors of her federal employment, including daily lifting, pulling, sorting and handling of mail and heavy parcels. OWCP accepted the claim for right hand tenosynovitis and right carpal tunnel syndrome.⁵ Appellant retired from the employing establishment in July 2013.⁶ The record reflects that appellant's retirement plan was under the

⁴ Docket No. 13-1433 (issued December 13, 2013); Docket No. 21-1023 (issued March 6, 2023), *petition for recon, denied*, Docket No. 21-1023 (issued September 13, 2023).

⁵ OWCP assigned the present claim OWCP File No. xxxxxx292. Under OWCP File No. xxxxxx938, it accepted appellant's January 29, 2009 occupational disease claim for the conditions of left carpal tunnel syndrome, left radial styloid tenosynovitis, and left wrist tendinitis. OWCP has administratively combined OWCP File Nos. xxxxxx938 and xxxxxx292, with the latter serving as the master file.

⁶ A July 25, 2013 notification of personnel action (PS Form 50) indicates that appellant's last day in pay status was February 8, 2013 and the Office of Personnel Management (OPM) had approved her disability retirement by letter dated July 8, 2013.

Federal Employees Retirement System (FERS). OWCP paid her wage-loss compensation on the supplemental rolls effective October 28, 2011, and on the periodic rolls, effective June 30, 2013.

On July 25, 2023 OWCP requested information from SSA regarding potential FERS/SSA dual benefits.

On July 28, 2023 SSA forwarded a completed FERS/SSA dual benefits calculation to OWCP. The form indicated that beginning March 2023 appellant's SSA age-related retirement benefit rates with FERS was \$1,820.20 and without FERS was \$1,203.60.

An August 28, 2023 FERS offset overpayment calculation worksheet indicated that appellant received a \$3,354.04 overpayment of compensation for the period March 1 through August 12, 2023.

In an August 30, 2023 letter, OWCP notified appellant that her compensation would be offset by the portion of her SSA age-related retirement benefits attributable to her federal service. It found that her new net wage-loss compensation payment would be \$3,486.97.

In a preliminary overpayment determination dated August 30, 2023, OWCP advised appellant that she received an overpayment of compensation in the amount of \$3,354.04 for the period March 1 through August 12, 2023, because her wage-loss compensation benefits had not been reduced by her SSA age-related retirement benefits attributable to her federal service. It explained the overpayment calculation. OWCP advised appellant of its preliminary determination that she was without fault in the creation of the overpayment and requested that she complete an overpayment recovery action request form (Form OWCP-20) and submit supporting financial documentation. Additionally, it notified her that she could request a final decision based on the written evidence, or a prerecoumment hearing. OWCP allotted 30 days for appellant to respond.

On September 18, 2023 appellant requested a telephonic prerecoumment hearing before a representative of OWCP's Branch of Hearings and Review and requested waiver of recovery of the overpayment. She disagreed that the overpayment occurred, and with the amount of the overpayment. Appellant requested a waiver of the overpayment, asserting that repayment of the overpayment would cause financial hardship.

In a September 18, 2023 Form OWCP-20, appellant reported total monthly household income of \$0, living expenses of \$200.00 to \$300.00 per month for food and \$300.00 every two months for clothing. She indicated that she had no assets of value.

Appellant's husband, in a September 18, 2023 letter, noted that appellant paid for half of the bills that were listed only in his name. He included monthly mortgage statement, utility bills, auto insurance policy premiums, cell phone bills, credit card statements, medical patient billing statements, Medicare premiums, and personal loan statements as well as checking and savings

account statements, a 2023 Internal Revenue Service joint tax return showing \$55,833.00 in W-2 income, and his earning statements (which varied monthly).

A telephonic hearing took place on January 12, 2024. Appellant indicated that her income included both SSA and FECA compensation benefits and that she shared household expenses with her husband. She asserted that she had credit card debt and borrowed money often from her son.

In a March 13, 2024 letter, appellant provided a detailed breakdown of her household's monthly bills. She listed expenses she split with her husband which totaled \$3,970.00, and she listed other shared expenses of \$3,954.00. Appellant asserted that her monthly income was \$5,154.34, and that her husband's monthly income, which included overtime, was \$3,800.00. She indicated that she had \$6.14, and her husband had \$170.00 left over after expenses each month.

