United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 21-1014**
	)	**Issued: July 8, 2022**
U.S. POSTAL SERVICE, CLAYTON BRANCH POST OFFICE, Clayton, MO, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 16, 2021 appellant filed a timely appeal from a May 12, 2021 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 over the merits of this case.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her accepted October 21, 2002

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the May 12, 2021 decision, appellant submitted additional evidence to OWCP. 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*.

employment injury; and (2) whether OWCP has abused its discretion in denying appellant's request for authorization for a right side reverse shoulder replacement.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 21, 2002 appellant, a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she was injured when her vehicle was struck from behind while in the performance of duty. OWCP accepted her claim for cervical, right shoulder, right wrist, and lumbar strains.[4] Appellant stopped work on October 23, 2002 and did not return.

On March 3, 2004 appellant was treated by Dr. Donald Bassman, a Board-certified orthopedist. Dr. Bassman noted that he performed a right knee arthroscopy and partial medial meniscectomy and arthroplasty of the medial tibial and medial femoral surfaces. He diagnosed torn medial meniscus and degenerative joint disease.

On December 18, 2006 Dr. Bassman performed a total right knee replacement and diagnosed degenerative joint disease of the left knee.

On September 26, 2008 Dr. Bassman performed a removal and excision of osteochondroma from the distal right femur and diagnosed osteochondroma of the distal right femur medially.

Appellant came under the treatment of Dr. Jody T. Jachna, a Board-certified orthopedist, who on August 15, 2011 diagnosed right painful total knee arthroplasty due to lack of patella resurfacing and performed a right knee patellar resurfacing. On November 15, 2011 Dr. Jachna diagnosed left knee patellar degenerative joint disease after knee arthroplasty and performed a left knee revision total knee arthroplasty for patellar resurfacing.

Appellant submitted a February 1, 2013 report from Dr. Jachna who treated appellant for swelling in the legs. She reported slipping and falling several times with subsequent pain and swelling below her knees. Dr. Jachna diagnosed right shoulder possible recurrent rotator cuff tear and bilateral knee arthroplasties with patellar resurfacing and contusions.[5]

[3] Docket No. 13-2051 (issued February 21, 2014).

[4] On March 7, 2005 appellant filed an occupational disease claim for bilateral knee condition, which was accepted for aggravation of bilateral internal knee derangement. OWCP assigned the claim OWCP File No. xxxxxx049. It administratively combined OWCP File Nos. xxxxxx049 and xxxxxx663 with the latter serving as the master file claim.

[5] Appellant submitted an MRI scan of the right shoulder dated February 7, 2013, which revealed a full thickness tear of the entirety of the supraspinatus tendon with retraction, similar to prior examination, suspected tear of the biceps tendon and superior anterior labrum.

OWCP received additional evidence. A magnetic resonance imaging (MRI) scan of the cervical spine dated February 12, 2018 revealed mild-to-moderate cervical spondylosis worse at C6-7 with moderate canal stenosis and bilateral foraminal stenosis, varying degrees of foraminal encroachment, and possible ischemic disease.

On April 4, 2018 Dr. Jachna performed an open right carpal tunnel release and diagnosed right carpal tunnel syndrome.

Dr. Jachna subsequently treated appellant on December 10, 2018 and diagnosed right shoulder cuff tear arthropathy and right carpal tunnel release. She performed a steroid injection into the subacromial space of the right shoulder. On August 29, 2019 appellant presented with very limited range of motion of the right shoulder with crepitus in all planes. Dr. Jachna diagnosed right shoulder cuff tear arthropathy. She recommended a consultation for a reverse shoulder arthroplasty.

On November 6, 2019 Dr. Scott G. Kaar, a Board-certified orthopedist, evaluated appellant for a right rotator cuff tear sustained at work years ago. He noted tenderness of the right rotator cuff insertion, restricted range of motion, and positive impingement sign. An x-ray of the right shoulder of even date revealed mild-to-moderate arthritis. Dr. Kaar diagnosed right shoulder chronic irreparable rotator cuff tear. He requested authorization to perform right reverse total shoulder arthroplasty. In a patient status report of even date, Dr. Kaar returned appellant to work with restrictions.

A computerized tomography (CT) scan of the right shoulder dated February 15, 2020 revealed moderate osteoarthritis of the glenohumeral and acromioclavicular (AC) joints, superior subluxation of the humeral head, and supraspinatus and infraspinatus muscle atrophy consistent with chronic rotator cuff tear.

