

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

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**S.F., Appellant**

**and**

**U.S. POSTAL SERVICE, UNIVERSITY  
STATION, Dallas, TX, Employer**

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**Docket No. 20-1492  
Issued: August 17, 2022**

*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 August 4, 2020 appellant filed a timely appeal from an April 13, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> The Board notes that, following the April 13, 2020 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional conditions, including cervical discopathy with right upper extremity radiculopathy as causally related to the accepted employment injury.

## FACTUAL HISTORY

On June 25, 2009 appellant, then a 52-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a torn rotator cuff in the right shoulder and herniated cervical disc at C5-6 due to factors of his federal employment, including repetitively carrying a mailbag weighing up to 35 pounds, lifting parcels, pushing and pulling postal carts, and loading and unloading trays of mail. He noted that he first became aware of his condition on December 2, 2007 and first realized his conditions were related to his federal employment on August 25, 2008. On August 17, 2009 OWCP accepted appellant's claim for sprain of the right shoulder, upper arm, and neck.

In a report dated June 25, 2009, Dr. Christopher R. Mann, an osteopath, performed a physical examination and reviewed appellant's medical history. He noted a June 8, 2009 magnetic resonance imaging (MRI) scan demonstrated disc bulges at C3-4, C4-5, C5-6, and C6-7. Dr. Mann also reviewed a right shoulder MRI scan of even date, which demonstrated partial tears of the supraspinatus, subscapularis, and infraspinatus tendons as well as acromioclavicular (AC) joint arthritis. He diagnosed right shoulder rotator cuff tear, right shoulder impingement, and cervical discopathy with right upper extremity radiculopathy. Dr. Mann opined that appellant's rotator cuff tear and impingement fit correctly with his high repetition overhead work activities as well as pushing, pulling, and lifting of the mailbag as required by a letter carrier. In regard to his cervical condition, he opined that repetitively lifting and turning his head to grab mail from the trunk of his vehicle caused him to sustain cervical discopathy with considerable weakness in the right upper extremity. In a work restriction evaluation of even date, Dr. Mann diagnosed right shoulder sprain, cervical strain, right shoulder impingement, and cervical discopathy.

On September 23, 2009 Dr. Daniel Sunwoo, a Board-certified physiatrist, diagnosed neck pain, cervical intervertebral disc displacement, cervical radiculopathy, and rotator cuff syndrome.

On October 22, 2009 Dr. Mann opined that appellant's cervical "pain and loss of strength in the right upper extremity is directly related to the work injury of December 2, 2007."

In notes dated November 8, 2012, Dr. Mann found that appellant had experienced a recurrence of his December 2, 2007 employment injury with increased radiculopathy from muscle spasm throughout the neck and upper back. He noted that, following the December 2, 2007 employment injury, appellant was performing his regular duties as a letter carrier, when on October 31, 2012 he delivered over 500 cookbooks. Dr. Mann diagnosed neck, shoulder, and arm sprain and attributed these conditions to his work activities. He performed a physical examination and found that appellant was totally disabled from November 1 through 12, 2012. Dr. Patrick K. Stanton, an osteopath, administered cervical epidural steroid injections on September 6, 2013, May 9 and October 16, 2014. Drs. Mann and Stanton continued to treat appellant on April 4, May 16, June 26, July 16, and October 24, 2014.

In a March 26, 2015 note, Dr. Mann examined appellant due to a resurgence of his cervical radiculopathy and increased headaches. He opined that his accepted conditions should be expanded to include cervical radiculopathy and disc degeneration that were evident at the initial examination.

On April 3, 2015 appellant underwent an additional cervical MRI scan, which demonstrated central disc extrusion at C3-4 and retrolisthesis C5 on C6. In an April 30, 2015 note, Dr. Mann again found that he was experiencing a resurgence of his cervical radiculopathy and recommended expansion of his accepted conditions.

In a June 22, 2015 note, Dr. Jamie Spicer, a Board-certified family practitioner, diagnosed chronic pain syndrome, thoracic back pain, and bilateral subscapular bursitis. On July 21, 2015 he administered bilateral cervical facet injections at C2-3, C5-6, and C6-7.

Dr. Mann completed a note on September 15, 2015 diagnosing sprains of the shoulder, arm, and neck.

