

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> 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 the vehicle she was operating was struck from behind while in the performance of duty. OWCP accepted her claim for cervical, right shoulder, right wrist, and lumbar strains.<sup>3</sup> Appellant stopped work on October 23, 2002 and did not return.<sup>4</sup>

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. 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.<sup>5</sup>

In development letters dated March 16 and April 21, 2020, OWCP notified appellant that the evidence was insufficient to authorize the proposed right total shoulder replacement surgery, because the requested treatment did not appear to be medically necessary for and causally related to the accepted employment conditions. It 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 employment 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 as such was a candidate for reverse total shoulder replacement due to post-traumatic rotator cuff tear arthropathy.

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<sup>2</sup> Docket No. 13-2051 (issued February 21, 2014); Docket No. 21-1014 (issued July 8, 2022).

<sup>3</sup> On March 7, 2005 appellant filed an occupational disease claim (Form CA-2) 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.

<sup>4</sup> 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 he performed a removal and excision of osteochondroma from the distal right femur and diagnosed osteochondroma of the distal right femur medially.

<sup>5</sup> A computerized tomography scan of the right shoulder dated February 15, 2020 revealed moderate osteoarthritis of the glenohumeral and acromioclavicular joints, superior subluxation of the humeral head, and supraspinatus and infraspinatus muscle atrophy consistent with chronic rotator cuff tear.

On May 6, 2020 OWCP referred appellant's case to a district medical adviser (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 statement of accepted facts (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, he concluded that she did not have intraarticular pathology as a result of her accepted employment injury. Although appellant was diagnosed with a shoulder strain, Dr. Fellars 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, he disagreed with his findings and asserted that the medical records of 2002 did 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. Dr. Fellars 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 employment 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 a February 3, 2021 work excuse note and patient status report, he 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 her claim was accepted for cervical, right shoulder, right wrist, and lumbar strain under OWCP File No. xxxxxx633.

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 the requested 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 she 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 [appellant's] 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 report of Dr. Ralph, the impartial medical examiner (IME), 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 special weight of the medical opinion evidence rested with Dr. Ralph, who concluded that the requested treatment was not medically necessary for her accepted employment injury.

On June 16, 2021 appellant appealed to the Board.<sup>6</sup> By decision dated July 8, 2022, the Board set aside the May 12, 2021 decision and remanded the case for further proceedings. The Board found that Dr. Ralph, the IME, did not base his report on an accurate factual history and remanded the case to OWCP for further development of the medical evidence. The Board instructed OWCP to prepare an updated SOAF and then obtain a supplemental opinion from Dr. Ralph. The Board found that there was no conflict of medical opinion at the time of OWCP's referral to Dr. Ralph. The DMA did not accept the right shoulder strain as factual, and work related as set forth in the 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. As the DMA did not use the SOAF as the framework in forming his opinion, his opinion is of diminished probative value. The Board found that, even though the report of Dr. Ralph was not entitled to the special weight afforded to the opinion of an IME resolving a conflict of medical opinion, his report can still be considered for its own intrinsic value and can still constitute the weight of the medical evidence.<sup>7</sup>

On August 11, 2022 OWCP requested that Dr. Ralph provide an addendum report and address: (1) whether he concurred with Dr. Fellar's report dated June 1, 2020, which found that the medical records of 2002 did not support an intraarticular right shoulder pathology, rather the pain was radiating from the cervical spine and was incorrectly diagnosed as a shoulder strain; and (2) provide additional explanation in support of his finding that the current state of the claimant's right shoulder and recommended surgery were unrelated to the accepted October 21, 2002 employment injury. It prepared an updated SOAF dated August 11, 2022 noting that appellant's claim was accepted for cervical, right shoulder, right wrist, and lumbar strains under OWCP File No. xxxxxx633 and aggravation of bilateral internal derangement of the knees under OWCP File No. xxxxxx049.

