



her compensation for intermittent wage-loss on the supplemental rolls as of December 10, 2018. Appellant did not receive wage-loss compensation between February 2, 2019 and June 10, 2019.

On February 5, 2019 Dr. Ryan Jander, a Board-certified hand surgeon, performed a left shoulder arthroscopy to treat appellant's left shoulder adhesive capsulitis.

Appellant submitted claims for compensation (Form CA-7) for leave without pay (LWOP) for the period March 18 to June 7, 2019.<sup>1</sup>

In March 28, 2019 treatment notes, Dr. Jander assessed post arthroscopy adhesive capsulitis and cervical radiculopathy. He provided a disability certificate of the same date, indicating that appellant could not return to work "until after April 11, 2019, when further disability will be determined."

A separate treatment note, dated March 28, 2019, provided by Dr. Christopher Spevak, Board-certified in pain medicine, indicated that appellant was released to return to work without restrictions.

OWCP received treatment notes, dated from April 18 to 24, 2019, from Dr. Rosemarie Filart, a Board-certified physiatrist. In her April 18, 2019 notes, Dr. Filart advised that appellant's chief complaint was chronic pain. She noted appellant's history of injury, examined appellant, and diagnosed cervicalgia. Dr. Filart related that appellant had been released to return to work without restrictions. Dr. Spevak also saw appellant on April 24, 2019 for complaints of neck pain with radiculopathy. He also released appellant to return to work without limitations.

In a development letter dated May 10, 2019, OWCP notified appellant that the evidence of record indicated that she was claiming wage-loss compensation due to total disability related to a left shoulder arthroscopy surgery performed on February 5, 2019. It noted that the operative report indicated that appellant had left shoulder adhesive capsulitis, which was not a currently accepted work injury. OWCP explained that additional evidence was needed to establish that the February 5, 2019 surgery was causally related to the work injury and medically necessary. It advised appellant that her case would be held open for 30 days to afford her the opportunity to submit the requested information.

In an April 4, 2019 report, Dr. Bradley Dengler, a neurosurgeon, noted that appellant underwent cervical spine surgery on May 24, 2018 and a recent shoulder surgery. He advised that appellant was seen for recurrent cervical symptoms. Dr. Dengler diagnosed cervical radiculopathy. He also provided treatment notes of the same date. Dr. Dengler indicated that appellant could return to work on May 28, 2019.

In May 2, 2019 treatment notes and a narrative report of the same date, Dr. Dengler related that appellant was seen in a follow up related to her April 25, 2019 magnetic resonance imaging (MRI) scan results, which revealed a combination of old left C5-6 and C6-7 laminectomy and new

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<sup>1</sup> Appellant had filed Form CA-7 claims for compensation for disability commencing February 4, 2019; however, the claims, prior to March 18, 2019, are not the subject of this appeal.

C5-6 findings and resolution of foraminal stenosis. In May 3, 2019 treatment notes, he reviewed her MRI scan results, diagnosed cervicalgia, and recommended a spinal cord stimulator.

OWCP received treatment notes, dated May 10, 2019, from Dr. Michael Stockin, a Board-certified anesthesiologist, who diagnosed cervicalgia.

In May 13, 2019 reports, Dr. Stockin noted that he treated appellant for sprain of the cervical spine ligaments and cervical radiculopathy. He advised that she underwent a successful spinal cord stimulator trial and he was planning to perform surgical implementation on June 12, 2019.

Dr. Filart also saw appellant on May 13, 2019 and treated her for cervicalgia.

In a May 16, 2019 report, Dr. Jander diagnosed adhesive capsulitis, cervical radiculopathy, and post arthroscopy. He opined that appellant had reached maximum medical improvement (MMI) and was cleared to return to work as her shoulder symptoms had resolved. Dr. Jander also noted that appellant's further work restrictions could be assessed by a neurosurgeon.

Dr. Dengler, in a May 22, 2019 report, noted that appellant underwent cervical spine fusion surgery on May 24, 2018 and recent shoulder surgery. He advised that she was seen on April 4, 2019 with recurrent cervical neck symptoms. Dr. Dengler opined that appellant could return to work no earlier than June 26, 2019.

In a June 6, 2019 report, Dr. Jander noted that appellant's history of injury was related to a motor vehicle accident on December 7, 2016. He explained that she sustained a cervical spine injury, which required multiple surgeries and overshadowed the less urgent left shoulder injury. Dr. Jander indicated that, after appellant's cervical spine injuries were stabilized, she was able to fully focus on the left shoulder injury and her ongoing pain and limited motion. He noted that he first evaluated appellant in July 2018 and that the treatment appellant received for the left shoulder was ineffective. Dr. Jander advised that appellant had gone one and a half years without pain relief and, after several conservative measures, appellant underwent arthroscopic release on her left shoulder on February 5, 2019. Additionally, he noted that appellant underwent intensive rehabilitation with an excellent functional result and significant improvement in her shoulder pain and range of motion). Dr. Jander opined, "[w]ithout question, the left shoulder pain is causally related to the motor vehicle accident that occurred on December 7, 2016. [Appellant] states that, prior to this accident, her shoulder was fine and had no problems." He advised that appellant did not require further treatment.

OWCP received June 12, 19, and 26, July 5, 12, and 30, and August 14, 2019 reports related to appellant's spinal cord stimulator placement and after care.

In a June 19, 2019 report, Dr. Dengler advised that appellant should continue off work.

On July 30, 2019 Dr. Dengler completed a work capacity evaluation (Form OWCP-5c) in which he noted appellant's diagnoses as cervical spondylosis and radiculopathy and related that appellant could return to sedentary work, starting August 6, 2019, for three hours a day.

In an August 14, 2019 report, Dr. Spevak noted that appellant was treated for chronic pain syndrome of the neck and left arm.

By decision dated August 29, 2019, OWCP denied appellant's claim for disability for the period from March 18 through June 7, 2019, finding that the medical evidence of record was insufficient to establish that appellant was disabled from work due to her accepted work-related conditions. It further found that medical evidence of record was insufficient to establish that adhesive capsulitis and the attendant surgery were causally related to the accepted December 7, 2016 employment injury.

The Board, having duly considered the matter finds that OWCP did not discuss medical evidence submitted in support of appellant's claims. Thus, the Board finds that this case is not in posture for decision.<sup>2</sup>

In the case of *William A. Couch*,<sup>3</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that medical reports were not reviewed by OWCP in its August 29, 2019 decision.<sup>4</sup> OWCP did not address the reports from Dr. Dengler regarding appellant's disability due to appellant's accepted cervical conditions. Furthermore, OWCP also did not address medical reports from Drs. Spevak, Filart, and Stockin.

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>5</sup> OWCP did not consider medical reports from Drs. Dengler, Spevak, Filart, and Stockin, the Board cannot review such evidence for the first time on appeal.<sup>6</sup>

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<sup>2</sup> See *A.C.*, Docket No. 20-0917 (issued January 27, 2021); *K.F.*, Docket No. 19-0888 (issued January 2, 2020); *J.J.*, Docket No. 13-1666 (issued August 18, 2014).

<sup>3</sup> 41 ECAB 548 (1990).

<sup>4</sup> See *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

<sup>5</sup> See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 3.

<sup>6</sup> 20 C.F.R. § 501.2(c). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.<sup>7</sup> Following this and other such further development as deemed necessary, OWCP shall issue a de novo decision.

**IT IS HEREBY ORDERED THAT** the August 29, 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: March 4, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> *M.J.*, Docket No. 18-0605 (issued April 12, 2019).