

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

<p>T.L., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, SHIRLEY A. CHISHOLM POST OFFICE, Brooklyn, NY, Employer</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 23-1039</p> <p>Issued: February 23, 2024</p>
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
 JANICE B. ASKIN, Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge
 JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 1, 2023 appellant, through counsel, filed a timely appeal from a July 17, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

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 an 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 The Board notes that, following the July 17, 2023 decision, appellant submitted additional evidence to OWCP. 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.*

Federal Employees Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish disability from work from December 5, 2020 through May 7, 2021, causally related to her accepted October 20, 2020 employment injury; and (2) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to the accepted October 20, 2020 employment injury.

FACTUAL HISTORY

On October 20, 2020 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she hit her right hand, little finger, knuckles, and elbow when a mailbox she was opening came out of the wall while in the performance of duty. She stopped work on the date of the alleged injury.

Appellant submitted medical evidence in support of her claim, including a December 2, 2020 duty status report (Form CA-17) bearing an illegible signature, which diagnosed right hand trauma and weakness and held her off work.

In a December 3, 2020 report, Dr. Alan S. David, an osteopath specializing in neurology, related appellant's history of injury. His examination of her right hand demonstrated a splint on the fifth digit, decreased hand grip due to pain, decreased wrist extensors due to pain, and trace of edema along the fifth digit. Dr. David diagnosed status post work-related injury, hand trauma and right-hand pain, and held appellant off work until mid-January 2121 due to subjective complaints of right hand and finger pain limiting her functional use of the hand. In a February 23, 2021 report, he related her report of severe right shoulder pain over the past four weeks, which she related to her recent hand trauma. Dr. David noted that appellant had a history of right shoulder pain following a motor vehicle accident (MVA) from several years prior, which had fully resolved. His examination of the right shoulder demonstrated tenderness along the acromioclavicular joint and difficulty raising her right arm above her head. Dr. David diagnosed status post work-related injury, hand trauma, right hand pain, and right shoulder pain.

On May 15, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period December 5, 2020 through May 7, 2021.

By decision dated May 21, 2021, OWCP accepted appellant's claim for contusions of the right hand, right wrist, and right fifth digit.

In a development letter dated May 21, 2021, OWCP requested that appellant submit medical evidence to support the claimed period of disability from December 5, 2020 through

³ 5 U.S.C. § 8101 *et seq.*

May 7, 2021 as causally related to the accepted October 20, 2020 employment injury. It afforded her 30 days to submit the requested evidence.

Appellant subsequently submitted March 16 and 20, 2021 work excuse notes bearing illegible signatures, which indicated that she was seen for a radiological examination on each of those dates.

A partially illegible right shoulder magnetic resonance imaging (MRI) scan dated April 1, 2021 revealed findings compatible with a partial tear of the rotator cuff, tendinopathy, and impingement syndrome.

In a June 1, 2021 report, Dr. David related that appellant reported being unable to work due to right shoulder pain. He diagnosed status post work-related injury and right shoulder pain.

In a June 17, 2021 report, Ahmed, a physical therapist, indicated that he had examined appellant between May 5 and June 4, 2021, and diagnosed right shoulder injury, right shoulder sprain, right shoulder contusion, and pain in right shoulder. Mr. Ahmed checked boxes indicating that she had no preexisting conditions that, may affect her treatment or prognosis, the incident was not the competent medical cause of the injury, her complaints were not consistent with the history of injury, and her history of injury was not consistent with his objective findings.

Beginning July 1, 2021, appellant filed CA-7 forms claiming wage-loss compensation for disability from work commencing May 8, 2021.

By decision dated July 9, 2021, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish that she was unable to work from December 5, 2020 through May 7, 2021 due to her accepted employment injury.

In a July 13, 2021 report, Dr. Robert L. Hecht, a Board-certified physiatrist, related appellant's history of injuring her right shoulder, elbow, and wrist on October 20, 2020 when a section of a mailbox fell on her. He noted that a March 31, 2021 MRI scan of the right shoulder revealed a partial rotator cuff tear. Dr. Hecht noted her history of injuring her right shoulder and wrist in a 2008 MVA. Appellant reported that she had no residual shoulder or wrist problems from that MVA, and stated that a May 8, 2017 right shoulder MRI scan revealed supraspinatus and infraspinatus tendinopathy. Dr. Hecht's examination of the right upper extremity revealed tenderness and restricted range of motion (ROM) in the shoulder, elbow, and wrist, positive Hawkin's sign in the shoulder, positive Tinel's sign in the elbow, and an equivocal Phalen's test in the wrist. He diagnosed joint derangements of right shoulder, elbow, and wrist secondary to the work-related injury. Dr. Hecht opined that appellant's complaints and examination findings were consistent with the described injury and diagnoses and indicated that she had 100 percent impairment. In reports dated August 24, 2021 through January 25, 2022, he provided the same diagnoses and opinions, and in CA-17 forms during the same period, he provided the same diagnoses. In an undated Form CA-17, Dr. Hecht diagnosed right shoulder, elbow, and wrist sprains/strains and advised that appellant could not return to work. In a March 8, 2022 Form CA-17 and report, he diagnosed joint derangements of right shoulder, elbow, and wrist secondary to the work-related injury, and advised that she could return to light-duty work on March 21, 2022.