By decision dated April 22, 2024, OWCP's hearing representative finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$3,354.04 for the period March 1 through August 12, 2023, because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits, without an appropriate offset. The hearing representative found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment. The hearing representative found that appellant's total combined reported household monthly expense was \$9,138.48⁷ and the total household reported monthly income was \$8,954.32.⁸ The hearing representative found that appellant's actual monthly net income was \$5,715.37, comprised of \$3,895.17 monthly FECA compensation plus \$1,820.20 monthly SSA benefits, and her husband's monthly net income was \$4,660.87,⁹ for a total combined net household monthly income of \$10,376.24. The hearing representative deducted the total combined reported household monthly expenses of \$9,138.48 and found a monthly surplus income of \$1,237.76. The hearing representative found appellant could repay the \$3,354.04 in full within 30 days or set up a repayment schedule with OWCP.

FACTUAL HISTORY -- ISSUES 3 & 4

On December 27, 2019 OWCP expanded the acceptance of the claim to include lesion of the left ulnar nerve; bilateral tenosynovitis of the hand and wrist; bilateral carpal tunnel syndrome; and bilateral radial styloid tenosynovitis. On January 24, 2023 it expanded acceptance of the claim to include the additional condition of trigger finger, right middle finger.

On February 28, 2023 appellant requested that the acceptance of her claim be expanded to include the conditions of major depressive disorder, insomnia and anxiety. She provided a

⁷ This was based on appellant's reported monthly expenses of \$3,187.48, her husband's reported monthly expenses of \$1,997.00 and joint reported monthly expenses of \$3,954.00.

⁸ This was based on claimant's reported monthly income of \$5,154.34 and her husband's reported monthly income of \$3,800.00.

⁹ The hearing representative added the husband's earning statements from August 14 to 27, 2023 of \$2,346.16 and from August 28 to September 10, 2023 of \$1,956.18, for a total of \$4,302.34 28-day income. The hearing representative then converted his 28-day income to a monthly income of \$4,660.87.

January 29, 2023 report from Dr. Jaclyn Lewis-Croswell, a clinical psychologist, who diagnosed major depressive disorder, recurrent, moderate and insomnia due to other mental disorder.

By decision dated March 6, 2023, the Board affirmed OWCP's decisions dated June 9 and April 19, 2021, which denied expansion of the acceptance of the claim to include a right ulnar nerve condition and denied authorization of the November 11, 2020 right ulnar nerve surgery, respectively.¹⁰ The Board accorded the weight of the medical evidence to the November 16, 2020 and May 11, 2021 reports of Dr. Franklin M. Epstein, a Board-certified neurosurgeon, who served as a district medical adviser (DMA), who opined that there was no causal relationship between appellant's right ulnar nerve condition and her employment injury. Dr. Epstein explained that the clinical and electrodiagnostic evidence of record did not support an employment-related occupational disease of the right ulnar nerve at either the wrist or the elbow, noting that her right ulnar nerve abnormalities were demonstrated by the 2019 and 2020 electromyogram/nerve conduction velocity (EMG/NCV) studies, but not in the 2003 EMG/NCV, eight years prior to the date of injury, or by the 2012 EMG/NCV, one year after the date of injury. For the above reasons, he further opined that the most recent surgery on the right ulnar nerve at both the elbow and wrist of November 11, 2020 should not be authorized as employment related.

In a March 8 and April 7, 2023 development letters, OWCP informed appellant of the deficiencies of her claim for expansion as a result of a consequential psychiatric condition and advised her of the type of medical evidence needed. It afforded her 30 days to provide the necessary evidence.

On December 14, 2023 appellant, through counsel, requested reconsideration of the denial of her request for expansion of the claim to include right ulnar nerve impairment. Multiple reports from Dr. Lewis-Croswell and Dr. Robert R. Reppy, an osteopath and family medicine physician, were received along with a November 8, 2023 EMG/NCV test. Reference was made to Dr. Reppy's November 14, 2023 report regarding expansion of the claim to include right ulnar nerve entrapment. In that report, Dr. Reppy indicated that appellant "needed to have the right ulnar nerve entrapment included in her list of accepted diagnoses."

