United States Department of Labor
Employees' Compensation Appeals Board

D.M., Appellant	)	
and	)	**Docket No. 25-0317**
	)	**Issued: April 15, 2025**
DEPARTMENT OF VETERANS AFFAIRS, NEW YORK HARBOR HEALTHCARE SYSTEM, St. Albans, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On February 18, 2025 appellant filed a timely appeal from a September 18, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[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*.

[3] The Board notes that following the September 18, 2024 decision, OWCP received additional evidence. 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 establish that the acceptance of her claim should be expanded to include chronic regional pain syndrome (CRPS), cervical radiculopathy, other muscle spasm, and post-traumatic osteoarthritis as causally related to or a consequence of her accepted December 28, 2020 employment injury.

FACTUAL HISTORY

On December 31, 2020 appellant, then a 42-year-old nurse, filed an occupational disease claim (Form CA-2) that she developed left deltoid, shoulder and neck conditions due to factors of her federal employment. She further explained that she experienced an adverse reaction to her COVID-19 vaccine shot. Appellant noted that she first became aware of her condition and realized its relation to factors of her federal employment on December 28, 2020.

In progress notes dated February 25, 2021, Dr. Vlada Frankenberger, an osteopathic physician Board-certified in physiatry, recounted appellant's history of pain within an hour of her first COVID-19 vaccine, with current complaints of myofascial pain syndrome with trigger points, musculoskeletal pain, left shoulder bicipital tendinitis, and chronic left shoulder pain. On physical examination, he reported moderate cervical paraspinal tenderness on palpation, moderate-to-severe trapezius and supraspinatus tenderness on palpation, palpable taut band of muscle, mild bilateral paraspinal hypertonicity, limited cervical range of motion, and negative bilateral Spurling's test. A review of a February 16, 2021 bilateral upper extremity electromyograph (EMG) revealed no evidence of peripheral neuropathy or cervical radiculopathy.

In a development letter dated March 18, 2021, OWCP noted that appellant was claiming left shoulder and neck conditions as the result of a COVID-19 vaccination provided or sponsored by her employer. It advised her that the evidence of record was insufficient to establish her claim. OWCP informed appellant of the type of factual and medical evidence required and afforded her 30 days to provide the requested information.

In report dated April 8, 2021, Dr. Philip Schrank, a Board-certified orthopedic surgeon, recounted appellant's history of injury and provided examination findings. He diagnosed left shoulder pain, unspecified chronicity; small fiber neuropathy; left shoulder probable small nerve neuropathy verses CRPS. Dr. Schrank concluded that appellant's conditions were a direct result of her December 28, 2020 COVID-19 vaccination.

In progress notes dated April 20, 2021, Dr. Frankenberger related that a January 12, 2021 magnetic resonance imaging (MRI) scan of appellant's left shoulder demonstrated mild acromioclavicular joint disease, and a January 22, 2021 MRI scan of her cervical spine showed C6-7 small posterior disc protrusion on the left.

By decision dated August 2, 2021, OWCP accepted the claim for adverse effect of other viral vaccines.

OWCP subsequently received reports dated May 3 and 24, 2021 from Dr. Jamal Khan, an osteopathic physician Board-certified in physiatry, who diagnosed CRPS.

In a report dated June 22, 2021, Dr. Nurcan Gursoy, a Board-certified neurologist, noted that appellant developed severe left shoulder scapular pain following a COVID-19 vaccination on December 28, 2020. He summarized appellant's medical treatment following the injury. In recounting his discussions with appellant, Dr. Gursoy related that the etiology of her symptoms was unclear. He observed that her clinical presentation was not very suggestive of small fiber neuropathy, but her severe excruciating pain might be suggestive of CRPS.

In an August 9, 2021 report, Dr. Timothy D. Groth, a Board-certified anesthesiologist, detailed appellant's examination findings and diagnosed left shoulder pain, myofascial pain syndrome, adverse effect of other viral vaccine, and small fiber neuropathy.

