

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

C.S., Appellant)	
)	
and)	Docket No. 23-0746
)	Issued: December 11, 2023
U.S. POSTAL SERVICE, SANTA ANA)	
WINDOW SERVICES POST OFFICE,)	
Santa Ana, CA, Employer)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

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

JURISDICTION

On April 22, 2023 appellant filed a timely appeal from an April 21, 2023 merit decision of the Office of Workers’ Compensation Programs (OWCP). Pursuant to the Federal Employees’ Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the April 21, 2023 decision, a 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include bilateral elbow and cervical conditions as causally related to her accepted employment injury.

FACTUAL HISTORY

On March 30, 2021 appellant, then a 47-year-old office machine operator, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. She noted that she first became aware of her condition and realized its relation to her federal employment on August 1, 2020. On September 8, 2021 OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral radial styloid (de Quervain's) tenosynovitis. It paid appellant wage-loss compensation for intermittent periods of disability on the supplemental rolls, effective August 31, 2020.

On January 6, 2022 appellant underwent diagnostic testing. A left elbow magnetic resonance imaging (MRI) scan was consistent with mild common extensor origin tendinitis. A cervical spine MRI scan report demonstrated multi-level disc desiccation, disc space narrowing, and acute compression deformities at multiple levels.

Appellant underwent additional diagnostic testing on February 9, 2022. An upper extremity electromyography and nerve conduction velocity (EMG/NCV) study showed mild left carpal tunnel syndrome and borderline right median sensory neuropathy. A bilateral elbow ultrasound report demonstrated soft tissue increased echogenicity, possible right ulnar head irregularity, and soft tissue calcification. A cervical spine ultrasound report revealed soft tissue calcification and soft tissue asymmetry.

In a report dated February 23, 2022, Dr. Cary Nelson, a family practitioner, noted appellant's accepted conditions of bilateral carpal tunnel syndrome and radial styloid (de Quervain's) syndrome. He indicated that appellant had worked at the employing establishment mail processing center since 2018 and began to experience increasing occurrence of stiffness, pain, and numbness in her bilateral wrists and elbows since August 2020. On physical examination, Dr. Nelson observed full range of motion of the neck and trigger point nodules in the posterior cervical spine on palpation. Examination of the bilateral elbows revealed tenderness in the bilateral and medial epicondyles with palpation, and forearm pronation.

Dr. Nelson described appellant's employment duties as a mail processing clerk, which included lifting trays up to 70 pounds to the automated postal center (APC) machine, sorting these mail trays, and pushing them out to the driver. He opined that appellant's injuries to the wrists, elbows, and neck are due to repetitive chronic injuries from prolonged and repetitive lifting, pivoting, and reaching while working as a postal worker since 2018. Dr. Nelson reported that appellant had bilateral carpal tunnel syndrome, de Quervain's disease, and injury to the muscles, tendons, and ligaments in the neck and elbows from repetitive wear and tear in the elbows and cervical or neck structures. He reported that extensor tendinopathy of the elbow, with pain in the outside of the elbow that resulted from inflammation and degeneration of the

tendons on the outside of the elbow. Dr. Nelson explained that sorting mail required forward and backward movement of the forearm, with swinging from the elbow joint repeatedly, which led to overuse wear and tear of the elbow joint, surrounding tendons, and muscles in the forearm and wrist. He further indicated that cervical spine disease involved arthritis, disc bulging, spinal canal and neuroforaminal stenosis, which occurred from repetitive reaching overhead and looking upward to place objects overhead such as during casing and sorting mail repeatedly for three years.

On March 7, 2022 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Michael J. Einbund, a Board-certified orthopedic surgeon, for a second opinion on the nature and extent of appellant's employment-related conditions, and her work capacity. It specifically asked Dr. Einbund whether the acceptance of appellant's claim should be expanded to include additional work-related conditions.