In September 17 and November 19, 2015 and February 11, 2016 notes, Dr. Spicer diagnosed cervical spondylosis without myelopathy, cervical spinal stenosis, and cervicgia. He noted that appellant had experienced neck pain for several years and had recently retired. Dr. Spicer administered bilateral C3-5 facet injections on April 5, 2016. He repeated his prior diagnoses on August 16, 2016.

Dr. Mann examined appellant on February 11, 2016 and diagnosed sprain of the right shoulder joint, and cervical spine sprain. He repeated his conclusion that appellant's accepted conditions should be expanded to include cervical radiculopathy and disc degeneration.

Dr. Spicer examined appellant on October 25, 2016, April 25, July 11, and November 21, 2017 diagnosing cervical spondylosis without myelopathy, chronic pain syndrome, thoracic back pain, and right hand pain. He administered bilateral C3-5 facet injections on May 16 and December 12, 2017. Dr. Spicer repeated his diagnoses on January 23 and March 13, 2018. He performed bilateral C3-6 medial branch blocks on April 16, 2018.

In a letter dated May 11, 2018, OWCP noted that appellant's claim had been accepted for sprain of the right shoulder, upper arm, and neck. It noted that Dr. Spicer had requested authorization for additional spinal injections. OWCP notified appellant that additional evidence was required before this treatment could be authorized as it did not appear to be medically necessary for or causally related to his accepted conditions. It requested additional supporting medical evidence and afforded 30 days for a response.

On June 20, 2018 appellant resubmitted the November 8, 2012 report from Dr. Mann.

On July 24, 2018 Dr. Spicer examined appellant due to his diagnosed conditions of spondylosis without myelopathy or radiculopathy, cervical region, chronic pain syndrome, thoracic back pain, and pain in the right hand.

By decision dated August 1, 2018, OWCP denied appellant's request to expand the acceptance of his claim. It found that the medical evidence of record did not provide a rationalized

opinion that the additional conditions of cervical spondylosis, spondylosis without myelopathy, cervical radiculopathy, and chronic pain syndrome were causally related to his accepted employment injury.

In a July 30, 2018 report, Dr. Mann requested that the acceptance of appellant's claim be expanded to include the additional conditions of cervical spondylosis, cervicothoracic spondylosis, and cervical disc disorder with radiculopathy C3-7. He reviewed appellant's employment duties as a letter carrier and noted that he was required to repeatedly twist and turn his head while looking up, to repeatedly reach above his head while loading and unloading his postal vehicle as well as while casing mail. Dr Mann noted that he was required to lift trays of mail from above shoulder level, which engaged the neck and could cause a great deal of repetitive strain on the cervical spine. He opined, with a reasonable degree of medical certainty, that appellant's repetitive overuse activity caused the injuries to his cervical spine. Dr. Mann determined that high-repetition over-shoulder lifting, grasping, and filing, while looking up both right and left as well as reaching for packages directly contributed to the onset of significant cervical facet arthrosis or hypertrophy and degenerative disc disease as demonstrated by MRI scan. He found that appellant continued to manifest symptoms directly related to his work injury of bilateral upper extremity neuralgias and paresthesias with increased weakness with reaching or overhead activities.

On October 16, 2018 Dr. Spicer repeated his diagnoses and findings.

On November 26, 2018 appellant requested reconsideration of the August 1, 2018 decision.

By decision dated January 23 2019, OWCP denied modification of the August 1, 2018 decision.

In June 24 and September 16, 2019 notes, Dr. Spicer repeated his diagnoses and findings.

On November 12, 2019 appellant requested reconsideration. He resubmitted Dr. Mann's June 25, 2009 note, November 8, 2012 report, April 30, 2015 note, and his July 30, 2018 report. Appellant provided an August 29, 2013 note from Dr. Mann noting that by the end of the workday of carrying mail he was in discomfort in his neck and shoulders.

In an October 8, 2019 report, Dr. Mann reviewed his treatment notes and asserted that his initial diagnoses was cervical discopathy with right upper extremity radiculopathy, but that OWCP accepted the claim for only sprains of the right shoulder and neck. He again asserted that appellant had sustained a recurrence of his accepted conditions on October 31, 2012 and that he had undergone medical treatment since that time.

On February 20, 2020 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions for a second opinion evaluation with Dr. Jason G. Stewart, a Board-certified orthopedic surgeon.