Dr. Khan, in an October 4, 2021 report, advised that appellant had been under his care for pain management. He diagnosed left shoulder pain, myofascial pain syndrome, adverse effect of other viral vaccine, small fiber neuropathy, and left upper limb CRPS.

In visit notes dated October 4, 22 and November 11, 2021, Dr. Alexander Fontenot, a Board-certified anesthesiologist, provided examination findings, reviewed diagnostic studies, and diagnosed myalgia, shoulder region joint pain, and lumbosacral region radiculopathy.

In a report dated November 9, 2021, Dr. Dov J. Berkowitz, a Board-certified orthopedic surgeon, related that following a COVID-19 vaccine, appellant began to experience neck and left shoulder pain. He reported that appellant had been diagnosed with small fiber neuropathy, myofascial pain syndrome, adverse effect of other viral vaccine, and left upper extremity CRPS. On physical examination, Dr. Berkowitz noted appellant's reduced left shoulder range of motion (ROM), positive Hawkins and provocative testing, and weakness to downward pressure against abduction.

In a report dated November 26, 2021, Dr. Tim Canty, a Board-certified anesthesiologist, recounted appellant's neck and shoulder pain complaints, summarized her medical history, reviewed diagnostic studies, and provided examination findings. He thereafter diagnosed myalgia, shoulder region joint pain, lumbosacral radiculopathy, cervicalgia, left upper limb CRPS, and adverse effect of other viral vaccines. Dr. Canty concluded that appellant's December 28, 2020 injury was the competent producing cause of the diagnosed conditions and the need for further medical treatment.

In a November 29, 2021 report, Dr. Leon Popovitz, a Board-certified orthopedic surgeon, noted that appellant had experienced left shoulder pain since receiving a COVID-19 vaccine on December 28, 2020.

In a report dated November 29, 2021, Dr. Robert C. Rothberg, a physician Board-certified in emergency medicine, diagnosed left upper extremity painful sensory neuropathy following COVID-19 vaccination of one year duration. He advised appellant that she most likely had a nerve issue.

In a December 30, 2021 report, Dr. James Paci, a Board-certified orthopedic surgeon, opined that appellant's brachial plexopathy after her vaccination was likely caused by an inflammatory reaction and lymphadenopathy. He also noted diagnoses of C6-7 disc herniation with C7 radiculopathy.

In a neurology progress note dated May 12, 2022, Dr. Michael Guido, a physician Board-certified in clinical neurophysiology, neurology, and vascular neurology, noted a history of injury, provided examination findings, and diagnosed complex regional pain syndrome (CRPS) type II.

Dr. Khan, in progress notes dated June 3, July 5, September 2, and 30, 2022 and a November 21, 2022 report, diagnosed shoulder injury related to vaccine administration, chronic left shoulder pain, and myofascial pain syndrome.

In a report dated June 15, 2022, Dr. Michael J. Sileo, a Board-certified orthopedic surgeon, related that appellant was status post-December 2020 COVID-19 vaccine with likely left upper extremity reflex sympathetic dystrophy (RSD). He explained that her symptoms of mild shoulder stiffness and multiple areas of hypersensitivity and particular tenderness were consistent with a diagnosis of RSD.

In a report dated March 29, 2023, Dr. Nizar Souayah, a Board-certified psychiatrist and neurologist serving as a district medical adviser (DMA), found that appellant's focal left deltoid pain at the site of the COVID-19 vaccination could be related to a small fiber neuropathy or focal myositis triggered by the vaccine. He further found that appellant did not develop a chronic pain syndrome including cervical radiculopathy, left arm pain, other muscle spasm, left shoulder pain, and post-traumatic osteoarthrosis as a consequence of her COVID-19 vaccination.

By decision dated March 29, 2023, OWCP denied appellant's request to expand the acceptance of her claim to include chronic pain syndrome, cervical radiculopathy, muscle spasm, and post-traumatic osteoarthritis.

OWCP received additional November 16, 2022 and March 29, 2023 progress notes from Dr. Guido, which related repetitive findings.