In a report dated April 15, 2022, Dr. Einbund reviewed the medical record and SOAF. On examination of appellant's neck, he observed negative cervical compression and Spurling test. Examination of appellant's bilateral wrists revealed full range of motion and diffuse pain. Dr. Einbund indicated that appellant's clinical presentation was histrionic, and not consistent with the objective findings. He noted that appellant reported complete loss of sensation, even to pin prick, and that he could not elicit a reliable 15 mm 2-point discrimination. Dr. Einbund diagnosed mild left carpal tunnel syndrome, borderline right carpal tunnel syndrome, and bilateral wrist de Quervain's tenosynovitis. He opined that the acceptance of appellant's claim should not be expanded to include any other conditions as causally related to the employment injury. Dr. Einbund explained that diagnostic testing of the elbows revealed minimal findings, and that diagnostic testing of the cervical spine revealed multilevel degenerative changes, which were considered age-related changes. He further reported that diagnostic studies confirmed that appellant still suffered from bilateral carpal tunnel syndrome, but that her work-related de Quervain's syndrome had resolved.

In an April 4, 2022 visit note, Dr. Nelson provided examination findings, and diagnosed bilateral carpal tunnel syndrome, bilateral lateral epicondyle tendinitis, de Quervain's bilaterally, bilateral elbow tendinitis, cervical spine disorder with myelopathy, and cervical spine degenerative disc disease. He opined that appellant's cervical spine disease and bilateral elbow tendinosis resulted from her work as a mail carrier for 3½ years. Dr. Nelson further explained that most people develop some degenerative wear and tear as they age, but most people do not manifest pain and discomfort or the level of degeneration that appellant had until age 70. He indicated that the acceleration of appellant's degenerative disease was the result of excessive wear and tear from repetitive lifting of heavy objects, pivoting the forearm from side to side, up and down, and from looking upward and rotating the neck backwards.

In a May 20, 2022 letter, OWCP requested that Dr. Einbund review Dr. Nelson's reports and the February 9, 2022 bilateral elbow and cervical ultrasound reports, and provide a rationalized medical opinion as to whether OWCP should expand the acceptance of appellant's claim to include bilateral elbow tendinitis, cervical spine disorder with myelopathy, and cervical spine degenerative disc disease.

In a May 26, 2022 supplemental report, Dr. Einbund noted his disagreement with Dr. Nelson's opinion regarding the expansion of the acceptance of appellant's claim to include bilateral elbow tendinitis, cervical spine disorder with myelopathy, and degenerative disc disease of the cervical spine. He indicated that because appellant's clinical presentation was very diffuse and nonspecific to the common extensor, it was not enough to establish any active diagnosis for the elbows. Regarding appellant's cervical spine, Dr. Nelson reported that appellant's examination findings did not show any abnormal neurological findings consistent with a diagnosis of myelopathy, and that her cervical spine degenerative disc disease was related to age-related changes.

By decision dated August 9, 2022, OWCP denied expansion of the acceptance of appellant's claim to include additional bilateral elbow and cervical conditions. It found that the weight of the medical opinion evidence rested with the April 15 and May 26, 2022 reports of Dr. Einbund, OWCP's second opinion examiner.

On September 1, 2022 appellant, through her then-counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 20, 2022 report, Dr. Nelson reiterated that appellant's bilateral hand, wrist, and elbow symptoms resulted from injuries that appellant sustained while performing her work duties from November 7, 2018 through August 1, 2020.

OWCP found a conflict in the medical opinion evidence between Dr. Nelson, appellant's treating physician, and Dr. Einbund, the second opinion examiner, regarding whether appellant required further medical treatment, including surgery, and whether she was totally disabled. It referred her, the medical record, an updated SOAF, and a series of questions to Dr. Brian Rothi, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion in order to resolve the conflict.

In a November 30, 2022 report, Dr. Rothi reviewed the medical record, including the SOAF, and noted the accepted conditions of bilateral carpal tunnel syndrome and de Quervain's disease. On physical examination of appellant's upper extremities, he observed positive Tinel's sign with paresthesias and zero grip strength. Dr. Rothi reported full range of motion with pain and diffuse tenderness about the entire wrist, not consistent with radial styloid inflammation or de Quervain's disease. He diagnosed bilateral carpal tunnel syndrome, and complaints of pain and tenderness of the bilateral elbows and wrists, consistent with mild tendinitis. Dr. Rothi indicated that appellant also had significant cervical degenerative disc disease with spinal canal stenosis and neural foraminal stenosis, but no signs of radiculopathy radiating from her neck. He completed a work-capacity evaluation form (Form OWCP-5c), which indicated that appellant could perform modified-duty work.