In a Form CA-17 dated May 10, 2022, Dr. Sarah Gaballah, a Board-certified physiatrist, diagnosed joint derangements of right shoulder, elbow, and wrist, and advised that appellant could work full time with restrictions.

On May 17, 2022 appellant, through counsel, requested reconsideration.

Appellant subsequently submitted a May 10, 2022 report from Dr. Gaballah, who related appellant's history of right shoulder, elbow, and wrist pain with numbness and tingling in the right hand after the accepted October 20, 2020 employment injury, when a mailbox fell on her right shoulder, elbow, and wrist. Her examination of the right upper extremity revealed tenderness to palpation of the anterior shoulder, decreased and painful ROM in the shoulder, positive Neer, Hawkins, and empty can test in the shoulder, tenderness to palpation of the medial epicondyle, decreased and painful ROM in the elbow, positive Tinel's sign at the elbow, tenderness to palpation in the medial, radial, and ulnar aspect of the wrist, decreased ROM in the wrist, and positive Tinel's, Phalen's, flexion, and compression tests in the wrist. Dr. Gaballah diagnosed pain and sprains in the right shoulder, elbow, and wrist and right-hand numbness and tingling. She opined that the incident appellant described was the competent medical cause of the injury, her complaints were consistent with the history of injury, and the history of injury was consistent with the objective findings. Dr. Gaballah advised that appellant had 50 percent temporary impairment, and requested that appellant's right shoulder conditions be added to her case as work related. In a June 14, 2022 report, she noted that appellant's right shoulder MRI scan was normal and that appellant continued to report right hand numbness, tingling, and weakness since October 20, 2020. Dr. Gaballah repeated her diagnoses and opinions from the May 10, 2022 report, and added diagnoses of right hand numbness and tingling likely secondary to carpal tunnel syndrome and paresthesia.

By decision dated August 3, 2022, OWCP denied modification of the July 9, 2021 decision. It further found that appellant had not submitted sufficient medical evidence to support expansion of the acceptance of her claim to include additional conditions.

On July 13, 2023 appellant, through counsel, requested reconsideration.

Appellant submitted a May 25, 2022 right shoulder MRI scan, which revealed no abnormalities.

On August 9, 2022 Dr. Gaballah repeated her earlier diagnoses and opinions. On August 30, 2022 she performed an electromyogram/nerve conduction velocity study, which revealed mild right sensory demyelinating median nerve neuropathy at the wrist consistent with carpal tunnel syndrome. In a report of the same date, Dr. Gaballah diagnosed right carpal tunnel syndrome, right ulnar sensory neuropathy, neuropathy of right ulnar nerve at wrist, and paresthesia. She noted that appellant was working limited duty and advised that appellant should not lift or carry more than 10 pounds. Dr. Gaballah opined that the incident appellant described was the competent medical cause of the injury, her complaints were consistent with the history of injury, and the history of injury was consistent with the objective findings. In an October 11, 2022 report, she diagnosed pain and sprains of the right elbow, wrist and shoulder, and right carpal tunnel syndrome, and repeated her opinion from the last report. Dr. Gaballah advised that appellant should not lift more than 15 pounds.

By decision dated July 17, 2023, OWCP denied modification of the August 3, 2022 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁵ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁶

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in their employment, they are entitled to compensation for loss of wages.⁸

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is

⁴ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See M.B.*, Docket No. 18-1455 (issued March 11, 2019); *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

⁶ *See* 20 C.F.R. § 10.5(f); *T.W.*, Docket No. 22-0790 (issued March 9, 2023); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁷ 20 C.F.R. § 10.5(f).

⁸ *See L.S.*, Docket No. 22-0821 (issued March 20, 2023); *D.R.*, Docket No. 18-0323 (issued October 2, 2018).

⁹ *See L.S., id.*; *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹⁰ *Y.S.*, Docket No. 19-1572 (issued March 12, 2020); *T.K.*, Docket No. 18-1239 (issued May 29, 2019).

claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.¹¹

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish disability from work for the period December 5, 2020 through May 7, 2021, causally related to her accepted October 20, 2020 employment injury.

On December 3, 2020 Dr. David related appellant's history of injury and diagnosed status post work-related injury, hand trauma, and right-hand pain, and held her off work until mid-January 2021 due to subjective complaints of right hand and finger pain limiting her functional use of the hand. In a February 23, 2021 report, he added a diagnosis of right shoulder pain. Dr. David, however, did not provide an opinion indicating that appellant was unable to work during the claimed period due to the accepted October 20, 2020 employment conditions.¹² The Board has held that medical evidence that does not provide an opinion as to whether a period of disability is due to an accepted employment-related condition is insufficient to meet a claimant's burden of proof.¹³ Therefore, Dr. David's reports are insufficient to establish appellant's claim for disability for the period December 5, 2020 through May 7, 2021.

