United States Department of Labor
Employees' Compensation Appeals Board

L.J., Appellant	)	
	)	
and	)	**Docket No. 23-0860**
	)	**Issued: January 29, 2024**
DEPARTMENT OF THE NAVY, NAVY DRUG SCREENING LABORATORY, San Diego, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2023 appellant filed a timely appeal from a June 6, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 June 6, 2023 decision, 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 left upper extremity conditions as causally related to or as a consequence of the accepted October 15, 2014 employment injury.

FACTUAL HISTORY

On November 4, 2014 appellant, then a 38-year-old medical technician, filed an occupational disease claim (Form CA-2) alleging that she developed a right wrist condition due to factors of her federal employment after lifting specimen trays of urine and feeling a sharp pain in her right hand and wrist. She noted that she first became aware of her condition and its relationship to her federal employment on October 15, 2014. OWCP initially denied the claim and on September 9, 2015 accepted scapholunate ligament partial tear of the right wrist. On October 13, 2016, it expanded the acceptance of appellant's claim to include lesion of the ulnar nerve of the right upper limb (cubital tunnel) and sprain of the right wrist. Appellant did not stop work, but was accommodated by reassignment to another department where she was able to work only with her left arm.[3] She was removed from federal employment on May 16, 2016. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective April 30, 2015, and on the periodic rolls, effective May 29, 2016.[4]

On April 30, 2015 Dr. Leo T. Kroonen, a Board-certified orthopedic surgeon, performed an OWCP-authorized right wrist arthroscopy and diagnosed right wrist scapholunate partial tear.

On February 8, 2017 Dr. Rommell G. Childress, a Board-certified orthopedic surgeon, performed OWCP-authorized surgery, including release of the right ulnar nerve at the elbow with neurolysis of nerve, injection of the right wrist, manipulation under anesthesia, and fluoroscopy. He diagnosed right ulnar nerve compression at the elbow and capsulitis of the right wrist status post ligament surgery.

An electromyogram and nerve conduction velocity (EMG/NCV) study dated October 18, 2017 revealed bilateral cubital tunnel syndrome and left carpal tunnel syndrome, and noted no significant improvement in the right ulnar cubital tunnel after surgery. A magnetic resonance imaging (MRI) scan of the right wrist dated October 27, 2017 was negative.

In a report dated November 2, 2017, Dr. Childress noted that an EMG/NCV study dated October 18, 2017 revealed evidence of bilateral cubital tunnel syndrome and left carpal tunnel syndrome. Appellant reported that she overused her left upper extremity to protect her right upper extremity, which remained symptomatic after surgery. Dr. Childress requested that appellant's

[3] Appellant's supervisor indicated that her tasks in the light-duty assignment included typing, filing, and barcode scanning with the left arm only. She worked in this position from October 20, 2014 through April 29, 2015.

[4] By decision dated February 16, 2018, OWCP issued a formal loss of wage-earning capacity (LWEC) determination based upon appellant's ability to earn $489.00 per week as a hospital administration clerk and it adjusted her wage-loss compensation commencing March 4, 2018 based on this determination. By decisions dated November 27, 2018 and April 3, 2019, OWCP denied modification of the February 16, 2018 decision.

claim be expanded to include left carpal tunnel syndrome and left cubital tunnel syndrome. In reports of follow-up visits dated January 4 and March 5, 2018, he noted that appellant developed left carpal tunnel syndrome from overusing the left upper extremity and opined that the condition was work related. Dr. Childress noted findings on examination of the left wrist of hypersensitivity to percussion with acute flexion, diminished sensation to light touch in the median distribution, and numbness/tingling.

On September 19, 2018 appellant requested that the acceptance of her claim be expanded to include additional conditions relating to her left upper extremity.

OWCP referred appellant along with the case record, a statement of accepted facts (SOAF) and a series of questions, to Dr. James T. Galyon, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of appellant's accepted employment-related conditions. In his October 25, 2019 report, Dr. Galyon diagnosed traumatic rupture of the scapholunate ligaments with a partial tear. He noted that appellant underwent debridement arthroscopic surgery, which did not stabilize the bones in the wrist and she continued to be symptomatic. As a result of the surgery, appellant used her left hand dominantly and her right hand only to assist. Dr. Galyon noted mildly diminished grip strength in the right hand compared to the left, no sensory deficits over the right hand and wrist, ulnar distribution numbness, and paresthesias. Appellant complained of pain in her left little finger and ring finger, tenderness over the scar on the medial surface of the left elbow, and diminished sensation over the little finger and ring finger of the left hand. X-rays of the right wrist demonstrated no instability of the carpal joints. Dr. Galyon advised that the work-related conditions had not resolved and that the damaged ligaments were surgically debrided but not repaired and continued to cause objective findings of pain in the wrist. He indicated that appellant had not reached maximum medical improvement (MMI) and recommended that she be evaluated by a hand surgeon to determine whether additional surgery was warranted. Dr. Galyon advised that appellant could not return to her date-of-injury job and required restrictions for the right upper extremity.

