

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

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C.M., Appellant )  
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)

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Meredith, NH, Employer )  
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**Docket No. 22-0462  
Issued: November 10, 2022**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 7, 2022 appellant, through counsel, filed a timely appeal from a January 18, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

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

<sup>3</sup> The Board notes that following the January 18, 2022 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish the expansion of the acceptance of her claim to include the additional conditions of right cubital tunnel with intersection syndrome, right carpal tunnel syndrome, and right rotator cuff tear as causally related to the accepted September 21, 2020 employment injury.

## FACTUAL HISTORY

On October 6, 2020 appellant, then a 34-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2020 she broke her nose and injured her right arm when a box weighing over 40 pounds fell off a pallet she was pushing and hit her on her face and right arm while in the performance of duty.

In September 23 and 30, 2020 reports, a certified physician assistant and a family nurse practitioner noted that appellant was injured at work on September 21, 2020 when a box fell on her right arm, causing continuing numbness and discomfort in her right arm, elbow, and wrist. An assessment of right forearm contusion was provided, and appellant was placed on light-duty status until she was seen by an orthopedist.

September 23, 2020 x-rays of appellant's right thumb, right humerus, and right forearm were negative for acute osseous processes. An October 16, 2020 electromyography/nerve conduction velocity (EMG/NCV) study found no electrophysiological evidence for a right median, ulnar, or radial neuropathy, but showed dynamic paresthesia.

In an October 5, 2020 report, Dr. Lance J. Klingler, a Board-certified orthopedic surgeon, reported the history of injury as appellant was at work pushing a large cart of boxes when a 40-pound box fell off the top of the stack and hit her on the head and in the right arm. He also noted that she broke her nose. Dr. Klingler diagnosed right cubital tunnel with intersection syndrome. In an accompanying October 5, 2020 medical form, Dr. Klingler diagnosed right cubital tunnel/intersection syndrome which he opined, by checking a box marked "Yes," was a result of the September 21, 2020 work injury. He provided work restrictions and indicated that appellant could continue working with restrictions.

In follow-up reports dated October 26 and December 4, 2020 and January 15, 2021, Dr. Klingler indicated that appellant had right mild cubital tunnel syndrome with tennis elbow and resolving intersection syndrome, shoulder pain with arm numbness, and carpal tunnel syndrome. In accompanying form reports of even date, Dr. Klingler opined, by checking a box marked "Yes" that the diagnosed right cubital tunnel/intersection syndrome and right shoulder pain, carpal tunnel syndrome, and cubital tunnel syndrome conditions were the result of the September 21, 2020 work injury.

Dr. Klingler also provided duty status reports (Form CA-17) dated January 15 and February 5, 2021 and attending physician reports (Form CA-20) dated January 15, 2021 and undated, in which he opined, with a checkmark "Yes," that the September 21, 2020 employment incident caused or aggravated appellant's right cubital tunnel with intersection syndrome, carpal tunnel and right shoulder sprain/strain, contusion, and rotator cuff tear.

A January 25, 2021 magnetic resonance imaging (MRI) arthrogram of appellant's right shoulder was reported as being unremarkable.

In a February 18, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP provided 30 days to respond.

In response, OWCP received a statement from appellant dated March 1, 2021 and a March 15, 2021 operative report indicating that appellant had undergone right carpal tunnel release, right ulnar nerve transposition, and right flexor pronator mass lengthening.

On March 23, 2021 OWCP accepted appellant's claim for sprain of right shoulder, strain of right shoulder, and right shoulder contusion.

By separate decision dated March 23, 2021, OWCP denied appellant's claim for the additional conditions of right cubital tunnel with intersection syndrome, carpal tunnel syndrome, and right rotator cuff tear, finding that the medical evidence of record was insufficient to establish causal relationship between the additional diagnosed conditions and the accepted employment injury.

Thereafter, OWCP received a May 14, 2021 statement from appellant reiterating the details of her September 21, 2020 injury. It also received reports from physical therapists dated December 4 and 16, 22, 29, and 31, 2020; and January 4, 11, 14, 18, 21, 25, February 1, 4, 8, 11, 16, 17, 23, and 25, 2021.

In a February 5, 2021 report, Dr. Patrick J. Casey, a Board-certified orthopedic surgeon, noted the history of appellant's September 21, 2020 employment injury. He noted appellant's medical course and provided examination findings. Dr. Casey noted that appellant's shoulder MRI scan was unremarkable and that her EMG study was also unremarkable for any kind of radiculopathy or carpal tunnel syndrome, but he noted that a radiologist had commented that appellant might have dynamic symptoms, not seen on an EMG study. He diagnosed right arm pain.