In a March 4, 2020 report, Dr. Stewart reviewed the SOAF, listing appellant's job duties, and his medical treatment. He performed a physical examination and noted that he exhibited diffuse tenderness throughout the cervical spine in the paraspinal musculature with limited range of motion. Dr. Stewart diagnosed prior sprain of ligaments of the cervical spine. He found that

no identifiable additional diagnoses were caused or aggravated by appellant's job duties. Dr. Stewart was unable to find any medical evidence that would establish a causal relationship between appellant's current cervical condition and his accepted job duties.

By decision dated April 13, 2020, OWCP denied modification of its prior decision. It found that Dr. Stewart's report was entitled to the weight of the medical evidence.

### **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.<sup>3</sup>

The medical evidence required to establish causal relationship between a claimed specific condition or period of disability and an employment injury is rationalized medical opinion evidence.<sup>4</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>5</sup>

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>6</sup>

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>7</sup> The implementing regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a

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<sup>3</sup> *W.H.*, Docket No. 22-0117 (issued June 6, 2022); *S.M.*, Docket No. 20-0241 (issued August 25, 2020); *see D.M.*, Docket No. 18-0757 (issued November 14, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>4</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>5</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Victor J. Woodhams*, 41 ECAB 345 (2005).

<sup>6</sup> *B.P.*, Docket No. 19-1376 (issued January 4, 2021); *M.O.*, Docket No. 18-0229 (issued September 23, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>7</sup> *Supra* note 2 at § 8123(a).

physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>8</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision due to an unresolved conflict in the medical opinion evidence.

OWCP accepted that appellant sustained cervical and right shoulder strains due to his accepted employment duties. Initially, Dr. Mann had diagnosed cervical and right shoulder strains as well as cervical discopathy with right upper extremity radiculopathy. In his June 25, 2009 and July 30, 2018 reports, he reviewed appellant's employment duties as a letter carrier and noted that he was required to repeatedly twist and turn his head while looking up, to repeatedly reach above his head while loading and unloading his postal vehicle as well as while casing mail. Dr. Mann noted that he was required to lift trays of mail from above shoulder level, which engaged the neck and could cause a great deal of repetitive strain on the cervical spine. He opined that appellant's repetitive overuse activity caused the injuries to appellant's cervical spine with a reasonable degree of medical certainty and directly contributed to the onset of significant cervical facet arthrosis or hypertrophy and degenerative disc disease as demonstrated by the MRI scan.

OWCP requested that Dr. Stewart, the second opinion physician, address whether appellant had sustained any additional conditions as a result of his accepted employment duties.

In his March 4, 2020 report, Dr. Stewart reviewed the SOAF and appellant's medical treatment. He found that no identifiable additional diagnoses were caused or aggravated by appellant's job duties. Dr. Stewart reported that he was unable to find any medical evidence that would establish a causal relationship between appellant's current cervical condition and his accepted employment injury.

Both Drs. Mann and Stewart provided a description of the employment duties and both discussed the medical evidence and their physical findings. The Board, therefore, finds that a conflict in medical opinion exists regarding whether appellant developed additional conditions as a result of his employment injury.<sup>9</sup> OWCP regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.<sup>10</sup> The Board will, therefore, remand the case for OWCP to refer appellant to an impartial medical examiner to determine whether the acceptance of his claim should be expanded to include the additional conditions, including cervical discopathy with right upper extremity

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<sup>8</sup> 20 C.F.R. § 10.321; *S.N.*, Docket No. 19-1050 (issued July 31, 2020); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *Shirley L. Steib*, 46 ECAB 309 (1994).

<sup>9</sup> *S.N.*, *id.*; *D.S.*, Docket No. 20-0146 (issued June 11, 2020); *W.B.*, Docket No. 17-1994 (issued June 8, 2018).

<sup>10</sup> 5 U.S.C. § 8123(a); *S.N.*, *id.*; *G.K.*, Docket No. 16-1119 (issued March 16, 2018).

radiculopathy causally related to his accepted employment injury.<sup>11</sup> Following this and such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision due to an unresolved conflict in the medical opinion evidence.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 13, 2020 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: August 17, 2022  
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

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<sup>11</sup> *S.N., id.; P.S.*, Docket No. 17-0802 (issued August 18, 2017).