In development letters dated March 16 and April 21, 2020, OWCP notified appellant that her request for authorization of the right total shoulder replacement could not be approved. It indicated that the evidence was insufficient to authorize the proposed surgery, because the requested treatment did not appear to be medically necessary for and causally related to the accepted conditions. OWCP requested further evidence for consideration regarding the right shoulder condition.

In reports dated March 25 and May 5, 2020, Dr. Kaar treated appellant for an October 21, 2002 work injury to the right shoulder. He diagnosed traumatic full thickness and chronic rotator cuff tear arthropathy originating from her right shoulder injury in 2002. Dr. Kaar indicated that the tear was too large, retracted, and chronic to perform a repair or joint preserving procedure. He opined that appellant failed comprehensive nonoperative treatment and was a candidate for reverse total shoulder replacement due to post-traumatic rotator cuff tear arthropathy.

On May 6, 2020 OWCP referred appellant's case to a DMA to determine whether appellant developed a right full-thickness shoulder tear/chronic rotator cuff arthropathy as a consequence of the work-related injury and the medical necessity of the proposed right reverse total shoulder replacement. It prepared a SOAF dated April 21, 2020 noting in part that appellant's claim was

accepted for cervical, right shoulder, right wrist, and lumbar strains under OWCP File No. xxxxxx633

On June 1, 2020 Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as the DMA, reviewed the SOAF and the medical evidence of record and indicated that appellant developed a full-thickness chronic tear with rotator cuff arthropathy of the right shoulder. However, the Dr. Fellars concluded that appellant did not have intraarticular pathology as a result of her accepted work injury. Although appellant was diagnosed with a shoulder strain, he opined that the pain was located in the trapezius, radiating from her cervical spine, and there was no evidence of shoulder pathology. With regard to Dr. Kaar's May 5, 2020 report, Dr. Fellars disagreed with his findings and asserted that the medical records of 2002 do not support an intraarticular shoulder pathology rather the pain was radiating from the cervical spine toward her shoulder and was incorrectly diagnosed as a shoulder strain. The DMA concluded that the medical evidence did not support her shoulder pathology was work related.

On June 10, 2020 OWCP advised that a conflict in medical opinion evidence existed between Dr. Kaar, appellant's treating physician, and Dr. Fellars, an OWCP DMA, regarding whether appellant developed a right full thickness shoulder tear/chronic rotator cuff arthropathy as a consequence of the work-related injury and the medical necessity of the proposed reverse total shoulder replacement.

In a report dated October 7, 2020, Dr. Kaar diagnosed work-related right shoulder irreparable rotator cuff and rotator cuff tear arthropathy and recommended a right reverse total shoulder arthroplasty. In the February 3, 2021 report, Lauren E. Smith, a physician's assistant, diagnosed work-related right shoulder irreparable rotator cuff and rotator cuff tear arthropathy and recommended a right reverse total shoulder arthroplasty. In a February 3, 2021 work excuse note and patient status report, Dr. Kaar returned appellant to work with restrictions.

On February 9, 2021 OWCP referred appellant to Dr. Michael Ralph, a Board-certified orthopedist, to resolve the conflict in medical opinion between Dr. Kaar and Dr. Fellars. It prepared a SOAF dated April 21, 2020 noting in part that appellant's claim was accepted for cervical, right shoulder, right wrist, and lumbar strain under OWCP File No. xxxxxxx633.

In a March 7, 2021 report, Dr. Ralph noted his review of the SOAF, as well as the medical evidence of record. He opined that appellant's accepted conditions of cervical strain, right shoulder strain, right wrist strain, and lumbar strain resolved decades ago. Dr. Ralph opined that the diagnosed full-thickness shoulder tear, chronic rotator cuff arthropathy, and right total shoulder replacement surgery were unrelated to the events of 2002. He advised that appellant had no injury or aggravation to her body of a residual nature as it related to the accepted conditions. Dr. Ralph indicated that appellant did not continue to have residuals of the work-related conditions and noted that the accepted conditions resolved shortly after the accident occurred. He further stated: "I would not have accepted the conditions of her right and her left knee, nor would I have recommended that the surgeries that were done be related to the event of 2002." Dr. Ralph noted that OWCP did not comment that the knee problems were an accepted condition; however, upon review of the record it appeared to be an accepted claim.