Dr. Klingler continued to submit progress reports and form reports, which noted diagnoses of right mild cubital tunnel with tennis elbow and resolving intersection syndrome and indicated that appellant could work with restrictions. In February 18, 2021 reports, Dr. Klingler indicated that appellant's conditions of right carpal tunnel syndrome and cubital tunnel syndrome were worsening. He related that she had positive Tinel's and Phalen's tests at the right cubital tunnel and at the median nerve. Dr. Klingler also continued to opine, in a February 18, 2021 form, with a checkmark "Yes," that appellant's right carpal tunnel syndrome and cubital tunnel syndrome conditions were the result of the September 21, 2020 work injury.

In a March 16, 2021 report, Dr. Klingler noted that on September 21, 2020 appellant was working when a box fell and struck her in her face and right arm. He indicated that she was diagnosed with a right shoulder strain/contusion and right carpal and cubital tunnel syndrome. Dr. Klingler explained that the force in which the box struck appellant was the direct cause of her injuries and need for ongoing treatment, including surgical intervention for the carpal and cubital tunnel therapy. In April 7 and 21, 2021 CA-20 forms, Dr. Klingler again opined that appellant's

right shoulder contusion/strain, right carpal tunnel syndrome, and cubital tunnel syndrome conditions were caused by being struck by a box.

In a progress report dated June 1, 2021, Dr. Klinger related that appellant still had shoulder pain. He related that she should perform modified work duties, and undergo additional physical therapy. In another report dated July 3, 2021, Dr. Klinger related that appellant was seen in follow up, but that she was not improving with therapy. He related an impression of carpal tunnel syndrome and cubital tunnel syndrome.

Appellant underwent right upper extremity EMG studies on July 23, 2021, which were interpreted as essentially normal studies.

In a progress report dated August 2, 2021, Dr. Klinger again related an impression of carpal and cubital tunnel syndromes, with neck pain and radiation. On August 11, 2021 he completed a Form CA-20 in which he related that an EMG study had confirmed appellant's carpal tunnel syndrome and cubital tunnel syndrome. Dr. Klinger diagnosed cervical radiculopathy, right shoulder contusion, and right carpal tunnel syndrome and cubital tunnel syndrome. He indicated by check mark "yes" that appellant's conditions were caused by the September 21, 2020 incident.

An August 12, 2021 MRI scan of appellant's cervical spine revealed findings of degenerative disc disease, mild spinal canal stenosis at C4-C6, and mild-to-moderate right-sided neural foraminal narrowing at C5-C6.

In an October 6, 2021 report, Dr. Klinger further explained that appellant's right arm contusion caused an irritation/compression of the nerves in her right arm for which she was diagnosed with right cubital tunnel with intersection syndrome. He thus opined that the box striking appellant at work was the direct cause of her right-hand contusion, right arm contusion, right hand numbness, right cubital tunnel intersection syndrome, and right carpal tunnel syndrome.

Dr. Jacob Kaufman, a Board-certified neurologist, performed a neurologic consultation on October 6, 2021. He related that due to appellant's ongoing right arm symptoms, he believed it was necessary to exclude a demyelinating disorder (*e.g.*, multiple sclerosis) with an MRI scan of appellant's brain. Dr. Kaufman further related that if that study was normal, and her repeat cervical MRI scan was normal, her condition would be either musculoskeletal/orthopedic (from the cervical spine or another location) or the onset of a complex regional pain disorder.

Appellant underwent another cervical MRI scan on October 8, 2021 which was compared to the August 12, 2021 MRI scan. It found that there was an interval decrease in the C3-4 disc bulge, with corresponding decrease in the mild spinal canal stenosis at that level, and persistent mild canal stenosis at C4-C6.

On October 20, 2021 appellant, through counsel, requested reconsideration.

In an October 18, 2021 progress report, Dr. Klinger recommended chiropractic treatment as appellant may have some dynamic proximal nerve irritation. In a December 20, 2021 report, he requested a repeat EMG study for the right carpal tunnel syndrome and cubital tunnel syndrome diagnoses.

By decision dated January 18, 2022, OWCP denied modification of the March 23, 2021 decision.

### **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.<sup>4</sup> To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.<sup>5</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 injury identified by the employee.<sup>6</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish the expansion of the acceptance of her claim to include the additional conditions of right cubital tunnel with intersection syndrome, right carpal tunnel syndrome, and right rotator cuff tear as causally related to the accepted September 21, 2020 employment injury.