Following a preliminary review, by decision dated December 8, 2022, an OWCP hearing representative set aside the August 9, 2022 OWCP decision and remanded the case for further development of the medical evidence and a supplemental report from Dr. Einbund regarding whether appellant sustained additional diagnosed conditions causally related to her employment activities.

In a December 22, 2022 supplemental report, Dr. Einbund described appellant's duties as a mail processing clerk, and discussed the additional medical records that he had reviewed. He indicated that the additional medical records did not reveal any substantial medical evidence to support expansion of the acceptance of the claim to include bilateral elbow tendinitis, cervical spine disorder with myelopathy, and degenerative disc disease of the cervical spine. Dr. Einbund explained that although MRI scans of the elbow showed minimal findings of mild tendinosis of the common extensor, her clinical presentation was very diffuse and nonspecific to the common extensor. He also determined that EMG/NCV study and examination findings were not consistent with any active cervical myelopathy. Dr. Einbund reported that there was evidence of cervical spine degenerative disc disease, and opined that this condition was age-related and not related to her employment. He also opined that appellant did not fully cooperate with the examination, but noted that he was still able to provide a full assessment of appellant's conditions.

In a report dated January 10, 2023, Dr. John W. Ellis, a Board-certified family practitioner, requested expansion of the acceptance of appellant's claim to include bilateral lateral epicondylitis and bilateral lesions of the ulnar nerve. On examination of appellant's right elbow, he observed mild swelling over the lateral epicondyle and decreased range of motion. Dr. Ellis reported that examination of the left elbow showed swelling and focal tenderness over the common extensor. He diagnosed bilateral elbow lateral epicondylitis and bilateral ulnar nerve lesion. Dr. Ellis opined that the above-noted diagnoses arose out of, and in the course of, appellant's employment. He explained that the development of lateral epicondylitis was associated with repeated contraction of the muscles in the forearm. Dr. Ellis noted that the repeated and repetitive motions required of appellant, including continued and repeated contraction of the muscles in her forearm as she manipulated her wrists and fingers for gripping, grasping, pushing and pulling, and carrying trays and parcels, overloaded the muscles and tendons that connect to two small parts of the bone just above the elbow.

In a January 24, 2023 supplemental report, Dr. Rothi indicated that he agreed with Dr. Einbund's opinion that the additional medical records did not support a claim of injury to the elbows and cervical spine. He noted that Dr. Einbund was accurate in describing appellant's exaggerated findings on physical examination consistent with pain magnification. Dr. Rothi recommended carpal tunnel decompression surgery.

In a February 23, 2023 supplemental report, Dr. Rothi again indicated that he agreed with Dr. Einbund's opinion that the medical evidence of record did not support a claim of injury to the elbows and cervical spine. He reported that Dr. Einbund accurately described appellant's exaggerated findings on physical examination consistent with pain magnification, and that appellant did not fully cooperate in her second opinion examination. Dr. Rothi noted that appellant had a "zero" on the attempted Jamar grip testing, which was impossible. He clarified that appellant's symptom magnification did not impede his ability to fully assess appellant's condition.

By *de novo* decision dated March 9, 2023, OWCP denied expansion of the acceptance of appellant's claim to include additional bilateral elbow and cervical conditions. It indicated that the denial of expansion was supported by the opinions of Dr. Einbund and Dr. Rothi.

In a report dated March 9, 2023, Dr. Rothi clarified that appellant was capable of performing modified duties as a mail processing clerk and provided work restrictions.

In a report and work status note dated March 16, 2023, Dr. John R. Morris, a Board-certified orthopedic surgeon, indicated that appellant began to notice symptoms of tingling and numbness in her hands, wrists, and elbows while doing her job. On examination of appellant's upper extremities, he observed pain on palpation at the carpal tunnels and first dorsal compartment with a positive Finkelstein's test. Dr. Morris diagnosed bilateral carpal tunnel syndrome, bilateral tenosynovitis, and bilateral epicondylitis. He recommended that appellant not work pending surgery.

On March 30, 2023 appellant requested reconsideration.

In a report dated April 6, 2023, Dr. William Simpson, a Board-certified orthopedic surgeon, indicated that he initially treated appellant for severe bilateral wrist symptoms in June 2022. He described appellant's work duties and reviewed her medical history. On examination of appellant's wrists, Dr. Simpson observed slight tenderness, moderate swelling over the wrists, and a positive Tinel's test. He diagnosed bilateral carpal tunnel syndrome and bilateral de Quervain's syndrome. Dr. Simpson reported that appellant had failed conservative treatments and recommended that she undergo surgical decompression of the carpal tunnels to prevent further bilateral median nerve deterioration at the wrist.

