

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

P.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houma, LA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 22-0794
Issued: October 20, 2023**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On April 27, 2022 appellant, through counsel, filed a timely appeal from an April 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ 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.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 11, 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 expand the acceptance of her claim to include a right shoulder condition as causally related to the accepted December 24, 2014 employment injury.

FACTUAL HISTORY

On December 29, 2014 appellant, then a 61-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2014 she injured her left lower leg while in the performance of duty. She noted that she was unloading a dispatch vehicle when a wire cage rolled into her and pushed her against a large container. Appellant stopped work on the date of injury. On January 26, 2015 OWCP accepted her claim for an open wound of the left knee, leg, and ankle without complications. It thereafter expanded the acceptance of appellant's claim to include sprains of the left knee and lower leg, tear of the left medial meniscus, and strain of muscle and tendon of the peroneal muscle group of the left lower leg. OWCP paid her wage-loss compensation on the supplemental rolls, effective December 24, 2014 and on the periodic rolls, effective April 5, 2015.

On June 25, 2015 appellant underwent OWCP-authorized surgery to repair a tear of the peroneal brevis tendon in the left ankle performed by Dr. Michael LaSalle, a Board-certified orthopedic surgeon.

In a report dated May 31, 2016, Dr. Lisa Lee-Alevizon, a Board-certified family physician and acupuncturist, noted that appellant related complaints of low back, left leg, and right shoulder pain, which she attributed to the December 24, 2014 employment incident. She performed a physical examination, which revealed pain and spasms throughout the back and right shoulder and pain in the left lateral ankle. Dr. Lee-Alevizon diagnosed low back and left leg pain, bilateral sciatica, muscle spasm, and low back and right shoulder strains.

Appellant underwent physical therapy and acupuncture treatments to the right shoulder, low back, and left leg with Dr. Lee-Alevizon from May 31, 2016 through April 17, 2017.

In a report dated February 15, 2017, Dr. LaSalle noted that appellant had chronic swelling in the left lateral ankle, which he opined was permanent. He also noted that she related complaints of pain in the right shoulder, which she attributed to the December 24, 2014 employment incident.

In a report dated May 15, 2017, Dr. LaSalle opined that appellant had reached maximum medical improvement relative to her left ankle condition. He noted that she again related complaints in the right shoulder.

A report of magnetic resonance imaging (MRI) scan of the right shoulder dated May 25, 2018, revealed a partial thickness interstitial tear at the confluence of the supraspinatus and infraspinatus tendons medial to the footplate, bursitis, and mild acromioclavicular (AC) joint arthropathy.

In a medical report dated May 30, 2018, Dr. Brett E. Casey, Board-certified in orthopedic surgery, noted that appellant related complaints of stiffness and pain in the neck and right shoulder.

He reviewed the May 25, 2018 MRI scan and performed a physical examination, where he observed reduced range of motion in the neck and right shoulder and positive Spurling's, Speed, Neer's, Hawkins', and O'Brien's tests. Dr. Casey diagnosed neck and right shoulder pain, cervical disc displacement, arthrosis of the right AC joint, and impingement syndrome of the right shoulder.

On April 10, 2019 appellant, through counsel, requested that her claim be expanded to include a right shoulder strain.

By letter dated May 10, 2019, OWCP advised counsel that the evidence was insufficient to expand the claim to include a right shoulder condition, but that it would refer appellant for a second opinion evaluation.

In a letter dated July 10, 2020, Dr. Kyle J. Guidry, Board-certified in family medicine, diagnosed left leg pain, ruptured left ankle tendon, a right rotator cuff tear, and neck and back pain. He opined that these conditions were caused by the December 24, 2014⁴ injury.⁵

On September 13, 2021 OWCP referred appellant, along with the medical record, a SOAF and a series of questions, to Dr. Simon Finger, a Board-certified orthopedic surgeon, for a second opinion examination. It requested that he provide an opinion regarding whether she sustained a right shoulder injury causally related to her accepted December 14, 2014 employment injury.

