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<b>R.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 23-0952</b>
	)	<b>Issued: March 5, 2024</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>ORLANDO VA MEDICAL CENTER,</b>	)	
<b>Orlando, FL, Employer</b>	)	
	)	

*Alan J. Shapiro, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

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

## JURISDICTION

On July 10, 2023 appellant, through counsel, filed a timely appeal from a June 14, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted January 18, 2022 employment incident.

## **FACTUAL HISTORY**

On January 28, 2022 appellant, then a 47-year-old volunteer program administration specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 2022, she experienced pain in her left shoulder and the left side of her neck when she and a volunteer lifted a large container of clothing from a vehicle while in the performance of duty. She did not stop work.

In a development letter dated February 8, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, and afforded her 30 days to submit the necessary evidence.

In response, appellant submitted a February 21, 2022 statement asserting that at 9:30 a.m. on January 18, 2022, she unloaded a bin of donated clothing weighing 25 to 30 pounds from a car. As she lifted the bin, she experienced severe pain in her left shoulder and neck. Appellant wore a sling for approximately one week.

In a February 25, 2022 duty status report (Form CA-17), Dr. Robert R. Reppy, an osteopathic physician specializing in family practice, noted a January 18, 2022 employment injury. He diagnosed a shoulder injury and returned appellant to modified duty with restrictions. In prescription slips of even date, Dr. Reppy ordered a magnetic resonance imaging (MRI) scan of the left shoulder and prescribed medication.

OWCP also received a February 25, 2022 work slip signed by a provider whose signature is illegible, and a March 9, 2022 work slip signed by M. Lopez, a medical assistant.

By decision dated March 16, 2022, OWCP accepted that the January 18, 2022 employment incident occurred as alleged, but denied appellant's claim as the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 25, 2022 appellant requested reconsideration and submitted additional evidence.

In a January 19, 2022 report, Dr. Billy N. Thompson, a family medicine physician, in the employing establishment's occupational health clinic, recounted a history of the January 18, 2022 employment incident, and reported his findings on physical examination. He ordered x-rays of the left shoulder, which demonstrated no acute osseous abnormality. Dr. Thompson diagnosed left rotator cuff strain.

In a January 28, 2022 report, Dr. Yong Chen, an occupational medicine physician, at the employing establishment's occupational health clinic, recounted appellant's history of injury and treatment. He diagnosed left-sided neck sprain, left shoulder sprain, left shoulder adhesive

capsulitis, and left rotator cuff strain or tear. Dr. Chen referred appellant to an orthopedist and provided work restrictions.

In a February 25, 2022 report, Dr. Reppy recounted appellant's history of injury on January 18, 2022 and reported his findings on physical examination. He noted that there was "no firm diagnosis at this point" as appellant required additional tests. Dr. Reppy suspected a left rotator cuff tear. He prescribed medication and noted appellant's work restrictions.

OWCP received March 3, 2022 notes, wherein Dr. Reppy, referred appellant for a surgical consultation regarding repair of a left supraspinatus tendon tear, and ordering a cervical MRI scan to rule out myelopathy.

In a March 4, 2022 report, Dr. Reppy clarified that appellant required a break every 45 minutes to stand and stretch.

A March 7, 2022 MRI scan of the left shoulder demonstrated an acromioclavicular joint stress response with moderate hypertrophy, coracohumeral ligament thickening with rotator internal synovitis compatible with capsulitis and consistent with subacute injury, and supraspinatus insertional moderate tendinosis with low-grade insertional tear and no muscular atrophy.

A March 9, 2022 electromyogram and nerve conduction velocity (EMG/NCV) study demonstrated left ulnar entrapment neuropathy. On that same date, a somatosensory evoked potential study of the upper extremities demonstrated abnormal cervical and cortical delta latency.

In a March 9, 2022 report, Dr. Reppy opined that a thoracic outlet syndrome evaluation was essentially normal. In a March 18, 2022 Form CA-17 report, he again diagnosed a shoulder injury and noted appellant's work restrictions.

By decision dated April 20, 2022, OWCP modified its March 16, 2022 decision to find that the medical evidence established a medical diagnosis in connection with the January 18, 2022 employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted employment incident.

OWCP received a March 9, 2022 neck soft tissue ultrasound study, which demonstrated probable mild-to-moderate inflammation at the bilateral C7 paravertebral area with associated paravertebral spasm.

OWCP also received a March 18, 2022 report by Dr. Reppy, reviewing appellant's history of injury and treatment. He diagnosed a torn supraspinatus tendon of the left shoulder, synovitis at the coracohumeral ligament of the left shoulder, and left ulnar entrapment neuropathy. Dr. Reppy referred appellant to an orthopedic surgeon to discuss repair of the left supraspinatus tear, prescribed medication, and renewed work restrictions.