In response to her claim for expansion as a result of a consequential psychiatric condition, appellant submitted April 20, 2023 answers to OWCP's questionnaire and an April 30, 2023 report from Dr. Lewis-Croswell. In her report, Dr. Lewis-Croswell stated that appellant presented on January 27, 2023 with symptoms of recurring depression and stress related to her reported medical conditions, which caused her a great deal of physical pain and physical limitations. Appellant reported that her pain woke her up in the middle of the night and that these limitations had led to feelings of depression. She also reported significant work stress in 2005 and having to take four months of leave following January 2011 due to her workers' compensation claim, which led to consequences including losing her home. Appellant indicated that her depression had been recurrent since then. She also reported a new onset of high stress and anxiety due to a letter which indicated that she was being evaluated to return to work. Dr. Lewis-Croswell opined that appellant's chronic pain has caused limits to her life. She explained that chronic pain was well known to lead to depression and insomnia and that patients with chronic pain had high rates of poor sleep quality and depression which required special treatment. Dr. Lewis-Croswell also

¹⁰ Docket No. 21-1023 (issued March 6, 2023), *petition for recon. denied*, Docket No. 21-1023 (issued September 13, 2023).

indicated that research showed that chronic pain intensity and level of disability could be a predictor of depression severity as well as poor sleep quality. She noted that the more the patient's sleep was disrupted the worse the pain and depression could become, which created a vicious cycle for appellant.

OWCP continued to receive progress reports from Dr. Reppy.

In a January 24, 2024 letter, OWCP advised appellant that a second opinion appointment had been scheduled with Dr. Omar D. Hussamy, a Board-certified orthopedic surgeon on February 8, 2024.

By decision dated January 25, 2024, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions of major depressive disorder, insomnia and anxiety as causally related to the accepted employment injury.

In a February 8, 2024 report, Dr. Hussamy noted appellant's history of injury, reviewed a January 23, 2024 statement of accepted facts (SOAF) and the medical record, and examined appellant. He found no objective findings upon examination to support that she continued to suffer from the physical effects of the January 3, 2011 work injury. Dr. Hussamy disagreed with Dr. Reppy regarding the diagnoses of right cubital tunnel syndrome, noting that "the clinical and electrodiagnostic evidence in the medical records of Dr. Reppy do not support a work-related occupational disease of the right ulnar nerve either at the wrist or elbow."

On February 16, 2024 appellant requested an oral hearing by a representative of OWCP's Branch of Hearings and Review of OWCP's January 25, 2024 decision.

In a March 7, 2024 report, Dr. Reppy opined that Dr. Hussamy performed a subpar evaluation. He continued to opine that appellant had residuals from lesion of left ulnar nerve, right third digit trigger finger, bilateral tenosynovitis of hands and wrists, bilateral carpal tunnel syndrome, and bilateral radial styloid tenosynovitis.

By decision dated March 8, 2024, OWCP denied modification finding that the medical evidence failed to provide medical rationale based on an accurate history of the condition and current medical reports which support why the case should be expanded to include a consequential right ulnar nerve entrapment condition.

Following a preliminary review, by decision dated March 11, 2024, an OWCP hearing representative found the case not in posture for decision regarding expansion of the claim to include appellant's diagnosed psychiatric conditions and set aside the January 25, 2024 decision. The hearing representative found that while Dr. Lewis-Crosswell's report regarding causal relationship was of limited probative value, as her opinion was based on an incomplete background, OWCP should send Dr. Lewis-Crosswell a copy of Dr. Hussamy's February 8, 2024 second opinion report for her to review. She was then to explain whether appellant's complaints of chronic pain and physical limitations were based on objective examination findings attributable to the accepted conditions and whether the alleged consequential psychiatric conditions were the "direct and natural result" of the accepted conditions. The hearing representative also instructed OWCP that before it issued a *de novo* decision regarding expansion of the claim to include the

diagnosed psychiatric conditions, it should determine whether there was a conflict in medical opinion regarding residuals of the work injury.

