

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

_____)
A.J., Appellant)

and)

U.S. POSTAL SERVICE, CLEVELAND)
POSTAL & DISTRIBUTION CENTER,)
Cleveland, OH, Employer)
_____)

**Docket No. 23-0404
Issued: September 8, 2023**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On January 27, 2023 appellant, through counsel, filed a timely appeal from a January 5, 2023 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.

_____)
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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of the claim to include the additional conditions as causally related to, or as a consequence of, the accepted November 30, 2011 employment injury.

FACTUAL HISTORY

On November 30, 2011 appellant, then a 47-year-old labor custodian, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she felt pain in her left shoulder when mopping and cleaning the restroom while in the performance of duty. OWCP accepted the claim for sprain of left shoulder and upper arm.

A January 23, 2012 magnetic resonance imaging (MRI) scan of appellant's left shoulder revealed mild acromioclavicular (AC) joint osteoarthritis; a small loose body in the anterior/anterior medial aspect of glenohumeral joint with focal articular cartilage defect of anterior/anterior glenoid; and long head biceps tendinosis.

On September 9, 2021 appellant, through counsel, requested that the acceptance of her claim be expanded to include left shoulder subacromial impingement/bursitis. In an attached October 15, 2014 medical report, Dr. Brian Victoroff, a Board-certified orthopedic surgeon, diagnosed appellant with left shoulder subacromial impingement/bursitis. He also noted that appellant had undergone left shoulder subacromial injection that day.

In a development letter dated November 15, 2021, OWCP informed appellant of the deficiencies of her claim for expansion. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

Medical reports from Dr. Victoroff contained impressions of left shoulder rotator cuff tendinopathy and severe arthritis of the glenohumeral joint based on left shoulder MRI scan. In a December 8, 2021 report, Dr. Victoroff opined that appellant's glenohumeral arthritis was causally related to her 2011 work injury. He recommended left shoulder arthroplasty surgery.

On December 21, 2021 OWCP referred appellant, the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Michael R. Magoline, an orthopedic specialist, for a second opinion evaluation. The referral letter only asked Dr. Magoline to provide an opinion regarding the status of appellant's accepted left shoulder sprain and the causal relationship of appellant's left shoulder glenohumeral arthritis.

In a January 21, 2022 report, Dr. Magoline reviewed the SOAF and appellant's medical record. He indicated that appellant's limited range of motion of the left shoulder and pain were consistent with left shoulder glenohumeral arthritis. Dr. Magoline reported that the January 23, 2012 left shoulder MRI scan demonstrated degenerative changes in the glenohumeral joint, while the recent MRI scan of August 2021 demonstrated severe glenohumeral arthritis. He opined that there was no causal relationship between the left shoulder glenohumeral arthritis and the accepted work-related left shoulder strain. Rather, the November 30, 2011 work injury caused only a left shoulder strain as a result of mopping floors. Dr. Magoline explained that there was no causal

relationship between the diagnoses of left shoulder sprain and degenerative changes in the glenohumeral shoulder joint as the diagnoses were separate and the MRI scan obtained soon after the injury demonstrated preexisting degenerative changes in the glenohumeral joint. He also found that there was no evidence that the work-related injury caused, aggravated, accelerated, or precipitated the diagnosed glenohumeral arthritis, noting that appellant had responded to conservative treatment and that the work-related left shoulder sprain/strain, which occurred over 10 years ago, had resolved without residuals. Dr. Magoline found that OWCP's question as to whether the work injury aggravated an underlying/preexisting condition and whether such aggravation was temporary or permanent in nature was not applicable.

In a March 2, 2022 letter, OWCP requested that Dr. Victoroff review and comment on Dr. Magoline's January 21, 2022 report within 30 days.

In a March 9, 2022 work capacity evaluation (Form OWCP-5c), Dr. Victoroff opined that appellant could not perform her usual job without restrictions due to advanced arthritis, and that she could work only four hours a day, pending surgery, with sedentary, light work restrictions which were permanent in nature.