In a September 26, 2023 report, Dr. Raj Tolat, a Board-certified physiatrist, related that appellant's physical examination revealed reduced cervical and left shoulder ROM and tenderness on palpation over the left cervical paraspinal musculature, acromioclavicular joint, and medial and posterior deltoid. He diagnosed cervical spine disc protrusion, left shoulder derangement, and status post adverse effect to COVID-19 vaccine. Dr. Tolat found, if the history given was correct, there was a causal relationship between the December 28, 2020 injury and her complaints.

Dr. Guido, in an October 5, 2023 report, diagnosed CRPS type 2. He provided a history of injury noting that appellant developed left upper extremity CRPS following her first COVID vaccination in her left arm. Dr. Guido found that her COVID injection triggered her CRPS. He explained that injections can function as a trigger for CRPS, which he believed occurred in the current case.

In reports dated October 31, December 12, 2023, and January 30, 2024, Dr. Tolat provided examination findings, which were unchanged, and diagnosed cervical spine disc protrusion, left shoulder derangement, and status post adverse effect to COVID-19 vaccine. He recommended physical therapy and that appellant continue work as tolerated.

In pain management progress reports dated January 18 and February 16, 2024, Dr. Amit Kaushal, a Board-certified internist, reviewed diagnostic studies and performed a physical examination. He related that appellant's pain began on December 28, 2020 after her first COVID-

19 vaccination. Appellant's pain began at the site of the injection and then started to radiate into the left shoulder, she was unable to rotate her neck 24 hours after the injection. On physical examination Dr. Kaushal reported positive left upper trapezius, positive supraspinatus tenderness, and left shoulder hypersensitivity touch/allodynia, limited cervical rotation due to pain. He believed that the vaccine needle tip might have irritated the axillary nerve causing CRPS. Dr. Kaushal explained that appellant's allodynia, decreased ROM, and skin color changes met the diagnosis criteria for CRPS. He also diagnosed left central disc protrusion without C6-7 cord compression and disc approaches left C7 nerve root.

Dr. Guido, in a March 11, 2024 progress note related that appellant had no known past medical history prior to receiving a COVID-19 vaccination into her left deltoid muscle. Appellant thereafter developed persistent pain and cramping and met the criteria for CRPS. He opined that appellant's vaccine injection on December 28, 2020 damaged her axillary nerve, which triggered her CRPS. Thus, Dr. Guido explained that her chronic pain was causally related to the injection.

On March 19, 2024 appellant, through counsel, requested reconsideration asserting that the medical evidence of record established that appellant sustained consequential injuries of CRPS and cervical radiculopathy. Counsel also asserted that there was an unresolved conflict in the medical opinion evidence between the DMA and appellant's treating physicians regarding expansion of her claim.

On April 12, 2024 OWCP referred appellant, together with a statement of accepted facts (SOAF), medical record, and series of questions, for a second opinion evaluation with Dr. Paul Lerner, a Board-certified neurologist, on the issue of whether appellant sustained additional medical conditions due to her accepted employment injury.

In a report dated May 15, 2024, Dr. Lerner, based upon a review of appellant's injury, medical record, SOAF, and physical examination, diagnosed adverse reaction to COVID-19 vaccination in the left arm. A neurological examination was within normal limits. Dr. Lerner observed a mild cervical spine ROM mild abnormality, which he stated was subjective and may be due to pain. He found no evidence of CRPS, small fiber neuropathy, axillary injury, or left shoulder joint abnormality. Dr. Lerner explained there were no objective physical findings such as skin, temperature, or hair changes or abnormal bone scan to support a diagnosis of CRPS. He noted appellant's current symptoms appeared to be caused by an adverse COVID-19 vaccine reaction. Dr. Lerner explained that underlying pathophysiological mechanism of COVID-19 adverse reactions is unclear as is the many reported side effects to the vaccine. Next, he related that from a clinical viewpoint her symptoms did not suggest small fiber neuropathy given the focal nature of her symptoms. Dr. Lerner expressed concern on the reported pericarditis and transient rash/ecchymosis, which he could not confirm or exclude as delayed adverse vaccine related reactions.