On March 19, 2024 OWCP provided Dr. Lewis-Crosswell with a copy of Dr. Hussamy's February 8, 2024 second opinion report and requested that she explain how the psychiatric condition was the "direct and natural result" of the accepted conditions. If the physical effects of the accepted conditions had resolved, she was further asked to explain why the consequential psychiatric conditions would not also have resolved.

On April 3, 2024 OWCP determined that a conflict in medical opinion existed between Dr. Reppy's reports of March 7, 18, and 20, 2024 and Dr. Hussamy's February 8, 2024 report regarding whether appellant's accepted conditions had resolved, her ability to perform sedentary work, and the rating of her bilateral upper extremities permanent impairment.

By *de novo* decision dated April 29, 2024, OWCP denied expansion of the acceptance of appellant's claim to include a consequential psychiatric condition. It noted that no supporting evidence was received from Dr. Lewis-Crosswell.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.¹¹ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.¹²

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.¹³ FECA Bulletin No. 97-09 states that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.¹⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,354.04, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA)

¹¹ 5 U.S.C. § 8102(a).

¹² *Id.* at § 8116.

¹³ 20 C.F.R. § 10.421(d); *see S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

¹⁴ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also N.B.*, Docket No. 18-0795 (issued January 4, 2019).

age-related retirement benefits for the period March 1 through August 12, 2023, without an appropriate offset.¹⁵

The evidence of record indicates that, while appellant was receiving compensation for wage-loss compensation benefits under FECA, she was also receiving SSA age-related retirement benefits based upon her federal service. A claimant cannot receive both compensation for wage-loss compensation benefits under FECA and SSA age-related retirement benefits attributable to federal service for the same period.¹⁶ The information provided by SSA established that appellant received SSA age-related retirement benefits that were attributable to her federal service during the period March 1 through August 12, 2023. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided its rate with FERS and without FERS for the specific period March 1 through August 12, 2023. OWCP provided its calculations for the relevant period based on SSA's worksheet and determined that appellant received an overpayment of compensation in the amount of \$3,354.04.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period March 1 through August 12, 2023, and finds that an overpayment of compensation in the amount of \$3,354.04 was created.¹⁷

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁸ Thus, a finding that appellant was without fault does not automatically result in waiver of the overpayment. OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹⁹

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses

¹⁵ *J.P.*, Docket No. 23-0975 (issued April 25, 2024); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹⁶ *Id.*

¹⁷ *See R.F.*, Docket No. 20-0159 (issued October 15, 2020); *see D.C.*, Docket No. 17-0559 (issued June 21, 2018).

¹⁸ 5 U.S.C. § 8129(a)-(b).

¹⁹ *D.H.*, Docket No. 19-0384 (issued August 12, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019); *L.S.*, 59 ECAB 350 (2008).

and the beneficiary's assets do not exceed a specified amount as determined by OWCP.²⁰ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.²¹ Also, assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.²²

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt; and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.²³ OWCP's procedures provide that, to establish that a valuable right has been relinquished, an individual must demonstrate that the right was in fact valuable, that he or she was unable to get the right back, and that his or her action was based primarily or solely on reliance on the payment(s) or on the notice of payment.²⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.²⁵

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses. The hearing representative found that appellant's total monthly household income of \$10,376.24 exceeded her total combined reported household monthly expenses of \$9,138.48 by more than \$50.00, in this case \$1,237.76. The Board agrees that appellant has a monthly surplus of over \$50.00 and does not need substantially all of her current income to meet current ordinary and necessary living expenses. Accordingly, as appellant has a surplus of over the \$50.00 statutory amount, she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.²⁶ Because she has not met the first prong of the two-prong test of whether recovery of the overpayment would

²⁰ 20 C.F.R. § 10.436(a)(b).

²¹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

²² *Id.* at Chapter 6.400.4a(2).

²³ 20 C.F.R. § 10.437; *see E.H.*, Docket No. 18-1009 (issued January 29, 2019).

²⁴ *Supra* note 21 at Chapter 6.400.4c(3).

²⁵ 20 C.F.R. § 10.436.