On November 20, 2019 OWCP requested that Dr. Childress review the second opinion report from Dr. Galyon and address whether he concurred with his opinion.

Dr. Childress treated appellant on November 19, 2019 and noted she reported increasing difficulty with her left upper extremity and the development of carpal tunnel and ulnar nerve conditions from overuse syndrome. He requested expansion of the acceptance of appellant's claim to include left carpal tunnel syndrome and cubital tunnel syndrome secondary to overuse from her accepted right-sided conditions. On December 19, 2019 Dr. Childress reviewed the second opinion evaluation and concurred with Dr. Galyon's recommendation for possible further work-up with a hand specialist. He noted findings of aching left elbow and paresthesias in the ulnar and median distributions. Dr. Childress diagnosed overuse syndrome involving the ulnar and median nerves on the left side, and requested expansion of the claim to include those conditions.

By decision dated May 18, 2020, OWCP denied the expansion of the acceptance of appellant's claim to include left carpal tunnel syndrome, left cubital tunnel syndrome, and left ulnar nerve entrapment of the elbow.

On May 27, 2020, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated July 27, 2020, OWCP's hearing representative set aside the May 18, 2020 decision, finding that further clarification of Dr. Galyon's opinion was required. The hearing representative noted that appellant was accommodated by reassignment to another department from October 20, 2014 through April 30, 2015 where she used only her left arm. The hearing representative instructed OWCP to obtain a description of appellant's job duties during this period, amend the SOAF, and remand the case to Dr. Galyon to provide a rationalized explanation of whether left carpal tunnel syndrome, left cubital tunnel syndrome, and ulnar entrapment of the left elbow was causally related to appellant's accepted employment injury.

On August 3, 2020 OWCP requested that the employing establishment provide a description of appellant's job duties from October 20, 2014 through April 29, 2015 after she was reassigned to another department and restricted to using only her left arm. On August 24, 2020 the employing establishment provided a March 21, 2016 memorandum, which noted that appellant was reassigned to a light-duty position from October 21, 2014 through January 12, 2015. Appellant's assigned tasks included completing data entry of batch folders using her left hand. The employing establishment noted that when work was slow appellant was sent home. Appellant had surgery on April 30, 2015 and was placed on leave without pay status through August 30, 2015.

Dr. Childress continued to treat appellant from August 26 through October 13, 2020 and requested that her claim be expanded to include carpal tunnel syndrome and cubital tunnel syndrome secondary to overuse syndrome from her accepted right-sided work conditions.

On September 18, 2020 OWCP requested that Dr. Galyon provide a supplemental report addressing whether appellant developed left carpal tunnel syndrome, left cubital tunnel syndrome, and ulnar nerve entrapment causally related to the accepted employment injury.

In a report dated October 9, 2020, Dr. Galyon opined that appellant had residuals of her work-related injury of partial tear of the scapholunate ligament and cubital tunnel syndrome due to an injury to her right wrist. He noted an x-ray of the right wrist did not reveal instability between the scaphoid and the lunate. Dr. Galyon noted that appellant had reached MMI and no further treatment was necessary. He indicated that appellant's left hand and wrist symptoms did not appear to be work related.

By decision dated November 17, 2020, OWCP denied appellant's request for expansion of the acceptance of her claim to include left carpal tunnel syndrome, left cubital tunnel syndrome, and left ulnar nerve entrapment of the elbow.

On December 4, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a December 4, 2020 statement, appellant described her work duties after reassignment on October 14, 2014, noting that she did not use her right arm when lifting, pulling, or dragging specimens over 5 to 10 pounds. She was instructed to use her left extremity to process, access, lift, pull, and drag a specimen of any weight. Appellant reported solely using her left extremity during the first few weeks of reassignment. She underwent surgery on the right wrist on April 30, 2015.

In a January 19, 2021 report, Dr. Childress opined that appellant developed overuse syndrome of the left upper extremity directly related to her work-related right upper extremity injuries.