In a report dated September 12, 2022, Dr. Ralph indicated that the Board was erroneous in stating that he was not aware of the accepted conditions and acknowledged that the accepted conditions were cervical strain, right shoulder strain, right wrist strain, and lumbar strain, which resolved decades ago. He continued to opine, based on a review of the complete medical records, that appellant was a reasonable surgical candidate for a reverse right shoulder replacement, but

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Id.*

that it was not related to the accepted October 22, 2002 employment injury. Dr. Kaar stated that there was no substantive change to his report as none of the facts have changed.

By decision dated September 26, 2022, 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 found that the report of Dr. Ralph constituted the weight of the medical evidence that appellant had not developed right shoulder full-thickness tear/chronic rotator cuff arthropathy as a consequence of her accepted employment injury. It further 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.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> 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.<sup>10</sup> 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).<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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<sup>8</sup> See *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>9</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *Id.*

<sup>12</sup> See *S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004).

<sup>13</sup> *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

## ANALYSIS -- ISSUE 1

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

Initially, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's May 12, 2021 decision, which was considered by the Board in its July 8, 2022 decision. Findings made in prior the Board decisions are *res judicata* absent further merit review by OWCP under section 8128 of FECA.<sup>14</sup>

Upon remand, by the Board on July 8, 2022, OWCP prepared an updated SOAF and requested that Dr. Ralph provide an addendum report and address whether he concurred with Dr. Fellar's report dated June 1, 2020, which found that the medical records of 2002 did not support an intraarticular right shoulder pathology rather the pain was radiating from the cervical spine and was incorrectly diagnosed as a shoulder strain and provide additional explanation in support of his finding that the current state of the claimant's right shoulder and recommended surgery was unrelated to the accepted October 21, 2002 employment injury.

Dr. Ralph produced a supplemental September 12, 2022 report at the request of OWCP. In this report, he restated his opinion that appellant was a reasonable candidate for the proposed reverse shoulder replacement on the right side; however, he did not believe that the proposed surgery was causally related to the accepted October 22, 2002 employment injury. Dr. Ralph, however, did not provide adequate medical rationale to explain the basis for his conclusion, he simply noted that the proposed right reverse shoulder replacement was not causally related to the accepted October 22, 2002 employment injury. He did not explain how the proposed surgery was solely due to nonoccupational factors.<sup>15</sup> Dr. Ralph further stated that there was no substantive change to his report as none of the facts have changed; however, he failed to thoroughly address the questions posed by OWCP. He provided a generalized opinion, without explanation, that appellant was a reasonable surgical candidate for a reverse right shoulder replacement, but that it was not related to the accepted October 21, 2002 employment injury.

The Board has held that, while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>16</sup> Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.<sup>17</sup> Once OWCP starts to procure medical opinion, it must do a complete job in securing from its referral physician an opinion which adequately addresses the relevant issues.<sup>18</sup>

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<sup>14</sup> *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

<sup>15</sup> *See R.B.*, Docket No. 20-0109 (issued June 25, 2020); *F.K.*, Docket No. 19-1804 (issued April 27, 2020); *J.T.*, Docket 15-1923 (issued December 16, 2015).

<sup>16</sup> *See D.V.*, Docket No. 17-1590 (issued December 12, 2018); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

<sup>17</sup> *See A.K.*, Docket No. 18-0462 (issued June 19, 2018); *Robert F. Hart*, 36 ECAB 186 (1984).

<sup>18</sup> *T.B.*, Docket No. 20-0182 (issued April 23, 2021); *L.V.*, Docket No. 17-1260 (issued August 1, 2018); *Mae Z Hackett*, 34 ECAB 1421, 1426 (1983).

Therefore, the Board finds that the case must be remanded to determine whether to expand acceptance of appellant's claim to include additional conditions of right shoulder full-thickness tear/chronic rotator cuff arthropathy as causally related to the accepted October 21, 2002 employment injury and the medical necessity of the proposed right side reverse shoulder replacement. OWCP shall submit the case record and a detailed SOAF to a new second opinion physician for the purpose of obtaining a rationalized medical opinion on the issue.<sup>19</sup> After this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>20</sup>

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 26, 2022 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 4, 2023  
Washington, DC

Alec J. Koromilas, 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

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<sup>19</sup> *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).

<sup>20</sup> In light of the Board's disposition in Issue 1, Issue 2 is rendered moot.