United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, CLEMENT J. ZABLOCKI VA MEDICAL CENTER, Milwaukee, WI, Employer	)	**Docket No. 24-0835** **Issued: August 28, 2025**

Appearances:
Alan J. Shapiro, 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
JANICE B. ASKIN, Judge

JURISDICTION

On August 12, 2024 appellant, through counsel, filed a timely appeal from a July 11, 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 July 11, 2024 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.*

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish continuing disability or residuals on or after August 2, 2021, causally related to the accepted August 16, 2017 employment injury; and (2) whether appellant has met her burden of proof to expand the acceptance of her claim to include additional bilateral upper extremity conditions as causally related to, or as a consequence of the accepted August 16, 2017 employment injury.

FACTUAL HISTORY

On September 7, 2017 appellant, then a 54-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2017 she sustained a left shoulder injury when transitioning a patient from a chair to a wheelchair while in the performance of duty. She did not stop work.

Appellant submitted medical evidence in support of her claim, including an undated report wherein Dr. Daniel Keller, a Board-certified internist, listed an August 16, 2017 date of injury and diagnosed adhesive capsulitis of the left shoulder. Dr. Keller stated that appellant's "injury is determined to be work related." He advised that appellant was disabled through August 30, 2017 and could return to "sit down work" on September 1, 2017 with restrictions of no lifting over 10 pounds.

By decision dated October 20, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the August 16, 2017 employment incident occurred as alleged. Therefore, the requirements had not been met for establishing that she sustained an injury as defined by FECA.

On December 8, 2017 appellant requested reconsideration and submitted additional evidence.

In a form report dated October 29, 2017, Dr. F. Michael Saigh, a Board-certified family practitioner, diagnosed radiculopathy of the left shoulder/arm; strain of muscles, fascia, and tendons at the left shoulder and left upper arm; sprain of the left shoulder girdle; strain of muscle, fascia, and tendon of the long head of the left biceps; strain of muscle, fascia, and tendon of the front wall of the thorax; effusion of the left shoulder, and muscle spasms of the left shoulder and neck complex. Dr. Saigh opined that the diagnosed medical conditions were the direct result of the August 16, 2017 employment incident.

By decision dated March 8, 2018, OWCP vacated its October 20, 2017 decision, finding that appellant had established the work-related conditions of strain of other muscles, fascia and tendons at the left shoulder and left upper arm; strain of muscle, fascia and tendon of the long head of the left biceps; and strain of muscle and tendon of the front wall of the thorax. By separate decision dated March 8, 2018, OWCP formally accepted appellant's claim for strain of other muscles, fascia and tendons at the left shoulder and left upper arm; strain of muscle, fascia and tendon of the long head of the left biceps; and strain of muscle and tendon of the front wall of the thorax. OWCP paid her wage-loss compensation for disability from work on the supplemental rolls, effective March 18, 2018.

OWCP subsequently received additional medical evidence. An April 21, 2018 left shoulder magnetic resonance imaging (MRI) scan demonstrated moderate impingement with a partial-thickness rotator cuff tear, degenerative chondromalacia, and subchondral cyst formation posterior labrum extending into the glenoid process of the scapula. A May 17, 2018 cervical spine MRI scan demonstrated advanced spondylosis of the cervical spine, multilevel central spinal stenosis, and spinal cord compression.

In an attending physician's report (Form CA-20) dated May 1, 2018, Dr. Saigh listed an August 16, 2017 date of injury and diagnosed tear of the left rotator cuff. He checked a box marked "Yes" indicating that appellant's diagnosed condition was caused or aggravated by her employment activity and advised that she would be able to resume work.

In an August 2, 2018 report, Dr. Jonathan D. Main, a Board-certified orthopedic surgeon, reported that he treated appellant on August 2, 2018 for left shoulder "pop" and pain which occurred after she transferred a patient from a chair to a wheelchair on August 16, 2017. He diagnosed left shoulder pain secondary to an acute injury with partial thickness rotator cuff tear and rotator cuff tendinopathy, preexisting asymptomatic glenohumeral arthrosis, and adhesive capsulitis resulting from the acute interstitial rotator cuff tear and likely exacerbated by preexisting glenohumeral arthrosis. Dr. Main opined that appellant's glenohumeral arthrosis did not occur at the time of her accepted August 16, 2017 employment injury.

An electromyography and nerve conduction velocity (EMG/NCV) study dated August 15, 2018 revealed moderate median neuropathy at or near the left wrist.

On August 28, 2018 Dr. Main performed OWCP-authorized arthroscopic subacromial decompression of left shoulder, arthroscopic distal clavicle resection of left shoulder, and left carpal tunnel release. He diagnosed rotator cuff tendinosis of the left shoulder, symptomatic acromioclavicular (AC) arthrosis, chondrosis of the glenohumeral joint and mid-humeral head, and carpal tunnel syndrome. In a work release report dated November 8, 2018, Dr. Main noted that appellant could return to light-duty work.

