United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 22-0531**
	)	**Issued: November 18, 2022**
U.S. POSTAL SERVICE, OAKDALE POST OFFICE, Charlotte, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 22, 2022 appellant filed a timely appeal from an August 26, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish expansion of the acceptance of her claim to include right upper extremity conditions as causally related to the accepted employment injury.

FACTUAL HISTORY

On April 18, 2007 appellant, then a 45-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained headaches, neck pain, and a cervical spine injury causally related to factors of her federal employment, including repetitive

[1] 5 U.S.C. § 8101 *et seq*.

lifting when processing mail and parcels. She noted that she first became aware of her conditions on March 9, 2004 and first realized its relation to her federal employment on February 25, 2007.[2] Appellant stopped work on February 28, 2007 and did not return. By decision dated October 16, 2007, OWCP accepted the claim for aggravation of cervical strain. It paid appellant wage-loss compensation on the supplemental rolls, effective February 28, 2007, and on the periodic rolls, effective November 25, 2007.

By decision dated August 7, 2008, OWCP expanded the acceptance of the claim to include a right lateral C6-7 disc herniation. By decision dated June 29, 2009, it further expanded the acceptance of the claim to include right cervical radiculopathy and occipital neuralgia. Appellant remained under medical treatment.[3]

In reports dated October 3, 2013 and May 15, 2014, Dr. Joe D. Bernard, a Board-certified neurosurgeon, diagnosed C7 radiculopathy and foraminal stenosis with C7 nerve root compression.

On February 2, 2016 appellant underwent OWCP-authorized right C6-7 partial laminectomy, medial facetectomy, and foraminotomy performed by Dr. Bernard.[4]

In a March 16, 2017 report, Dr. Bernard noted increased neck and right upper extremity pain and paresthesias. On examination, he observed tenderness with range of motion of the right shoulder and a slightly diminished right biceps reflex. Dr. Bernard diagnosed long-standing cervical spondylosis status-post C6-7 laminectomy and foraminotomy, worsening symptoms into the right deltoid and biceps, C5 radiculopathy, C6 radiculopathy, brisk reflexes consistent with early myelopathy, and bilateral frozen shoulder, right greater than left. He recommended an anterior cervical discectomy and fusion at C4-5, C5-6, and C6-7.

[2] OWCP assigned the present claim OWCP File No. xxxxxx522. Appellant has a prior traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx840 wherein she alleged that on March 9, 2004, she sustained a head injury with pain radiating through the neck and shoulders when the door of a postal container unlocked, fell downward, and struck her on the head while in the performance of duty. By decision dated April 19, 2004, OWCP accepted that claim for head contusion, blunt trauma. By decision dated February 24, 2005, it expanded acceptance of that claim to include headache and cervicalgia. Appellant also has a prior traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx716, wherein she alleged that, on February 13, 2006, she aggravated her neck and shoulder when lifting tubs of mail while in the performance of duty. OWCP assigned the claim File OWCP No. xxxxxx716 processed that claim as a short form closure.

[3] A November 17, 2010 electromyogram and nerve conduction velocity (EMG/NCV) study demonstrated mild right median mononeuropathy with compression at the wrist without right-sided radiculopathy. From January 2012 through April 2013, appellant underwent a series of OWCP-authorized greater occipital nerve blocks. A June 12, 2013 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated subtle spinal cord atrophy on the left at C5-6 related to mild central spinal stenosis and left-sided disc herniation, and moderate right C6-7 neural foramen stenosis due to spurring. A November 6, 2015 MRI scan of the cervical spine demonstrated moderate right-sided neural foraminal stenosis at C6-7 and mild bilateral neural foraminal stenosis at C3-4 through C5-6.

[4] A November 8, 2016 MRI scan of the cervical spine demonstrated multilevel degenerative disc disease with foraminal stenosis on the right at C6-7, and an unchanged central disc protrusion at C3-4 with mild cord compression. A December 5, 2016 EMG/NCV study demonstrated mild right median neuropathy at the wrist (carpal tunnel syndrome).

On July 6, 2017 OWCP referred appellant, along with a statement of accepted facts (SOAF)[5] and a series of questions for a second opinion examination and evaluation with Dr. Chason S. Hayes, a Board-certified orthopedic surgeon. It requested that he provide an opinion on the nature and extent of the accepted conditions, and whether the proposed cervical decompression was causally related to the accepted February 25, 2007 employment injury.

