

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

C.G., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
PORTLAND VA MEDICAL CENTER,
Portland, OR, Employer**

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) **Docket No. 23-0642**
) **Issued: November 21, 2023**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On March 29, 2023 appellant filed a timely appeal from an October 19, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0642.

On April 21, 2020 appellant, then a 53-year-old medical clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a right wrist and thumb condition due to factors of her federal employment, resulting from work modifications necessitated by prior accepted right shoulder and right elbow injuries resulting in overuse of the right wrist and thumb. She noted that she first became aware of her condition on March 19, 2020 and realized its relation to her federal employment on April 20, 2020. Appellant did not stop work.¹

¹ OWCP assigned the present claim OWCP File No. xxxxxx486. Appellant also has two prior traumatic injury claims (Form CA-1) for right upper extremity injuries. Under OWCP File No. xxxxxx186, OWCP accepted an August 26, 2014 right elbow injury, sustained when appellant lifted a heavy recycling bag while in the performance of duty, for right lateral epicondylitis, right ulnar nerve lesion, right radial nerve lesion, synovitis and tenosynovitis of the right upper extremity, right medial epicondylitis, and enthesopathy of the right elbow. Under OWCP File No. xxxxxx326, it accepted a January 24, 2018 right shoulder injury, sustained when appellant caught a sliding container with her right hand, for right rotator cuff strain and adhesive capsulitis of the right shoulder. Appellant underwent OWCP-authorized right rotator cuff repair on September 13, 2018.

In a development letter dated May 1, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In May 12, 2020 response to OWCP's development letter, appellant submitted a statement alleging that a modified computer keyboard and mouse issued to her as an accommodation for her accepted right elbow injury caused overuse of the fingers, thumb, and wrist. She also provided a September 26, 2019 report, wherein Dr. Eric W. Long, a Board-certified physiatrist, obtained electrodiagnostic test results for the right upper extremity demonstrating radial and ulnar nerve lesions in the proximal forearm.

By decision dated June 9, 2020, OWCP found that appellant had established the implicated employment factors, but denied her occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis under the present claim. It noted that Dr. Long's September 26, 2019 report addressed appellant's accepted right elbow injury under a OWCP File No. xxxxxx186, but not the claimed right thumb and wrist condition under OWCP File No. xxxxxx486. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 5, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received a June 22, 2020 report by Dr. Paul M. Puziss, a Board-certified orthopedic surgeon. Dr. Puziss opined that "thousands of repetitive movements per day" while operating the rollerball mouse "led to tissue breakdown in the first dorsal compartment or thumb extensor tendinitis and had also caused overuse of the trapezium first metacarpal joint resulting in a synovitis and thus pain in that joint." He explained that overuse syndrome involving a tendon caused inflammation of the tendon, leading to constriction of the tendon around the first dorsal compartment, resulting in additional friction and pain. Dr. Puziss also noted that overuse of the right trapezium first metacarpal joint caused "mechanical inflammation within the joint as it is overwhelmed by the number of strokes of a right dominant thumb." He added that appellant had greater strain on her hands because of her occupational right shoulder and elbow conditions, worsened by working 10-hour days during the prior 18 months.

By decision dated August 20, 2020, the hearing representative set aside the June 9, 2020 decision and remanded the case for further medical development. The hearing representative directed OWCP to administratively combine the present claim with OWCP File Nos. xxxxxx326 and xxxxxx186, as they also pertained to the right upper extremity.

OWCP continued to receive additional reports by Dr. Puziss.

On December 9, 2020 OWCP referred appellant to Dr. Carolyn Yang, a Board-certified orthopedic surgeon, for a second opinion to determine if appellant's right thumb and wrist conditions were causally related to the accepted employment factors. The November 23, 2020 statement of accepted facts (SOAF) provided to Dr. Yang noted only the occupational right elbow conditions accepted under File No. xxxxxx186.

In a December 23, 2020 report, Dr. Yang opined that appellant's right cubital and radial tunnel syndromes were not due to the accepted August 26, 2014 employment injury "on a more probable than not basis." She also opined that appellant's right thumb and wrist conditions were

not related to repetitive work duties “on a more-probable-than-not basis,” as it was “more likely” that these conditions are idiopathic in nature due to her age over 46 years old, obesity, and female gender.

On January 4, 2021 OWCP determined that a conflict of medical opinion existed between Dr. Puziss, appellant’s treating physician, and Dr. Yang, the second opinion physician, regarding whether the claimed right thumb and wrist conditions were related to the accepted work factors. It referred her, along with the case record and November 23, 2020 SOAF, to Dr. Josef Eichinger, Board-certified in orthopedic surgery and sports medicine, for an impartial medical examination.

OWCP continued to receive medical evidence from Dr. Puziss.

In a July 12, 2021 report, Dr. Eichinger, serving as the impartial medical examiner (IME), reviewed the SOAF and medical record. On examination, he observed a subjectively diminished sensory exam in both upper extremities, well-healed incisions at the dorsoradial and medial aspects of the right elbow and over the shoulder, tenderness to palpation of the right anatomical snuffbox, no tenderness over the right first dorsal compartment, and a negative Finkelstein’s test “with only pain of the basilar joint on the right hand.” Dr. Eichinger diagnosed right basilar thumb CMC joint osteoarthritis “unrelated to work activities on a more-probable-than-not basis, to a reasonable degree of medical certainty.” He explained that CMC joint thumb osteoarthritis was associated with “non-occupational risk factors including age, BMI and gender,” unrelated to keyboard activities or highly repetitive work.

By decision dated July 28, 2021, OWCP denied appellant’s occupational disease claim. It accorded the special weight of the medical evidence to Dr. Eichinger’s opinion as the IME.

On July 21, 2022 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated October 19, 2022, OWCP denied modification of the July 28, 2021 decision.²

The Board, having duly considered this matter, finds that this case is not in posture for decision.

Appellant has previously-accepted claims for right upper extremity conditions under OWCP File Nos. xxxxxx186 and xxxxxx326. The present claim, OWCP File No. xxxxxx486, also pertains to right upper extremity conditions. However, OWCP had not administratively combined the claims at the time it obtained the second opinion from Dr. Yang.

OWCP’s procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.³ For example, if a

² The Board notes that OWCP had not administratively combined appellant’s claims for right upper extremity injuries as of the October 19, 2022 decision.

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

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.⁴

Therefore, for a full and fair adjudication, the Board finds that this case must be remanded to OWCP to administratively combine appellant's claims under OWCP File Nos. xxxxxx186, xxxxxx326, and xxxxxx486 as they all concern the same region of the body. This will allow OWCP to consider all relevant claim files in adjudicating appellant's claim.⁵ It shall then prepare an updated SOAF, noting all of appellant's previously-accepted claims, and refer appellant to a new specialist in the appropriate field of medicine for a second opinion examination. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the October 19, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 21, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁴ *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).

⁵ *Id.*; *see also Order Remanding Case*, Docket No. 22-0531 (issued November 18, 2022); *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).