Following a preliminary review, by decision dated February 2, 2021, OWCP's hearing representative set aside the November 17, 2020 decision, finding that further clarification of Dr. Galyon's opinion was required. The hearing representative instructed OWCP to send appellant's December 4, 2020 statement regarding her work duties performed between October 20, 2014 through April 29, 2015 to the employing establishment for comment and requested that it provide documentation of any date appellant did not work after January 12, 2015. The hearing representative instructed OWCP to obtain a supplemental report from Dr. Galyon addressing whether the diagnosed left carpal tunnel syndrome and left cubital tunnel syndrome documented on the October 18, 2017 EMG/NCV study was caused by the light-duty work performed by appellant between October 20, 2014 through April 29, 2015, and whether the left upper extremity conditions developed as a consequence of overuse over time as a result of the residuals of the accepted right upper extremity conditions.

In a March 22, 2021 report, Dr. Childress opined that appellant developed an overuse syndrome of her left upper extremity. He requested additional diagnostic testing.

On May 24, 2021 OWCP requested that Dr. Galyon address whether the diagnosed left carpal tunnel syndrome and left cubital tunnel syndrome documented by the October 18, 2017 EMG/NCV study were caused by the light-duty assignment performed by appellant between October 20, 2014 and April 29, 2015, and if the left upper extremity conditions developed from overuse over time as a result of residuals of the accepted right upper extremity conditions.

On June 2, 2021 appellant underwent an EMG/NCV study, which revealed bilateral cubital tunnel syndrome, left worse than right.

In a June 10, 2021 report, Dr. Childress noted that recent diagnostic testing revealed cubital tunnel issues in both extremities and diminished sensation in the ulnar distribution bilaterally.

In a report dated June 16, 2021, Dr. Galyon performed a physical examination and noted ulnar neuropathy of the left little and ring fingers possibly related to the ulnar nerve, as well as a scar over the flexor surface of the left forearm, left little finger, and medially over the left elbow. He indicated that appellant had cubital tunnel syndrome of the left wrist, which she related to overuse syndrome of her left hand because of the injury to her right hand. Dr. Galyon opined that it was possible that the right wrist continued to be weak and painful and that appellant "may or may not have" shifted her activity to the left wrist, causing overuse syndrome.

By decision dated July 29, 2021, OWCP denied appellant's request for expansion of the acceptance of her claim, to include left carpal tunnel syndrome, left cubital tunnel syndrome, and left ulnar nerve entrapment of the elbow.

On August 3, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report of an August 23, 2021 follow-up visit, Dr. Childress noted that appellant's left upper extremity remained symptomatic. He noted that a recent EMG/NCV study revealed cubital tunnel syndrome bilaterally.

Following a preliminary review, by decision dated November 5, 2021, OWCP's hearing representative set aside the July 29, 2021 decision, finding that Dr. Galyon was unable to provide an unequivocal response to the questions posed to him. The hearing representative remanded the case for a new impartial medical examination.[5]

On June 2, 2022 OWCP found a conflict in the medical opinion and referred appellant to Dr. H. James Wiesman, Jr., a Board-certified orthopedic surgeon, to resolve the conflict as to whether there was a causal relationship between the claimed left carpal tunnel syndrome, left cubital tunnel syndrome, and left ulnar nerve entrapment and appellant's work-related injury.

In a July 18, 2022 report, Dr. Wiesman, serving as the impartial medical examiner (IME), submitted his findings upon examination following a review of a SOAF and the medical evidence of record. He opined that, upon examination and review of the records, there was no evidence that increased use of the left upper extremity secondary to the accepted injury of the right upper extremity caused the additional left upper extremity conditions. Dr. Wiesman noted the significance of the fact that the left upper extremity symptoms appeared after the unsuccessful ulnar nerve decompression performed by Dr. Childress in 2017. He further indicated that the chronological onset of the left upper extremity symptoms began three to four years after the original injury, which substantiated the fact that any problems that occurred with the left upper extremity were due specifically to the activities being performed by appellant during the period of the onset of symptoms and were not related to the accepted October 15, 2014 employment injury. Dr. Wiesman reviewed the EMG/NCV study of June 2, 2021, which was consistent with bilateral cubital tunnel syndrome, left worse than right. He noted the right median and left median motor distal latencies, amplitudes, and conduction velocities were normal. Therefore, Dr. Wiesman noted that electro diagnostically, it did not appear that appellant had left carpal tunnel syndrome; rather she had left ulnar cubital tunnel syndrome. He opined that the left upper extremity symptoms were not causally related to the accepted employment injury of the right upper extremity. Dr. Wiesman concluded that there was no objective, plausible medical evidence that the symptoms and diagnoses of left carpal tunnel syndrome, left cubital tunnel, and left ulnar nerve entrapment syndrome were related to the accepted October 15, 2014 employment injury.

