United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 20-0459**
	)	**Issued: January 27, 2021**
DEPARTMENT OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN & FAMILIES, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On December 26, 2019 appellant filed a timely appeal from a September 9, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional left shoulder conditions causally related to the accepted September 30, 2016 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the September 9, 2019 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*.

FACTUAL HISTORY

On October 3, 2016 appellant, then a 58-year-old grants management specialist, filed a traumatic injury claim (Form CA-1) assigned OWCP File No. xxxxxx165 alleging that she injured her left shoulder, left wrist, back, and left knee on September 30, 2019 while in the performance of duty.[3] She recounted that as she rose out of her chair, the left side of the chair arm broke, causing her left wrist to bend backwards. Appellant lost her grip and balance as the chair rolled backwards, and she fell onto the floor. Her left shoulder struck a desk and her left hand and left knee twisted under her. On the reverse side of the claim form, the employing establishment acknowledged that the employee was injured in the performance of duty and indicated that she had stopped work on the date of injury.

In support of her claim, appellant submitted an October 3, 2016 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), by Dr. Ronnie D. Shade, an attending Board-certified orthopedic surgeon. Dr. Shade noted a history of injury that, while performing her regular duties on September 30, 2016, she arose from a chair and the left arm of the chair swung outward and she fell. He diagnosed lumbar sprain, left knee osteoarthritis, thoracic spondylitis, lumbar subluxation, and left shoulder contusion.

Thereafter, OWCP received disability certificates dated October 5, 17, and 31, 2016 in which Dr. Shade requested that appellant be excused from work from October 3 through November 9, 2016 because she was totally incapacitated and unable to work.

In medical reports dated October 3 and 31, 2016 and a letter dated November 14, 2016, Dr. Shade reiterated appellant's history of injury on September 30, 2016 and conducted a physical examination. He provided assessments of: sprain of the ligaments of the lumbar spine; unspecified spondylopathy of the thoracolumbar region; unilateral osteoarthritis, left knee; sprain of the carpal joint of the left wrist, initial encounter; other synovitis and tenosynovitis of the left hand, first extensor sheath; contusion of the left shoulder, initial encounter; complete rotator cuff tear or rupture of the left shoulder, not specified as traumatic; osteoarthritis of the left shoulder, glenohumeral joint; and sprain of ligaments of the cervical spine, acute. In his November 14, 2016 letter, Dr. Shade opined that the mechanism of injury which led to the diagnosed conditions were directly causally related to the injury appellant sustained on September 30, 2016.

Subsequently, OWCP received diagnostic test results dated February 6, 2014 and January 5 and 10, 2017 from Board-certified diagnostic radiologists, Dr. James Zerner, Dr. Jordan Goss, Dr. Tuong Huu Le, and Dr. Craig Platenberg, which addressed appellant's lumbar, left shoulder, and cervical conditions. In a January 5, 2017 left shoulder arthrogram report, Dr. Le noted an impression of successful intraarticular contrast administration and referenced a left shoulder magnetic resonance imaging (MRI) scan performed on the same date. In a January 5, 2017 left shoulder MRI scan arthrogram, Dr. Goss provided impressions of mild supraspinatus tendinosis

[3] Appellant has a prior claim under OWCP File No. xxxxxx976, for a December 10, 2010 traumatic injury. OWCP accepted that claim for sprains of the back, lumbar region; left ribs; left shoulder and upper arm, unspecified site; ankle, not otherwise specified; and other specified sites of the sacroiliac joint. OWCP also accepted thoracic or lumbosacral neuritis or radiculitis, not otherwise specified. In OWCP File No. xxxxxx820, OWCP accepted appellant's occupational disease claim (Form CA-2) for carpal tunnel syndrome, right and left upper limbs; and lesions of the ulnar nerve, right and left upper limbs. OWCP administratively combined her claims with the current file, OWCP File No. xxxxxx976, serving as the master file.

with small intrasubstance tear at the footprint and no full-thickness rotator cuff tear; advanced acromioclavicular (AC) joint osteoarthritis with osseous and capsular hypertrophy and marrow edema; and moderate glenohumeral osteoarthritis with multifocal areas of full thickness and partial thickness cartilage loss, subchondral cyst formation in the glenoid, and degeneration within the anterior and inferior labrum.

On January 27, 2017 OWCP accepted appellant's claim for aggravation of preexisting sprain of the left shoulder joint and contusion of the left shoulder.

OWCP received a January 23, 2017 functional capacity evaluation report by Dr. Shade.

In a February 23, 2018 letter, Dr. Shade noted examination findings and reviewed diagnostic test results. He provided assessments of osteoarthritis, left shoulder, glenohumeral joint; other specified disorders of tendon, tendinosis, left shoulder; other cyst of the bone, subchondral, glenoid, left shoulder; and superior glenoid labrum lesion, left shoulder, initial encounter. Dr. Shade recommended that the acceptance of appellant's claim should be expanded to include his diagnosed conditions.