Dr. Main continued to treat appellant for left shoulder pain. In a report dated December 6, 2018, he diagnosed postoperative adhesive capsulitis, rotator cuff tendinopathy, and AC arthrosis.

On May 6, 2019 Dr. Saigh requested that the acceptance of appellant's claim be expanded to include right rotator cuff tendinosis without evidence of a rotator cuff tear. He noted that appellant had limited use of her left shoulder due to physical therapy and postoperative restrictions and, as a result, sustained a right rotator cuff injury. Dr. Saigh indicated that overuse rotator cuff injuries manifest themselves in the form of tendinitis/tendinosis as demonstrated by appellant's most recent right shoulder MRI scan.

On June 13, 2019 OWCP referred appellant's case, along with the medical record, a statement of accepted fact (SOAF), and a series of questions to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine whether she developed right shoulder rotator cuff tendinitis as a consequence of the accepted work-related injury. In a July 12, 2019 report, Dr. Fellars explained his review of the SOAF and the medical record, including Dr. Saigh's May 6, 2019 report, and disagreed with his conclusion that appellant developed right shoulder rotator cuff tendinitis as a consequence of the accepted work-related

injury. He maintained that the development of right rotator cuff tendinitis as a consequence of a left arm injury is not consistent with published medical literature.

OWCP subsequently received additional evidence. A June 18, 2019 left shoulder MRI arthrogram demonstrated subtle articular surface tear of the distal infraspinatus, mild tendinopathy of the supraspinatus with superimposed small thin linear interstitial tear, full-thickness chondromalacia of the central glenoid, partial thickness chondromalacia of the humeral head, a joint body within the biceps tendon sheath, and subtle marrow edema. A December 24, 2019 right shoulder MRI scan revealed severe glenohumeral joint chondromalacia, moderate infraspinatus tendinosis, and short segment tendinosis of the intra-articular segment of the long head of the biceps tendon.

On May 26, 2021 OWCP referred appellant, the medical record, a SOAF, and a series of questions to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion examination regarding the status of appellant's current conditions and whether any additional conditions were work related.

In a report dated June 16, 2021, Dr. Shivaram discussed appellant's factual and medical history, including the circumstances of the August 16, 2017 employment injury. He reported the finding of his physical examination, noting that the left shoulder had no evidence of swelling or atrophy, and no tenderness over the AC joint, trapezius, and scapula. Examination of the right shoulder revealed no swelling or deformity, normal range of motion, intact motor strength, negative impingement test, no tenderness over the biceps tendon, and no instability. Examination of the thoracic spine, lumbosacral spine, hips, and knees was normal. Dr. Shivaram noted that x-rays of the left shoulder revealed degenerative arthritis of the glenohumeral joint and that x-rays of the right shoulder were normal. He opined that the conditions which had been accepted in connection with the August 16, 2017 employment injury had resolved. Dr. Shivaram provided nonwork-related diagnoses of degenerative arthritis of the left shoulder, early degenerative arthritis of the right shoulder, and cervical radiculopathy with cervical stenosis of moderate severity. He opined that appellant had progressive worsening of preexisting arthritic changes involving the glenohumeral joint of the left shoulder. Dr. Shivaram advised that appellant was unable to return to regular duty because of progressive worsening of preexisting degenerative arthritis of the left shoulder, which was not related to the work injury. In an accompanying June 16, 2021 work capacity evaluation (Form OWCP-5c), he noted that appellant could only perform light-duty work due to preexisting arthritis of the left shoulder.

On June 30, 2021 OWCP advised appellant of its proposed termination of her medical benefits as the evidence of record established that she no longer had employment-related disability or residuals causally related to her accepted August 16, 2017 employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

In support of her claim, appellant submitted an April 19, 2021 report wherein Dr. Main noted that she reported persistent left shoulder pain and increasing compensatory right shoulder pain. Dr. Main diagnosed status post subacromial decompression and distal clavicle resection of the left shoulder, moderate glenohumeral arthrosis, and early osteoarthrosis of the right shoulder.

By decision dated August 2, 2021, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It found that the opinion of Dr. Shivaram represented the

weight of the medical evidence and established that she no longer had disability or residuals due to her accepted August 16, 2017 employment injury.

OWCP subsequently received additional evidence. In a July 12, 2021 report, Dr. Main reviewed Dr. Shivaram's June 16, 2021 report and disagreed with its findings. He noted that in 2017 appellant had no left-shoulder symptoms until she suffered her work-related injury and experienced a significant aggravation of mild osteoarthrosis. Dr. Main indicated that appellant had a similar work-related injury on February 4, 2016. He advised that the 2016 injury set in course osteoarthritic changes that further manifested themselves in 2017. In a July 26, 2021 report, Dr. Main reiterated that appellant's left shoulder osteoarthrosis was not preexisting, but was a condition that developed in 2016 after a work-related injury. He contended that the initial injury in 2016 began the course of osteoarthritic changes and that the 2017 employment injury accelerated the osteoarthritic condition beyond normal progression. Dr. Main indicated that appellant's severe osteoarthrosis of the left shoulder and mild osteoarthrosis of the right shoulder precluded her from performing her date-of-injury job.