In his narrative report dated March 16, 2021, Dr. Klinger noted that on September 21, 2020 appellant was working when a box fell and struck her in her face and right arm. He indicated that she was diagnosed with a right shoulder strain/contusion and right carpal tunnel syndrome and cubital tunnel syndrome and explained that the force in which the box struck appellant was the direct cause of her injuries and need for ongoing treatment, including surgical intervention for the carpal and cubital tunnel conditions. In an October 6, 2021 narrative report, Dr. Klinger also opined that the box striking appellant at work was also the direct cause of her right hand contusion, right arm contusion, right hand numbness, right cubital tunnel intersection syndrome, and right carpal tunnel syndrome. He concluded in his October 6, 2021 report that the right arm contusion caused an irritation/compression of the nerves, but failed to sufficiently explain with medical rationale how the accepted employment injury caused or contributed to the additional diagnosed conditions. The Board has held that a medical opinion which is and fails to provide a rationalized

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<sup>4</sup> *M.W.*, Docket No. 21-1260 (issued September 9, 2022); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>5</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

explanation as to how the work injury caused the diagnosed condition is of limited probative value.<sup>7</sup> As such, this evidence is insufficient to meet appellant's burden of proof.

Dr. Klinger also submitted numerous form reports, including Forms CA-20 and CA-17 reports from October 26, 2020. While these form reports provided an affirmative opinion which supported causal relationship, they do not explain with rationale how the accepted incident either caused or contributed to appellant's diagnosed conditions.<sup>8</sup> Therefore, this evidence is insufficient to establish appellant's claim.

Dr. Klinger also provided multiple progress reports and form reports dated October 5, 2020 through December 20, 2021 which diagnosed right cubital tunnel syndrome with intersection syndrome and right carpal tunnel syndrome, but offered no opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>9</sup> These reports are therefore insufficient to establish the claim.

In his February 5, 2021 report, Dr. Casey noted the history of the September 21, 2020 work injury as appellant was pushing something and a box fell and hit her head and she wrenched her shoulder. He noted appellant's medical course, provided examination findings, and reported his findings on the right shoulder MRI scan and EMG study, noting that they were unremarkable. Dr. Casey diagnosed right arm pain. However, he did not provide an opinion on causal relationship. The Board has held that medical evidence does not offer an opinion on causal relationship is of no probative value.<sup>10</sup> Thus, Dr. Casey's report is not sufficient to meet appellant's burden of proof.

OWCP also received an October 6, 2021 report from Dr. Kaufman, who related that due to appellant's ongoing right arm symptoms, he believed it was necessary to exclude a demyelinating disorder. Dr. Kaufman further related that if that study was normal, and her repeat cervical MRI scan was normal, her condition would be either musculoskeletal/orthopedic (from the cervical spine or another location) or the onset of a complex regional pain disorder. The Board has held that a report which is speculative and equivocal is insufficient to meet a claimant's burden of proof.<sup>11</sup> This report is therefore also insufficient to establish appellant's claim.

Appellant also submitted reports from physical therapists and a nurse practitioner. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers

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<sup>7</sup> See *J.L.*, Docket No. 20-1162 (issued October 7, 2021); *C.M.*, Docket No. 19-0360 (issued February 25, 2020); *Mary A. Ceglia*, 55 ECAB 626 (2004). See also *J.W.*, Docket No. 18-0678 (issued March 3, 2020); see *V.T.*, Docket No. 18-0881 (issued November 19, 2018); *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>8</sup> *A.C.*, Docket No. 21-1307 (issued March 22, 2022); *J.G.*, Docket No. 20-0009 (issued September 28, 2020).

<sup>9</sup> *H.T.*, Docket No. 20-1238 (issued July 12, 2021); *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>10</sup> *Id.*

<sup>11</sup> See *P.P.*, Docket No. 21-1163 (issued March 30, 2022); *M.G.*, Docket No. 21-0747 (issued October 15, 2021).

are not considered physicians as defined under FECA.<sup>12</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

Appellant also submitted several diagnostic tests to include x-rays, MRI scans, and EMG/NCV testing. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>13</sup>

As the medical evidence of record is insufficient to establish causal relationship between appellant's additional diagnosed conditions and the accepted September 21, 2020 employment injury, the Board finds that appellant has not met her burden of proof.

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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish the expansion of the acceptance of her claim to include the additional conditions of right cubital tunnel with intersection syndrome, right carpal tunnel syndrome, and right rotator cuff tear as causally related to the accepted September 21, 2020 employment injury.

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<sup>12</sup> Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also R.L.*, Docket No. 19-0440 (issued July 8, 2019) (a physical therapist is not considered a physician under FECA). *See also D.S.*, Docket No. 19-1657 (issued July 20, 2020) (nurse practitioners and registered nurses are not considered physicians under FECA).

<sup>13</sup> *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *J.P.*, Docket No. 19-0216 (issued December 13, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2022  
Washington, DC

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

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

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