On July 16, 2024 OWCP referred appellant, together with a SOAF, the medical record, and a series of questions, for a second opinion evaluation with Dr. Leon Sultan, a Board-certified orthopedic surgeon, on the issue of whether she sustained additional conditions due to her accepted December 28, 2020 employment injury.

In a report dated August 13, 2024, Dr. Sultan, reviewed appellant's medical record, history of injury, SOAF, and a series of questions, and provided examination findings. On physical examination of the left shoulder, he reported decreased ROM, negative impingement test, negative

Hawkins' test, and negative drop arm. Dr. Sultan also reported normal left upper extremity sensation. He found that appellant's subjective complaints did not correspond with his objective examination findings. A review of an August 2, 2022 cervical MRI scan, more likely than not, represented age-related degenerative changes. Next, Dr. Sultan opined that appellant did not develop consequential cervical radiculopathy due to receiving the COVID-19 vaccination. He explained that the vaccine caused an inflammatory condition in her left shoulder, which resulted in partial left shoulder adhesive capsulitis, residual left shoulder pain, and restricted left shoulder ROM.

In a supplemental report dated September 4, 2024, Dr. Sultan explained that appellant's lack of use of her left arm due to post-injection inflammatory changes caused chronic pain and disuse. He opined that the left shoulder partial adhesive capsulitis was caused by the left shoulder inflammatory changes which has persisted since the COVID-19 vaccination on December 28, 2020. However, Dr. Sultan explained that the evidence of record did not support consequential left shoulder post-traumatic osteoarthritis because the response to the injection did not persist, however, the post inflammatory change resulting in partial left shoulder adhesive capsulitis was permanent.

By decision dated September 18, 2024, OWCP vacated the March 29, 2023 decision in part, finding that the medical evidence of record was sufficient to establish the condition of partial left shoulder adhesive capsulitis as causally related to the December 28, 2020 employment injury. It, however, further affirmed the March 29, 2023 decision in part, finding that the medical evidence of record was insufficient to establish that appellant developed conditions of muscle spasm, CRPS, cervical radiculopathy, and post-traumatic osteoarthritis, causally related to the accepted employment injury.

By separate decision also dated September 18, 2024, OWCP formally expanded acceptance of the claim to include left shoulder adhesive capsulitis.

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.[4]

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.[5] 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

[4] *D.M.*, Docket No. 24-0512 (issued December 9, 2024); *L.F.,* Docket No. 20-0359 (issued January 27, 2021); *S.H.,* Docket No. 19-1128 (issued December 2, 2019); *M.M.,* Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo,* 55 ECAB 200, 204 (2004).

[5] *D.M.*, *id.*; *L.F., id.*; *T.K.,* Docket No. 18-1239 (issued May 29, 2019); *M.W.,* 57 ECAB 710 (2006); *John D. Jackson,* 55 ECAB 465 (2004).

employment factors identified by the claimant.[6] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[7]

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.[8]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[9] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of the claim to include cervical radiculopathy, muscle spasm, and post-traumatic osteoarthritis as causally related to, or consequential to, the accepted December 28, 2020 employment injury.

OWCP accepted that appellant's December 28, 2020 COVID-19 vaccination caused an adverse effect and that it caused adhesive capsulitis of the left shoulder. Appellant has requested that OWCP expand its acceptance of her claim to include cervical radiculopathy, muscle spasm, post-traumatic osteoarthritis and CRPS as causally related to or a consequence of her accepted employment injury. Regarding the diagnoses of cervical radiculopathy, muscle spasm, and post-traumatic osteoarthritis, the Board finds that appellant's treating physicians have not provided a rationalized medical opinion causally relating appellant's diagnoses to the accepted December 20, 2020 employment injury. The Board has held that medical opinion evidence should offer a

[6] *D.T.,* Docket No. 20-0234 (issued January 8, 2021); *D.S.,* Docket No. 18-0353 (issued February 18, 2020); *T.K., id.*; *I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 345 (1989).