On June 19, 2018 OWCP routed a statement of accepted facts (SOAF) and the medical record, to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), for a review of Dr. Shade's February 23, 2018 report and a determination as to whether the acceptance of appellant's claim should be expanded to include additional left shoulder conditions.

In a June 27, 2018 report, the DMA noted that he had reviewed the SOAF and appellant's medical record. He indicated that Dr. Shade did not propose any mechanism by which the September 30, 2016 work injury caused the claimed conditions. The DMA indicated that the presence of imaging findings did not constitute causality. He recommended that appellant's claim not be expanded to include the new conditions.

By decision dated August 30, 2018, OWCP denied the expansion of the acceptance of appellant's claim to include the additional conditions of: osteoarthritis of left shoulder, glenohumeral joint; other specified disorders of tendon, tendinosis of the left shoulder; other cyst of the bone, subchondral, glenoid, left shoulder; and superior glenoid labrum lesion of the left shoulder, initial encounter. It found that the medical evidence of record was insufficient to establish that these additional conditions were caused or aggravated by her September 30, 2016 employment injury.

On October 10, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a September 26, 2018 letter, Dr. Shade disagreed with OWCP's August 30, 2018 decision and opined that factors of appellant's employment contributed to, aggravated, and/or caused, her diagnosed conditions, disability, and impairment based on his examination findings and review of her medical record, including diagnostic test results.

By decision dated December 27, 2018, OWCP's hearing representative set aside the August 30, 2018 decision and remanded the case to OWCP for further development of the medical

evidence, finding, among other things, that the DMA's opinion was insufficiently rationalized to be accorded the weight of the medical evidence.

OWCP subsequently referred appellant, along with a SOAF and the medical record, to Dr. Barry Zindel, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a February 19, 2019 report, Dr. Zindel reviewed the SOAF and the medical evidence of record, including Dr. Shade's February 23, 2018 report. He discussed his examination findings and diagnosed left shoulder sprain, left shoulder contusion, and preexisting left shoulder osteoarthritis. Dr. Zindel disagreed with Dr. Shade's request to expand appellant's September 30, 2016 work-related injury to include the additional conditions of left shoulder glenohumeral joint arthritis, left shoulder tendinosis, left shoulder glenoid labrum lesion and cyst of the bone, and subchondral/glenoid of the left shoulder. He opined that these conditions, which were seen on a January 5, 2017 MRI scan arthrogram performed approximately three months after her September 30, 2016 employment injury, and his objective examination findings of restricted range of motion of the left shoulder, a positive Neer impingement test, crepitation on left shoulder motion, and weakness in the left arm were most likely related to the preexisting conditions and not related to the accepted work injury. Dr. Zindel further opined that there was no evidence that the claimed left shoulder conditions were aggravated, accelerated, or precipitated by the September 30, 2016 work-related injury.

By letter dated April 1, 2019, OWCP requested that Dr. Shade review Dr. Zindel's February 19, 2019 report and provide whether he agreed with his findings.

On April 9, 2019 Dr. Shade reviewed Dr. Zindel's February 19, 2019 report and disagreed with his findings. He strongly opined that appellant's work-related injury should be expanded to include the diagnosed left shoulder conditions. Dr. Shade noted that obviously these injuries were preexisting and indicated that the Department of Labor's rules and regulations clearly stated that any repeat injury, aggravation, or acceleration of a previous injury was considered a new injury.

On May 7, 2019 OWCP determined that there was a conflict of opinion between Dr. Shade and Dr. Zindel as to whether appellant sustained additional conditions causally related to her September 30, 2016 employment injury. On May 22, 2019 it referred her along with a SOAF dated May 7, 2019 to Dr. James F. Hood, a Board-certified orthopedic surgeon serving as an impartial medical examiner (IME), to resolve the conflict as to whether there was a causal relationship between the claimed conditions and the accepted work injury.

In a July 31, 2019 report, Dr. Hood, the IME, submitted his findings upon examination following a review of the SOAF and the medical evidence of record. He opined that appellant had minimal injuries resulting from her September 30, 2016 employment injury that had resolved in a short and finite period of time. The IME further opined that any current signs and symptoms or complaints could not be related to an incident now three years ago. Based on reasonable medical probability, he advised that all current and future signs and symptoms would be due to a combination of factors, including age-related degenerative changes, obesity, and poor conditioning. The IME reported that appellant's left shoulder contusion was not a significant contusion as there was no evidence of ecchymosis, soft tissue swelling, or bone marrow edema on the January 5, 2017 MRI scan. Therefore, he advised that the underlying arthritis of the glenohumeral joint and AC joint were long-standing and preexisting with no clinical or radiographic evidence of aggravation. The IME also reported that appellant had a simple lumbar

sprain/strain with no evidence of radiculopathy. Additionally, appellant may have had a very mild transient cervical sprain/strain. The IME concluded that appellant's case should be closed in relationship to the effects actually resulting from the September 30, 2016 employment injury.

By decision dated September 9, 2019, OWCP denied expansion of appellant's claim to include additional left shoulder conditions as work related. It found that the opinion of Dr. Hood, the IME, constituted the special weight of the evidence and established that the diagnosed left shoulder conditions were not causally related to her September 30, 2016 employment injury.