Additional medical evidence, including a December 2, 2020 Form CA-17 and March 16 and 20, 2021 work excuse notes bore illegible signatures. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁴ Therefore, this evidence is also of no probative value and is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between the claimed period of disability and the accepted October 20, 2020 employment injury, the Board finds that she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

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.¹⁵ When an injury arises in the course of employment,

¹¹ See *N.O.*, Docket No. 22-0644 (issued March 8, 2023); *J.B.*, Docket No. 19-0715 (issued September 12, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

¹² See *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *R.J.*, Docket No. 19-0179 (issued May 26, 2020); *M.A.*, Docket No. 19-1119 (issued November 25, 2019); *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁵ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

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.¹⁶ 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.¹⁷

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence.¹⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her accepted October 20, 2020 employment injury.

In a July 13, 2021 report, Dr. Hecht related appellant's history of injury and diagnosed joint derangements of right shoulder, elbow, and wrist secondary to the work-related injury. He opined that her complaints and examination findings were consistent with the described injury and diagnoses. In reports dated August 24, 2021 through January 25, 2022, Dr. Hecht provided the same diagnoses and opinions. He did not, however, explain the pathophysiological process through which the accepted October 20, 2020 employment injury could have caused appellant's joint derangements. The Board has held that medical evidence that states 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.²⁰ Therefore, Dr. Hecht's July 13, 2021 through January 25, 2022 reports are insufficient to establish expansion of the claim.²¹

In a May 10, 2022 report, Dr. Gaballah related appellant's history of injury and diagnosed pain and sprains of the right shoulder, elbow, and wrist and right-hand numbness and tingling. She opined that the incident appellant described was the competent medical cause of the injury, her complaints were consistent with the history of injury, and the history of injury was consistent with

¹⁶ See *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); see also *Charles W. Downey*, 54 ECAB 421 (2003).

¹⁷ *J.M., id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

¹⁸ See *V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹⁹ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

²⁰ See *C.T.*, Docket No. 22-0013 (issued November 22, 2022); *R.B.*, Docket No. 22-0173 (issued July 26, 2022); *A.P.*, Docket No. 20-1668 (issued March 2, 2022); *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

²¹ *B.W.*, Docket No. 21-0536 (issued March 6, 2023); *M.M.*, Docket No. 20-1557 (issued November 3, 2021).

the objective findings. Dr. Gaballah requested that appellant's right shoulder conditions be added to her case as work related. In June 14 through October 11, 2022 reports, she provided various diagnoses, including right carpal tunnel syndrome, right ulnar sensory neuropathy, neuropathy of right ulnar nerve at wrist, and sprains of the right elbow and shoulder, and repeated her opinion from the May 10, 2022 report. Dr. Gaballah did not, however, explain the pathophysiological process through which the accepted October 20, 2020 employment injury could have caused appellant's right shoulder conditions or carpal tunnel syndrome. As noted above, medical evidence that states 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.²² Therefore, Dr. Gaballah's May 10 through October 11, 2022 reports are insufficient to establish expansion of the claim.

In reports dated December 3, 2020 through June 1, 2021, Dr. David related appellant's history of injury and provided various diagnoses, including status post work-related injury, hand trauma, right hand pain, and right shoulder pain. In CA-17 forms dated August 24, 2021 through March 8, 2022, Dr. Hecht provided diagnoses for various right upper extremity conditions. In a Form CA-17 dated May 10, 2022, Dr. Gaballah diagnosed joint derangements of right shoulder, elbow, and wrist. None of these reports, however, offered an opinion as to the cause of appellant's medical conditions. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.²³ This evidence is, therefore, of no probative value and insufficient to establish expansion of the claim.

Additional documents, including a December 2, 2020 Form CA-17 and March 16 and 20, 2021 work excuse notes bore illegible signatures. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.²⁴ Therefore, this evidence is also of no probative value and is insufficient to establish appellant's claim.

Finally, appellant submitted results from diagnostic testing. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between an accepted employment factor/incident and a diagnosed condition.²⁵ For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish expansion of the acceptance of the claim to include an additional condition as causally related to appellant's accepted October 20, 2020 employment injury, the Board finds that she has not met her burden of proof.

²² *Supra* note 20.

²³ *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *J.H.*, Docket No. 19-0383 (issued October 1, 2019); *see also supra* note 13.

²⁴ *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²⁵ *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

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 establish disability from work for the period December 5, 2020 through May 7, 2021, causally related to her accepted October 20, 2020 employment injury. The Board further finds that she has not met her burden of proof to expand the acceptance of her claim to include additional conditions as causally related to her accepted October 20, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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