By decision dated June 30, 2022, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions as causally related to, or as a consequence of, the accepted employment injury. It accorded the weight of the medical evidence to Dr. Magoline's second opinion report.

OWCP continued to receive medical evidence. In a March 25, 2022 report, Dr. Victoroff diagnosed post-traumatic glenohumeral arthritis, left shoulder.

On July 11, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 17, 2022.

By decision dated January 5, 2023, OWCP's hearing representative affirmed the June 30, 2022 decision.

LEGAL PRECEDENT

The claimant bears the burden of proof to establish a claim for a consequential injury.³ 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. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the

³ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.⁴

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁵ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.⁶

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 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.⁷

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁸

ANALYSIS

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

In his January 21, 2022 report, Dr. Magoline, OWCP's second opinion physician, reviewed the medical record and SOAF and examined appellant. He noted that appellant had obvious preexisting degenerative changes in the left glenohumeral joint a few months after the accepted work injury and that an August 2021 MRI scan demonstrated severe glenohumeral arthritis. Dr. Magoline opined that the November 30, 2011 work injury caused only a left shoulder strain as a result of mopping floors which had resolved following conservative treatment. He also opined that there was no causal relationship between the left shoulder strain and the preexisting degenerative changes in the glenohumeral joint as the diagnoses were separate. Dr. Magoline concluded that as there was no evidence that the work-related injury had caused, aggravated, or accelerated the diagnosed glenohumeral arthritis condition, the question of whether the work injury aggravated an underlying/preexisting condition and whether such aggravation was temporary or permanent was not applicable. The Board finds, however, that Dr. Magoline did not provide

⁴ *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *K.W.*, Docket No. 18-0991 (issued December 11, 2018); *I.J.* 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *T.A.*, Docket No. 21-0798 (issued January 31, 2023); *G.R.*, Docket No. 18-0735 (issued November 15, 2018).

⁶ *Id.*

⁷ *T.A.*, *supra* note 5; *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

⁸ *G.D.*, Docket No. 20-0966 (issued July 21, 2022); *R.C.*, Docket No. 19-0376 (issued July 15, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

sufficient medical rationale to support his general conclusion that appellant's left shoulder glenohumeral arthritis was not causally related to her accepted November 30, 2011 employment injury. Dr. Magoline did not explain why her diagnosed preexisting left shoulder glenohumeral arthritis was not precipitated, aggravated, or a consequence of the accepted work injury. A conclusory opinion provided by a physician, without the necessary rationale explaining how and why an accepted employment injury was insufficient to result in a diagnosed medical condition, is insufficient to resolve the issue.⁹ As Dr. Magoline did not present a well-rationalized medical opinion explaining why appellant's left shoulder glenohumeral arthritis was not precipitated, aggravated, or a consequence of her accepted injury, the case is not in posture for decision.¹⁰ Moreover, OWCP did not ask Dr. Magoline to provide an opinion regarding whether appellant's diagnosed left shoulder subacromial impingement/bursitis was causally related to, or consequential to, the accepted employment injury.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.¹¹ 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.¹² Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.¹³

Therefore, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall request that Dr. Magoline provide a supplemental opinion in order to resolve the issue of whether appellant's additional diagnosed conditions are causally related to, or a consequence of, the accepted November 30, 2011 employment injury. If Dr. Magoline is unable to further address this issue with supporting medical rationale, OWCP shall refer appellant, along with a SOAF and the medical record, to a new second opinion physician. 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.

⁹ See *J.A.*, Docket No. 22-0989 (issued January 13, 2023); *S.D.*, Docket No. 21-0297 (issued July 2, 2021); *C.S.*, Docket No. 20-0621 (issued December 22, 2020).

¹⁰ *Id.*

¹¹ See *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).

¹² *T.B.*, Docket No. 22-1170 (issued April 24, 2023); *S.D.*, *supra* note 9; see also *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 5, 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: September 8, 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