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.[4]

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.[5] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment must be based on a complete factual and medical background.[6] 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, explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[7]

Section 8123(a) of FECA provides that, if there is a disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[8] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[9] Where OWCP has referred the case to an IME to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.[10]

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[4] *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[5] *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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

[7] *See M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] 5 U.S.C. § 8123(a); 20 C.F.R. § 10.32(b). *See R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009) (the district medical adviser, acting on behalf of OWCP, may create a conflict in medical opinion).

[9] 20 C.F.R. § 10.321; *R.C.*, 58 ECAB 238 (2006).

[10] *V.K.*, Docket No. 18-1005 (issued February 1, 2019); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

ANALYSIS

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

OWCP properly determined that a conflict in medical opinion existed between Dr. Shade, appellant's treating physician, and Dr. Zindel, the second opinion physician, on the issue of: whether appellant sustained osteoarthritis, left shoulder, glenohumeral joint; other specified disorders of tendon, tendinosis, left shoulder; other cyst of the bone, subchondral, glenoid, left shoulder; and superior glenoid labrum lesion, left shoulder, initial encounter, causally related to her September 30, 2016 employment injury. Accordingly, it referred appellant to Dr. Hood, serving as the IME, to resolve the conflict.[11]

As noted, when a case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[12]

The Board finds that the report of Dr. Hood is insufficient to carry the special weight of the evidence. In a July 31, 2019 report, the IME addressed the medical records, reviewed the May 7, 2019 SOAF, provided his own examination findings, and found no basis on which to attribute causal relationship between appellant's additional left shoulder conditions and the September 30, 2016 employment injury. He reasoned that her accepted left shoulder conditions had resolved within a short and finite period of time and that her current symptoms could not be related to her work injury which occurred three years ago. However, the May 7, 2019 SOAF reviewed by the IME only reflects the most recent accepted conditions of aggravation of preexisting sprain of the left shoulder joint and contusion of the left shoulder, which were accepted on January 27, 2017 in the instant claim assigned OWCP File No. xxxxxx165. It did not reflect appellant's previously accepted sprains of the back, lumbar region, left ribs, left shoulder, upper arm, and ankle, and other specified sites of the sacroiliac joint, and thoracic or lumbosacral neuritis or radiculitis under OWCP File No. xxxxxx976, and carpal tunnel syndrome and lesions of the ulnar nerve of the right and left upper limbs accepted under OWCP File No. xxxxxx820. OWCP administratively combined these claims with the instant claim, with OWCP File No. xxxxxx976, serving as the master file. Its procedures provide that the findings of an OWCP referral physician or impartial medical specialist must be based on the factual underpinnings of the claim, as set forth in the SOAF.[13] OWCP's procedures and Board precedent dictate that when OWCP's referral physician or impartial medical specialist renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[14] While Dr. Hood found no basis on which to attribute causal relationship between appellant's additional left

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[11] *V.K.,* Docket No. 19-0422 (issued June 10, 2020); *G.B.*, Docket No. 19-1510 (issued February 12, 2020); *R.H.*, 59 ECAB 382 (2008).

[12] *Supra* note 10.

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.810.11a (September 2019).

[14] *Id.* at Chapter 3.600.3(10) (October 1990); *J.R.,* Docket No. 19-1321 (issued February 7, 2020); *M.D.,* Docket No. 18-0468 (issued September 4, 2018); *Paul King*, 54 ECAB 356 (2003).

shoulder conditions and the September 30, 2016 employment injury, the Board finds that he was not provided a complete and accurate framework, rendering his opinion of diminished probative value.[15] The Board therefore finds that the case must be remanded to OWCP for further development.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.[16] Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[17] Accordingly, the Board finds that the case must be remanded to OWCP.[18]

On remand OWCP shall clarify the accepted conditions and prepare an updated SOAF. It shall then refer the case record, together with the SOAF, to Dr. Hood for a reasoned opinion regarding whether the acceptance of appellant's claim should be expanded to include additional left shoulder conditions causally related to her accepted conditions.[19] If Dr. Hood is unable to clarify or elaborate on his original report, or if his supplemental report is vague, speculative, or lacking in rationale, OWCP shall refer appellant to a new IME.[20] Following this and any such further development as deemed necessary, OWCP shall issue a *de novo* decision.

<u>CONCLUSION</u>

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

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[15] *Id.*

[16] *J.R., supra* note 14; *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

[17] *Id.*; *see also R.M.,* Docket No. 16-0147 (issued June 17, 2016).

[18] *J.R., supra* note 14; *S.S., supra* note 16; *J.T.*, Docket No. 18-1300 (issued March 22, 2019).

[19] *See P.S.,* Docket No. 17-0802 (issued August 18, 2017).

[20] *See M.S.,* Docket No. 18-1228 (issued March 8, 2019); *R.H.,* Docket No. 17-1903 (issued July 5, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2019 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: January 27, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board