On May 6, 2022 appellant requested reconsideration of the April 20, 2022 decision and submitted additional evidence.

In a May 6, 2022 report, Dr. Reppy noted that during his first examination of appellant on February 25, 2022, he opined that "her injury was in fact at work during her shift at the [employing

establishment] on [January 18,] 2022” when she unloaded a large bin of clothing and felt immediate pain at the neck and left shoulder.

By decision dated May 10, 2022, OWCP denied modification of its prior decision.

In an August 12, 2022 report, Dr. Reppy recounted that on January 18, 2022 while at work at the employing establishment, appellant unloaded a large bin full of clothing, and felt immediate pain in her left shoulder and neck. He noted that a March 7, 2022 MRI scan of the left shoulder demonstrated a supraspinatus tendon tear, and a March 9, 2022 EMG/NCV study demonstrated left ulnar motor nerve entrapment at the elbow. Dr. Reppy restated his prior diagnoses of left supraspinatus tendon tear and left ulnar nerve entrapment neuropathy. He opined that the weight of the bin of clothing overtaxed the tensile strength of the supraspinatus muscle, causing a tear in the body of the tendon. Based on appellant’s age, gender, and that she was “not a weightlifting fitness buff, it is quite plausible that the aforementioned weight superseded the contraction capacity of the involved muscle.” Dr. Reppy explained that the supraspinatus tendon would not heal on its own as tendons had a poor blood supply compared to muscle, and scar tissue had formed at both ends. Appellant therefore required “surgical intervention including trimming back the scar tissue and suturing” the ends together. Regarding the left ulnar nerve entrapment neuropathy, Dr. Reppy opined that when appellant pulled with her left arm at the time of injury, the traction force at the elbow joint “can cause damage at the cubital groove where the [u]lnar nerve traverses the elbow joint.” He explained that as the ulnar nerve sits deep within the cubital groove where the nerve traverses the elbow joint, it was “vulnerable to deformations in the groove such as that caused by linear traction during excessive pulling. This sets up a plausible mechanism for the pulling of the clothing bin with the left arm damaging the ulnar nerve [as] it crosses the elbow, which is exactly what was seen on the nerve conduction velocity test.” Dr. Reppy noted that appellant required surgery to address the ulnar nerve entrapment.

On January 23, 2023 appellant, through counsel, requested reconsideration of the May 10, 2022 decision. She resubmitted a copy of Dr. Reppy’s August 12, 2022 report.

By decision dated June 14, 2023, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment incident identified by the employee.<sup>9</sup>

### ANALYSIS

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

In a report dated August 12, 2022, Dr. Reppy advised that appellant sustained a left supraspinatus tendon tear and left ulnar nerve entrapment neuropathy when she lifted a heavy bin of clothing while at work on January 18, 2022. He explained that based on her age, gender, and fitness level, the weight of the clothing superseded the contraction capacity of the involved muscle. Dr. Reppy further explained that as the ulnar nerve sits deep within the cubital groove where the nerve traverses the elbow joint, it was “vulnerable to deformations in the groove such as that caused by linear traction during excessive pulling. He noted that this damage was confirmed by an EMG/NCV study. Additionally, Dr. Reppy explained that appellant would require surgical

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<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *C.S.*, Docket No. 21-0354 (issued June 27, 2023); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

repair of the supraspinatus tendon and ulnar nerve entrapment. While Dr. Reppy's August 12, 2022 report is insufficient to establish the claim, it is sufficient to require further development.<sup>10</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>11</sup> OWCP has an obligation to see that justice is done.<sup>12</sup>

The case shall therefore be remanded for further development of the claim. On remand, OWCP shall refer appellant, along with the medical record, and a statement of accepted facts to a physician in the appropriate field of medicine. The referral physician shall provide a rationalized opinion regarding whether she sustained a medical condition causally related to or aggravated by the accepted January 18, 2022 employment incident. If the second opinion physician disagrees with the opinion of Dr. Reppy, he or she must provide a fully-rationalized explanation of why the accepted employment incident was insufficient to have caused or contributed to appellant's medical condition. Following this and such other 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.

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<sup>10</sup> *A.L.*, Docket No. 22-0005 (issued February 6, 2023); *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *D.B.*, Docket No. 19-0504 (issued July 22, 2020); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *See J.H.*, Docket No. 18-1637 (issued January 29, 2020); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>12</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 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: March 5, 2024  
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