

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

J.V., Appellant)	
)	
and)	Docket No. 23-0895
)	Issued: January 26, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
Corpus Christi, TX, Employer)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On June 16, 2023 appellant filed a timely appeal from a May 31, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0895.

This case has previously been before the Board.¹ The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On January 18, 2022 appellant, then a 50-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he sustained severe right shoulder pain due to factors of his federal employment, including physical tasks during his 22-plus years in law enforcement. He indicated that two previous surgeries on his left shoulder left him with an impairment rating and a very weak left arm. Appellant noted that he first became aware of his condition and its relation to his federal employment on January 18, 2022. On the reverse side of the claim form, appellant's supervisor reported that appellant was retired and was last exposed to

¹ *Order Remanding Case*, Docket No. 22-1047 (issued March 14, 2023).

the conditions alleged to have caused the claimed condition on June 21, 2021. OWCP assigned this claim OWCP File No. xxxxxx898.

In an accompanying narrative statement, appellant described his work duties and noted that he had previously sustained an accepted left shoulder injury, which required two surgeries. He reported that, due to the high percentage of impairment of his left shoulder, he had to compensate in his daily activities by just using his right arm.

The record reflects that appellant has previously accepted traumatic injury claims (Form CA-1) for left shoulder conditions. A December 19, 2016 claim under OWCP File No. xxxxxx966 was accepted for other specific joint derangements of the left knee, left shoulder rotator cuff strain, and other disturbances of skin sensation. A March 28, 2018 claim under OWCP File No. xxxxxx903 was accepted for sprain of left shoulder joint. A February 12, 2019 claim under OWCP File No. xxxxxx994 was accepted for left shoulder rotator cuff strain and tear. OWCP granted appellant a schedule award for 16 percent permanent impairment of the left upper extremity under OWCP File No. xxxxxx994. His claims were administratively combined by OWCP, with OWCP File No. xxxxxx966 serving as the master file.

In a January 26, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a February 8, 2022 narrative report, Dr. Viraf Cooper, a Board-certified neurosurgeon, described appellant's work duties and noted that he had two prior work-related left shoulder injuries and two left shoulder surgeries. She opined that these injuries were noncontributory to his current right shoulder condition. Dr. Cooper diagnosed right shoulder rotator cuff tear, sprain, tendinosis, and acromioclavicular osteoarthritis and opined that these conditions were directly attributable to the physical demands of appellant's federal employment over 22 years.

On March 10, 2022 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Walter Del Gallo, a Board-certified orthopedic surgeon, for a second opinion evaluation. The Board notes that, while the SOAF informed Dr. Del Gallo of appellant's prior accepted left shoulder conditions, it failed to note appellant's schedule award for 16 percent permanent impairment of the left upper extremity under OWCP File No. xxxxxx994.

In a report dated March 31, 2022, Dr. Del Gallo noted his review of the medical record and diagnosed a nonwork-related right shoulder rotator cuff tear. He noted appellant's history of two left shoulder surgeries, but opined that there was no evidence that this in and of itself caused, aggravated, accelerated, or precipitated a right shoulder rotator cuff tear.

By decision dated April 25, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted factors of his federal employment.

On May 3, 2022 appellant requested reconsideration.

By decision dated July 6, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By order dated March 14, 2023, the Board set aside OWCP's April 25 and July 6, 2022 decisions and remanded the case for further development, finding that it was necessary to administratively combine OWCP File Nos. xxxxxx898, xxxxxx966, xxxxxx903, and xxxxxx994 for a full and fair adjudication of appellant's claim.²

By *de novo* decision dated May 31, 2023, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted factors of his federal employment. In reaching this finding, it relied on Dr. Del Gallo's March 31, 2022 report.

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

On March 10, 2022 OWCP provided Dr. Del Gallo with a SOAF that failed to note appellant's prior schedule award of 16 percent permanent impairment of the left upper extremity under OWCP File No. xxxxxx994, even though appellant alleged that his current condition stemmed from that impairment.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.³ OWCP's procedures dictate that, when a district medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁴

As OWCP provided Dr. Del Gallo with an incomplete SOAF, the Board finds that his second opinion report cannot represent the weight of the medical evidence.⁵

Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall prepare a complete and accurate SOAF including appellant's prior schedule award under OWCP File No. xxxxxx994 and request that Dr. Del Gallo submit a supplemental report regarding causal relationship. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

² *Id.*

³ *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁴ *R.W.*, Docket No. 19-1109 (issued January 2, 2020); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

⁵ *M.B.*, *supra* note 3; *G.C.*, Docket No 18-0842 (issued December 20, 2018).

IT IS HEREBY ORDERED THAT the May 31, 2023 decision of the Office of Workers' Compensation is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: January 26, 2024
Washington, DC

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

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

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