In a work status note dated April 13, 2023, Dr. Morris noted diagnosed conditions of bilateral carpal tunnel syndrome, bilateral de Quervain's tenosynovitis, right lateral epicondylitis, and left lateral epicondylitis. He reported that appellant could not work as a mail processing clerk.

By decision dated April 21, 2023, OWCP denied modification of the March 9, 2023 decision. It noted that appellant had not rebutted the opinions of Dr. Einbund and Dr. Rothi.

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.³

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁴ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁵ Additionally, the opinion of the physician must be

³ *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

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 the specific employment factor(s) identified by the claimant.⁶

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 the claimant's own intentional misconduct.⁷ 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 result of a compensable primary injury.⁸

ANALYSIS

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

In denying appellant's expansion claim, OWCP relied on the opinion of Dr. Einbund, OWCP's second opinion examiner.⁹ In reports dated April 15, May 26, and December 26, 2022, Dr. Einbund noted his review of the SOAF, and that appellant's claim was accepted for bilateral carpal tunnel syndrome and bilateral radial styloid tenosynovitis. He provided examination findings and indicated that appellant's clinical presentation was not consistent with the objective findings. Dr. Einbund explained that diagnostic testing of the elbows revealed minimal findings, which did not correlate with her very diffuse clinical presentation, and was not enough to establish an active diagnosis for the elbows. He also reported that diagnostic testing of the cervical spine revealed multilevel degenerative changes, which would be related to age-related changes. Dr. Einbund concluded that the medical evidence of record did not support expansion of the acceptance of the claim to include bilateral elbow tendinitis, cervical spine disorder with myelopathy, and degenerative disc disease of the cervical spine.

The Board finds, however, that Dr. Einbund did not provide sufficient medical rationale to support his opinion. He based his opinion on the fact that diagnostic testing of the elbows did not correlate with appellant's very diffuse clinical presentation. Dr. Einbund also attributed appellant's multilevel cervical degenerative changes noted in the MRI scan as age-related. However, he did not refer to any objective findings, nor provide any medical reasoning to support his conclusory statements that appellant's bilateral elbow and cervical conditions were

⁶ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *Charles W. Downey*, 54 ECAB 421 (2003).

⁸ *J.M.*, Docket No 19-1926 (issued March 19, 2021); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n. 7 (2001).

⁹ In its April 21, 2023 decision denying appellant's expansion claim, OWCP also discussed the reports of Dr. Rothi, an impartial medical examiner. The Board notes, however, that appellant was referred to Dr. Rothi for an impartial medical examination when a conflict in the medical opinion evidence was declared regarding her need for surgery and the extent of her disability, rather than a conflict regarding whether to expand the acceptance of her claim to include additional conditions.

not due to her accepted employment injury.¹⁰ Dr. Einbund did not discuss examination findings in correlation with the diagnostic testing. Furthermore, he did not discuss whether appellant developed bilateral elbow and cervical conditions due to the accepted factors of her federal employment as a mail processing clerk. Accordingly, the Board finds that Dr. Einbund's opinion is of limited probative value and requires clarification.¹¹

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹² While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹³ Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁴ In this case, it began to develop the evidence when it referred appellant to Dr. Einbund for a second opinion examination. OWCP should have obtained an opinion from Dr. Einbund, which addressed the underlying issue in this case, specifically whether appellant's claim should be expanded to include additional bilateral elbow and cervical conditions as causally related to the accepted employment injury.

Therefore, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall refer appellant, along with a SOAF and the medical record, to a new second opinion physician in order to resolve the issue of whether appellant developed additional bilateral elbow and cervical conditions causally related to the accepted employment injury. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁰ See *D.T.*, Docket No. 20-0234 (issued January 8, 2021); see also *K.C.*, Docket No. 19-1251 (issued January 24, 2020).

¹¹ See *T.B.*, Docket No. 22-1170 (issued April 24, 2023); see also *M.W.*, Docket No. 21-1260 (issued September 9, 2022).

¹² *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹³ *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹⁴ *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2023 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: December 11, 2023
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