In an October 21, 2021 report, Dr. Finger advised that he had reviewed the SOAF and the medical evidence of record. On physical examination he observed mild shoulder impingement on the right with grossly intact rotator cuffs. Dr. Finger determined that appellant did not sustain a right shoulder injury related to her accepted December 24, 2014 employment injury. He noted that the May 25, 2018 right shoulder MRI scan showed a partial thickness tear, but that he did not believe that it would require surgery. Dr. Finger opined that the partial thickness rotator cuff tear was not related to the accepted employment incident and noted "I see no evidence in the medical record or on physical exam[ination] that a right shoulder injury was connected to the work injury on [December 24, 2014]."

By decision dated November 19, 2021, OWCP denied expansion of the acceptance of appellant's claim to include a right shoulder condition as causally related to her accepted December 24, 2014 employment injury.

On December 1, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The telephonic hearing was held on

⁴ Dr. Guidry's report indicated a date of injury of December 22, 2014; however, this appears to be a typographical error as the case record establishes that the date of injury was December 24, 2014.

⁵ On November 2, 2020 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation with Dr. Christopher Cenac, Sr., a Board-certified orthopedic surgeon. It requested that he determine whether she had any remaining residuals and disability due to her accepted December 24, 2014 employment injury. In a December 3, 2020 report, Dr. Cenac provided his physical examination findings and determined that appellant had no evidence of any continuing residuals from the accepted December 24, 2014 employment injury. On May 10, 2021 OWCP requested clarification from him as to whether appellant sustained an injury to her right shoulder as a result of the accepted December 24, 2014 employment incident. No further reports were received from Dr. Cenac.

March 8, 2022. During the hearing, appellant testified that she believed that she injured her right shoulder during the incident on December 24, 2014 because she was “smashed like a pancake” against the containers.

By decision dated April 11, 2022, OWCP’s hearing representative affirmed OWCP’s November 19, 2021 decision.

LEGAL PRECEDENT

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.⁶ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.⁷ The opinion of the physician 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 employment injury.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include a right shoulder condition as causally related to the accepted December 24, 2014 employment injury.

In his July 10, 2020 letter, Dr. Guidry diagnosed a right rotator cuff tear, and opined that it was caused by the December 24, 2014 employment incident. While he attributed appellant’s right shoulder condition to her accepted employment incident, he did not offer medical rationale explaining how the accepted employment incident caused the diagnosed right shoulder condition. The Board has held that medical evidence that provides a conclusion, but does not offer a rationalized medical explanation regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.⁹ Dr. Guidry’s letter, therefore, is insufficient to establish expansion of the claim.

In reports dated May 31, 2016 through April 17, 2017, Dr. Lee-Alevizon noted that appellant complained of right shoulder pain, which appellant attributed to her December 24, 2014 employment incident. In reports dated February 15 and May 15, 2017, Dr. LaSalle noted that appellant attributed her right shoulder pain to the December 24, 2014 employment incident. Dr. Casey, in his report dated May 30, 2018, diagnosed right shoulder pain and impingement. However, none of reports contain an opinion as to whether appellant’s diagnosed right shoulder condition was causally related to her accepted employment incident. The Board has held that

⁶ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *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).

⁷ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *See S.D.*, Docket No. 21-0085 (issued August 9, 2021); *see also M.B.*, Docket No. 19-1655 (issued April 7, 2020).

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.¹⁰ As such, this evidence is also insufficient to establish expansion of the claim.

OWCP also received a report of MRI scan of the right shoulder dated May 25, 2018. The Board has held, however, that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment injury, and a diagnosed condition.¹¹

In an October 21, 2021 second opinion evaluation, Dr. Finger opined that appellant's right shoulder condition was not causally related to the accepted December 24, 2014 employment incident. As his report was well-reasoned and based on a complete and accurate history, the Board finds that it constitutes the weight of the medical evidence.

As the medical evidence of record is insufficient to establish that the acceptance of the claim should be expanded to include a right shoulder condition causally related to the accepted December 24, 2014 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 expand the acceptance of her claim to include a right shoulder condition as causally related to her accepted employment injury.¹²

¹⁰ *S.L.*, Docket No. 23-0152 (issued May 16, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *see D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹¹ *M.E.*, Docket No. 18-0940 (issued June 11, 2019); *V.J.*, Docket No. 17-0358 (issued July 24, 2018); *John W. Montoya*, 54 ECAB 306 (2003).

¹² The Board notes that the employing establishment issued a Form CA-16, dated December 24, 2014. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board