[5] The record reveals that Dr. Galyon was a second opinion physician and not a referee physician as noted by the OWCP hearing representative.

By decision dated October 13, 2022, OWCP denied appellant's request for expansion of the acceptance of her claim to include left carpal tunnel syndrome, left cubital tunnel syndrome, and left ulnar nerve entrapment of the elbow.

On October 24, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 22, 2023.

In a progress note dated April 13, 2023, Dr. Childress noted diminished sensation to light touch in the ulnar distribution bilaterally, as well as fair pinch and grip strength bilaterally. He opined that appellant's left upper extremity overuse syndrome developed as a result of her work-related right upper extremity injury.

By decision dated June 6, 2023, OWCP's hearing representative affirmed the October 13, 2022 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]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.[9]

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.[10] The basic rule is

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[6] *M.B.*, Docket No. 19-0485 (issued August 22, 2019); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

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

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id*.

[10] *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *A.M.,* Docket No. 18-0685 (issued October 26, 2018); *Mary Poller,* 55 ECAB 483, 487 (2004).

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.[11]

Section 8123(a) of FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[12] For a conflict to arise the opposing physicians' viewpoints must be of virtually equal weight and rationale.[13] Where OWCP has referred the case to an IME to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well reasoned and based upon a proper factual background, must be given special weight.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include left upper extremity conditions as causally related to or as a consequence of the accepted October 15, 2014 employment injury.

OWCP found a conflict in the medical opinion evidence between appellant's treating physician, Dr. Childress, who opined that that the development of left ulnar nerve conditions and left carpal tunnel syndrome was secondary to overuse of the left upper extremity, and its second opinion physician, Dr. Galyon, who opined that appellant's left upper extremity conditions were not work related. It properly referred appellant to Dr. Wiesman, serving as the IME, to resolve the conflict, pursuant to 5 U.S.C. § 8123(a).

In his July 18, 2022 report, Dr. Wiesman found that appellant's left carpal tunnel syndrome, left cubital tunnel, and left ulnar nerve entrapment syndrome were not causally related to her accepted October 15, 2014 employment injury. He noted there was no evidence that any increased use of the left upper extremity secondary to the accepted injury of the right upper extremity caused these additional conditions. Dr. Wiesman indicated that the left upper extremity symptoms described by Dr. Childress appeared after the unsuccessful ulnar nerve decompression performed by appellant in 2017. He further noted that the chronological onset of the left upper extremity symptoms began three to four years after the original injury, which substantiated that any problems that occurred with the left upper extremity were due specifically to the activities being carried out by appellant during the period of onset of symptoms and were not related to the accepted October 15, 2014 employment injury. Dr. Wiesman concluded that there was no objective, plausible medical evidence that the symptoms and diagnoses of left carpal tunnel

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

[12] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[13] *See A.E.,* Docket No. 23-0756 (issued December 14, 2023); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006); *James P. Roberts,* 31 ECAB 1010 (1980).

[14] *M.E.,* Docket No. 21-0281 (issued June 10, 2022); *Darlene R. Kennedy, id.; James P. Roberts, id.*; *see also Gary R. Sieber*, 46 ECAB 215, 225 (1994).

syndrome, left cubital tunnel, and left ulnar nerve entrapment syndrome were causally related to the accepted employment injury.

Dr. Wiesman addressed the medical records to make his own examination findings to reach a well-reasoned opinion.[15] Following physical examination, he found no basis on which to attribute causal relationship between the additional left upper extremity conditions and the accepted October 15, 2014 employment injury. The Board, therefore, finds that Dr. Wiesman's opinion constitutes the special weight of the medical evidence.

As Dr. Childress was on one side of the conflict, his subsequent report is insufficient to create a new conflict in medical opinion or to overcome the special weight properly accorded to Dr. Wiesman.[16] Therefore, OWCP properly determined that this additional report was insufficient to expand the acceptance of appellant's claim to include left carpal tunnel syndrome, left cubital tunnel, and left ulnar nerve entrapment syndrome as causally related to or a consequence of the accepted October 15, 2014 employment injury.

As the medical evidence of record is insufficient to establish expansion of the acceptance of her claim to include left upper extremity conditions, 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 establish that the acceptance of her claim should be expanded to include left upper extremity conditions as causally related to or as a consequence of the accepted October 15, 20214 employment injury.

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[15] *K.V.,* Docket No. 18-0947 (issued March 4, 2019); *M.E.,* Docket No. 18-1135 (issued January 4, 2019); *Michael S. Mina*, 57 ECAB 379 (2006); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report).

[16] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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