[7] *See D.T., id.*; *P.M.,* Docket No. 18-0287 (issued October 11, 2018).

[8] *F.R.,* Docket No. 24-0075 (issued March 4, 2024); *V.K.,* Docket No. 19-0422 (issued June 10, 2020); *K.S.,* Docket No. 17-1583 (issued May 10, 2018).

[9] U.S.C. § 8123(a). *See R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

[10] 20 C.F.R. § 10.321. *See also J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

medically-sound explanation of how the specific employment incident physiologically caused injury.[11] Appellant has therefore not met her burden of proof to establish these diagnoses.

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.

The Board further finds, however, that the case is not in posture for decision with regard to whether appellant has met her burden of proof to expand the acceptance of the claim to include CRPS as causally related to, or consequential to, the accepted December 28, 2020 employment injury.

In reports dated January 18 and February 16, 2024 treating physician, Dr. Kaushal related that on physical examination appellant had positive left upper trapezius, positive supraspinatus tenderness, and left shoulder hypersensitivity touch/allodynia, limited cervical rotation due to pain. He explained that her allodynia, decreased ROM, and skin color changes met the diagnosis criteria for CRPS. Dr. Kaushal related that appellant's pain began on December 28, 2020 after her first COVID-19 vaccination. He further noted that her pain began at the site of the injection and then started to radiate into the left shoulder, she was unable to rotate her neck 24 hours after the injection. Dr. Kaushal opined that the vaccine needle tip might have irritated the axillary nerve causing CRPS. Appellant's treating physician, Dr. Guido also diagnosed CRPS and explained in his October 5, 2023 report that injections can function as a trigger for CRPS diagnosed CRPS type 2, which is what happened in this case. In a March 11, 2024 report, he further related that appellant had no known past medical history prior to receiving a COVID-19 vaccination into her left deltoid muscle. Appellant thereafter developed persistent pain and cramping and met the criteria for CRPS. Dr. Guido opined that appellant's vaccine injection on December 28, 2020 damaged her axillary nerve which triggered her CRPS. He concluded that appellant's chronic pain was causally related to the injection.

In his May 15, 2024 report, Dr. Lerner explained that there were no objective physical findings such as skin, temperature, or hair changes or abnormal bone scan to support a diagnosis of CRPS. He noted that appellant's current symptoms appeared to be caused by an adverse COVID-19 vaccine reaction. Dr. Lerner further stated that there were many reported side effects from the vaccine, noting the underlying pathophysiological mechanism of COVID-19 was unclear.

Treating physicians Drs. Kaushal and Guido related physical examination findings consistent with a diagnosis of CRPS and provided an explanation regarding causal relationship. Dr. Lerner, OWCP's second opinion physician, on the other hand, related that appellant had no objective findings of CRPS. The Board, therefore, finds that a conflict in medical opinion exists regarding whether appellant developed CRPS causally related to her accepted December 28, 2020 COVID-19 vaccine.

OWCP's regulations provide that, if a conflict exists between the medical opinion of the employee's treating physicians and the medical opinion of a second-opinion physician, OWCP

[11] *K.J.*, Docket No. 21-0020 (issued October 22, 2021); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

shall appoint a third physician to make an examination.[12] The Board shall, therefore, remand the case to OWCP for referral to an IME regarding whether appellant has met her burden of proof to establish that she developed CRPS causally related to her accepted employment injury.[13] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of the claim to include cervical radiculopathy, muscle spasm, and post-traumatic osteoarthritis as causally related to, or consequential to, the accepted December 28, 2020 employment injury. The Board further finds, however, that the case is not in posture for decision with regard to whether appellant has met her burden of proof to expand the acceptance of the claim to include CRPS as causally related to, or consequential to, the accepted December 28, 2020 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2024 decision of the Office of Workers' Compensation Programs is affirmed in part, and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 15, 2025
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

[12] 5 U.S.C. § 8123(a); *R.R.*, Docket No. 25-0220 (issued February 10, 2025).

[13] *Id.*