In a July 21, 2017 report, Dr. Hayes reviewed the medical record and SOAF. On examination, he observed tenderness to palpation of the cervical spine, right shoulder, and right wrist, positive impingement and Hawkins tests of the right shoulder, positive median compression test at the right wrist, and positive Phalen's and Tinel's signs at the right wrist. Dr. Hayes opined that appellant had overlapping symptoms from her cervical spine, right rotator cuff, and right carpal tunnel syndrome. He opined that the carpal tunnel syndrome and right rotator cuff syndrome were unrelated to the February 25, 2007 employment injury. Dr. Hayes noted that appellant did not require additional cervical spine surgery.

A November 20, 2017 OWCP-authorized functional capacity evaluation (FCE) demonstrated that appellant could perform light-duty work.

In reports from November 3, 2017 through September 27, 2018, Dr. T. Hemanth Rao, Board-certified in psychiatry, neurology, and electrodiagnostic medicine, diagnosed improved occipital neuralgia, improved C6 radiculopathy requiring surgery, and improved right upper extremity pain.

In May 24, 2019 reports, Dr. David R. Wiercisiewski, a Board-certified physiatrist, noted appellant's history of C6-7 surgery and a December 2016 EMG/NCV study positive for right carpal tunnel syndrome. On examination, he noted weakness of the right biceps, brachioradialis, and deltoid muscles, and right grip strength weakness. Dr. Wiercisiewski diagnosed cervical radiculopathy with progressive right arm pain.[6]

In a July 23, 2019 report, Dr. Wiercisiewski opined that a July 12, 2019 MRI scan of the cervical spine demonstrated multilevel cervical spondylosis and right-sided foraminal narrowing at C6-7. He noted that these findings correlated with appellant's symptoms and post-surgical status.[7]

In reports dated from September 3 through November 21, 2019, Dr. Bryan Saltzman, a Board-certified orthopedic surgeon, summarized a history of the March 9, 2004 closed head injury and subsequent treatment. He diagnosed right lateral epicondylitis attributable to overuse while working, right rotator cuff impingement, bursitis, tendinitis, and a partial tear. Dr. Saltzman explained that appellant had a significant component of cervical spine etiology for the right upper

[5] The SOAF did not reference appellant's other claim files.

[6] A May 29, 2019 EMG/NCV study of the right upper extremity demonstrated mild, chronic C7 radiculopathy, and mild median nerve entrapment at the right wrist. A July 22, 2019 MRI scan of the cervical spine demonstrated multilevel mild central canal stenosis and right foraminal narrowing at C3-4, C4-5, and C6-7.

[7] On August 6, 2019 appellant underwent an OWCP-authorized right C7 nerve root block and C6-7 transforaminal intra-articular injection.

extremity symptoms, with EMG/NCV evidence of radiculopathy. He administered an intra-articular injection to the right shoulder. Dr. Saltzman prescribed medication, physical therapy, a counterforce strap for the right elbow, and a right wrist brace.

On January 28, 2020 OWCP received a May 29, 2019 report by Dr. Wiercisiewski, who opined that an EMG/NCV study performed that day demonstrated mild right C7 radiculopathy and mild right carpal tunnel syndrome. Dr. Wiercisiewski diagnosed moderate right-sided neural foraminal stenosis at C6-7 and mild bilateral neural foraminal stenosis at C3-4 though C5-6.[8]

In a September 9, 2019 report, Dr. Dawn Quashie, a Board-certified family practitioner opined that repetitive, forceful hand and wrist motions while processing mail directly caused right carpal tunnel syndrome.

On January 29, 2020 OWCP received a January 22, 2020 report by Dr. Saltzman. He attributed appellant's right elbow pain to overuse during physical rehabilitation following cervical spine surgery.[9]

In reports from March 2 through October 7, 2020, Dr. Saltzman attributed appellant's right epicondylitis to overuse during post-surgical rehabilitation. He noted that as conservative measures had not improved her symptoms, that appellant could elect to undergo surgical repair and debridement of the right lateral epicondyle. Dr. Saltzman administered intra-articular injections to the right shoulder and elbow.

In March 17 and September 15, 2020 reports, Dr. Rao diagnosed occipital neuralgia, C6 radiculopathy requiring additional surgery, and improved right upper extremity pain.

In a development letter dated January 7, 2021, OWCP informed appellant of the deficiencies of her claim for expansion. It explained the type of additional medical and factual evidence needed. OWCP afforded appellant 30 days to respond.