By decision dated May 12, 2021, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish that the additional conditions of right shoulder full-thickness tear/chronic rotator cuff arthropathy were causally related to the accepted October 21, 2002 employment injury. It further denied authorization for the reverse right shoulder replacement. OWCP noted that the referee report of Dr. Ralph established that appellant had not developed right shoulder full-thickness tear/chronic rotator cuff arthropathy as a consequence of her accepted injury. It found that the weight of the medical opinion evidence rested with Dr. Ralph, who concluded that the requested treatment was not medically necessary for appellant's accepted employment injury.

LEGAL PRECEDENT -- ISSUE 1

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.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.[8] 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 specific employment factor(s).[9]

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 a claimant's own intentional misconduct.[10] Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural consequence of a compensable primary injury.[11]

FECA provides that if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[12] For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and

[6] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

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

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id.*

[10] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004); 1 Arthur Larson & Lex K. Larson, *The Law of Workers' Compensation* 10-1 (2006).

[11] *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

[12] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

rationale.[13] Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well-reasoned and based upon a proper factual background, must be given special weight.[14]

ANALYSIS -- ISSUE 1

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

OWCP determined that a conflict in medical opinion existed between Dr. Kaar, appellant's treating physician, who indicated that appellant developed a right full-thickness shoulder tear/chronic rotator cuff arthropathy as a consequence of the work-related injury and required surgery, and Dr. Fellars, a DMA, who opined that the full-thickness chronic tear with rotator cuff arthropathy of the right shoulder and proposed surgery were not causally related to the work injury. Consequently, it properly referred appellant to Dr. Ralph, a Board-certified orthopedic surgeon for an impartial medical examination. The Board finds, however, that there was no conflict of medical opinion at the time of OWCP's referral to Dr. Ralph.

The April 21, 2020 SOAF provided to the DMA specifically noted that appellant's claim was accepted for cervical, right shoulder, right wrist, and lumbar strain. In a report dated June 1, 2020, the DMA, in addressing appellant's requested conditions for expansion of the right shoulder, advised that the medical records of 2002 did not support an intraarticular right shoulder pathology; rather the pain was radiating from the cervical spine toward her shoulder and was incorrectly diagnosed as a shoulder strain. The DMA did not accept the right shoulder strain as factual and work related. He concluded that appellant's claim should not be expanded to include right full-thickness shoulder tear/chronic rotator cuff arthropathy.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF. OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician 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.[15] As the DMA did not use the SOAF as the framework in forming his opinion, his opinion is of diminished probative value.[16]

Even though the report of Dr. Ralph is not entitled to the special weight afforded to the opinion of an impartial medical specialist resolving a conflict of medical opinion, his report can still be considered for its own intrinsic value[17] and can still constitute the weight of the medical

[13] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[14] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

[15] *Id.*; *see also N.W.*, Docket No. 16-1890 (issued June 5, 2017).

[16] *Id.*; *see also Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

[17] *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

evidence.[18] However, Dr. Ralph's report is similarly flawed, as he did not use the SOAF provided as the framework in forming his opinion. Dr. Ralph stated: "I would not have accepted the conditions of her right and her left knee, nor would I have recommended that the surgeries that were done be related to the event of 2002." He did not acknowledge or understand that appellant's claim was accepted for cervical, right shoulder, right wrist and lumbar strain under OWCP File No. xxxxxx633 and that this claim was administratively combined with OWCP File No. xxxxxx049, which was accepted for aggravation of bilateral internal knee derangement. As he failed to rely upon a complete and accurate SOAF, his opinion is of diminished probative.[19]

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.[20] Once OWCP undertook development of the evidence by referring appellant to a referee physician, it had the duty to secure an appropriate report addressing the relevant issues.[21] As Dr. Ralph did not base his report on an accurate factual history, the case shall be remanded to OWCP for further development of the medical evidence.

On remand, OWCP shall prepare an updated SOAF and then obtain a supplemental opinion from Dr. Ralph. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[22]

CONCLUSION

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

[18] *See Leanne E. Maynard*, 43 ECAB 482 (1992); *Rosa Whitfield Swain*, 38 ECAB 368 (1987) (a physician was improperly designated as an impartial medical specialist, but his opinion nonetheless constituted the weight of the medical evidence).

[19] *See S.T.*, Docket No. 18-1144 (issued August 9, 2019) (medical opinions based on an incomplete or inaccurate history are of limited probative value).

[20] *See D.M.*, Docket No. 19-1181 (issued December 2, 2019).

[21] *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Richard F. Williams*, 55 ECAB 343 (2004).

[22] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2021 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: July 8, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board