²⁶ *Id.* at § 10.437(a), (b).

defeat the purpose of FECA, it is unnecessary for OWCP to consider the second prong of the test based on her assets.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.²⁷

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, she has failed to establish that OWCP acted improperly by denying waiver of recovery of the \$3,354.04 overpayment.

LEGAL PRECEDENT -- ISSUES 3 and 4

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.²⁸

The claimant bears the burden of proof to establish a claim for a consequential injury.²⁹ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.³⁰ The opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.³¹

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.³² 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.³³

²⁷ *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *L.D.*, Docket No. 18-1317 (issued April 17, 2019); *William J. Murphy*, 41 ECAB 569, 571-72 (1989).

²⁸ *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

²⁹ *S.S.*, Docket No. 21-1140 (issued June 29, 2022); *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).

³⁰ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

³¹ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

³² *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

³³ *J.M., id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, (2001).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.³⁴ A physician's opinion on whether there is causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.³⁵ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.³⁶

ANALYSIS -- ISSUES 3 and 4

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a right ulnar nerve condition causally related to her accepted January 3, 2011 employment injury.

The Board notes that it is unnecessary for it to consider the evidence appellant submitted prior to the issuance of OWCP's June 9 and April 19, 2021 merit decisions as the Board considered it in its March 6, 2023 decision.³⁷ Findings made in prior Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.³⁸

OWCP subsequently received Dr. Reppy's November 14, 2023 report, which appellant's December 14, 2023 reconsideration request referenced with regard to expansion of the claim to include right ulnar nerve entrapment. In his November 14, 2023 report, Dr. Reppy indicated that appellant should have the right ulnar nerve entrapment included in her list of accepted conditions. While he provided an affirmative opinion suggestive of causal relationship in his report, he did not offer medical rationale sufficient to explain his conclusionary opinion.³⁹ The Board has held that conclusory statements lacking medical rationale are insufficient to establish causal relationship between employment factors and diagnosed conditions.⁴⁰ Rather, the Board has held that a medical opinion must offer a rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.⁴¹ Dr. Reppy offered no medical rationale for his conclusory statement regarding causation. Thus, his report is insufficient to establish claim expansion to include a right ulnar nerve entrapment. There is no

³⁴ *E.M.*, *supra* note 30; *Robert G. Morris*, 48 ECAB 238 (1996).

³⁵ *M.V.*, *supra* note 31; *Victor J. Woodhams*, *supra* note 30.

³⁶ *Id.*

³⁷ *See supra* note 4.

³⁸ *M.J.*, Docket No. 20-1565 (issued January 24, 2023); *B.D.*, Docket No. 20-1365 (issued December 21, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

³⁹ *S.A.*, Docket No. 21-0593 (issued February 3, 2022); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

⁴⁰ *S.A.*, *id.*; *K.O.*, Docket No. 18-1422 (issued March 19, 2019); *see E.P.*, Docket No. 18-0194 (issued September 14, 2018).

⁴¹ *S.A.*, *id.*; *V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

other medical evidence of record to support a well-rationalized medical opinion that appellant's right ulnar nerve entrapment was caused or aggravated by the accepted diagnosed conditions.

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.

The Board further finds that OWCP improperly issued the April 29, 2024 decision.

The Board notes that OWCP's hearing representative, in his decision dated March 11, 2024, set aside the January 25, 2024 decision, and provided specific instructions for further development. On April 3, 2024 OWCP determined that a conflict in medical opinion existed between Dr. Reppy and Dr. Hussamy with regard to whether appellant's accepted conditions had resolved. OWCP, however, issued its April 29, 2024 decision denying expansion of the claim to include a consequential psychiatric condition prior to the completion of OWCP's development. Thus, it was premature for OWCP to issue its April 29, 2024 decision.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$3,354.04, for which she was without fault, because she concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits for the period March 1 through August 12, 2023, without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment of compensation. The Board also finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a right ulnar nerve condition causally related to her accepted January 3, 2011 employment injury. The Board further finds OWCP improperly issued the April 29, 2024 decision regarding appellant's claimed consequential psychiatric condition.

ORDER

IT IS HEREBY ORDERED THAT the March 8 and April 22, 2024 decisions of the Office of Workers' Compensation Programs are affirmed. The April 29, 2024 decision is reversed.

Issued: September 27, 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