In a December 23, 2020 report, Dr. Saltzman opined that the 2004 employment injury caused persistent neck pain requiring C6-7 laminoplasty in February 2016. He indicated that appellant wished to undergo right lateral epicondylar debridement and repair as her symptoms had worsened.

In a February 3, 2021 report, Dr. Saltzman attributed appellant's right lateral epicondylitis to physical therapy for the February 25, 2007 employment injury.

By decision dated March 24, 2021, OWCP denied expansion of the claim to include right epicondylitis, right carpal tunnel syndrome, and right shoulder pathologies.

[8] An August 12, 2019 MRI scan of the right elbow demonstrated a partial tear of the ulnar collateral ligament and mild common flexor and extensor tendinitis.

[9] An August 12, 2019 report of an MRI scan of the right shoulder demonstrated a Type II acromion, partial tear of rotator cuff.

On April 27, 2021 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on July 16, 2021. She contended that her right shoulder and elbow conditions developed due to the combined effects of the March 9, 2004 and February 25, 2007 employment injuries, aggravated by the right C6-7 partial laminectomy and a functional capacity evaluation.

Appellant submitted additional evidence. In a March 16, 2021 report, Dr. Rao opined that appellant required surgery to address C6 radiculopathy.

In an August 20, 2021 report, Dr. Rao opined that appellant's medical records as of 2008 documented right ulnar neuropathy "as a direct result" of an occupational closed head injury.

By decision dated August 26, 2021, OWCP's hearing representative affirmed the March 24, 2021 decision. She further found that as appellant's physicians had referenced the accepted March 9, 2004 employment injury under OWCP File No. xxxxxx840 to explain her right upper extremity pathologies, OWCP should administratively combine OWCP File No. xxxxxx840 with OWCP File No. xxxxxx522 to provide a complete and accurate history.

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.[10]

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.[11] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.[12]

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.[13] The opinion of the physician must be based on a complete factual and medical background of the claimant, 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

[10] *S.M.*, Docket No. 20-1527 (issued March 29, 2022); *D.B.*, Docket No. 20-1280 (issued March 2, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

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

[12] *Id*.

[13] *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

employment factors identified by the claimant.[14] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[15]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The rules that come into play are essentially based upon the concepts of direct and natural results and of the claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[16]

ANALYSIS

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

Appellant has a previously accepted claim for head contusion, blunt trauma, headache, and cervicalgia sustained on March 9, 2004 under OWCP File No. xxxxxx840. The present claim, OWCP File No. xxxxxx522, also pertains to the head and cervical spine, with accepted conditions of aggravation of a cervical strain, cervical radiculopathy, a right lateral C6-7 disc herniation, right cervical radiculopathy, and occipital neuralgia.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.[17] For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.[18] Although both OWCP File Nos. xxxxxx840 and xxxxxx522 pertain to head and neck injuries, OWCP had not administratively combined the claims at the time it obtained the second opinion from Dr. Hayes.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross -referencing between files.[19] For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar

[14] *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, *id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[15] *See P.M.*, Docket No. 18-0287 (issued October 11, 2018).

[16] *D.B.*, *supra* note 10; *see V.K.*, Docket No. 19-0422 (issued June 10, 2020).

[17] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

[18] *Id.*; *Order Remanding Case, A.J.*, Docket No. 21-1410 (issued May 10, 2022); *R.H.*, Docket No. 21-0575 (issued December 21, 2021); *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

[19] Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000); *see also Order Remanding Case, T.D.*, Docket Nos. 21-1160 & 21-1161 (issued April 20, 2022).

condition or the same part of the body, doubling is required.[20] In this instant case, both OWCP File Nos. xxxxxx840 and xxxxxx522 involved appellant's claim for injuries to her head and neck. Furthermore, appellant's claim under OWCP File No. xxxxxx716 also involves a neck injury. For a full and fair adjudication, the Board finds that the case must be returned to OWCP to administratively combine appellant's claims under OWCP File Nos. xxxxxx840, xxxxxx522, and xxxxxx716 as they concern the same parts of the body. This will allow OWCP to consider all relevant claim files in adjudicating appellant's claim.[21] Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding the expansion of the acceptance of appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2021 decision of the Office of Workers' Compensation is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 18, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[20] *Id.*; *Order Remanding Case, M.E.*, Docket No. 21-0094 (issued May 27, 2021); *Order Remanding Case, L.M.*, Docket No. 19-1490 (issued January 29, 2020); *Order Remanding Case, L.H.*, Docket No 18-1777 (issued July 2, 2019).

[21] *Id.*