On August 18, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on December 15, 2021.

OWCP continued to receive additional evidence, including August 9 and 23, 2021 treatment notes by Dr. Main.

By decision dated March 1, 2022, OWCP's hearing representative affirmed OWCP's termination of appellant's wage-loss compensation and medical benefits, effective August 2, 2021. However, the hearing representative remanded the case to OWCP for further development, as a conflict in medical opinion evidence existed between Dr. Main, appellant's treating physician, and Dr. Shivaram, the second opinion physician, regarding whether she had continuing disability or residuals on or after August 2, 2021, causally related to the accepted August 16, 2017 employment injury and whether the acceptance of her claim should be expanded to include additional conditions as causally related to the accepted August 16, 2017 employment injury.

On September 12, 2022 OWCP referred appellant, along with the medical record, a SOAF, and a series of questions to Dr. Hythem Shadid, a Board-certified orthopedic surgeon, for an impartial medical examination regarding whether appellant had continuing disability and residuals causally related to the accepted August 16, 2017 employment injury and whether the acceptance of her claim should be expanded to include additional conditions as causally related to the accepted August 16, 2017 employment injury.

In a report dated October 10, 2022, Dr. Shadid, serving as the impartial medical examiner (IME), reviewed the history of appellant's August 16, 2017 employment injury and her subsequent medical treatment. He discussed her complaints of severe left shoulder pain and noted that her history was significant for left shoulder arthritis prior to the employment injury. Dr. Shadid diagnosed strain of the left shoulder, strain of the long head of the left biceps; and strain of muscle and tendon of the front wall of the thorax, and opined that appellant's work injury was limited to the three accepted conditions. He noted that the mechanism of injury, assisting a patient and transferring him with the aid of a coworker, was consistent with having sustained shoulder, biceps, and chest muscular strains. Dr. Shadid advised that a November 17, 2017 left shoulder MRI scan only demonstrated chronic findings and opined that there were no acute findings or material

changes to support precipitation, aggravation, or acceleration of appellant's preexisting left shoulder condition. He maintained that the mechanism of injury appellant described was inconsistent with an aggravation of her preexisting conditions.

Dr. Shadid further noted that multiple subsequent MRI scans confirmed the same degenerative left shoulder conditions and indicated that each subsequent study demonstrated the natural progression of these conditions. He maintained that, by definition, strains are temporary and self-limited conditions that resolve. Dr. Shadid therefore opined that the accepted conditions had resolved prior to the time that the November 17, 2017 MRI scan was obtained. He indicated that any treatment following the resolution of the accepted conditions was related to preexisting degenerative changes to the left shoulder. Dr. Shadid noted that there was no evidence that the accepted conditions were still active and causing objective findings. He related that his opinion was based on appellant's diagnostic imaging, mechanism of injury, clinical course, and examination findings. Dr. Shadid advised that appellant was not capable of returning to her date-of-injury job as a nursing assistant due to her reduced shoulder range of motion, but opined that this was related to her preexisting degenerative shoulder condition rather than the August 16, 2017 employment injury. He further noted that no work-related restrictions or limitations were medically warranted and that all restrictions were based on appellant's nonwork-related degenerative left shoulder conditions.

In reports dated October 31, 2022 through June 19, 2023, Dr. Main diagnosed osteoarthrosis of the left shoulder, stable interstitial tears of the left rotator cuff, and left glenohumeral arthrosis. In his June 19, 2023 report, he related that appellant had likely developed right rotator cuff tendinitis.

By decision dated February 1, 2024, OWCP denied appellant's claim for continuing disability or residuals on or after August 2, 2021 causally related to the August 16, 2017 employment injury, finding that the special weight of the medical opinion evidence rested with the opinion of Dr. Shahid, in his role as the IME, who opined that her accepted conditions had resolved. It also denied appellant's request to expand the acceptance of her claim, finding that the special weight of the medical opinion evidence rested with the opinion of Dr. Shahid, in his role as the IME, who opined in his October 10, 2022 report that she did not sustain additional bilateral upper extremity conditions causally related to the accepted August 16, 2017 employment injury.

On February 13, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 6, 2024.

OWCP received additional evidence, including a February 12, 2024 report wherein Dr. Main noted that appellant reported right shoulder pain due to overuse of her arm. Dr. Main diagnosed osteoarthrosis of the left shoulder.

By decision dated July 11, 2024, OWCP's hearing representative affirmed OWCP's February 1, 2024 decision.

LEGAL PRECEDENT -- ISSUES 1 & 2

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing disability or residuals after that date, causally related to the accepted

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 based on a complete medical and factual background, supporting such causal relationship.[5]

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 a causal relationship between the diagnosed condition and the accepted employment 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, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[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 a claimant's own intentional misconduct.[10] 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 consequence of a compensable primary injury.[11]

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

[4] *See M.D.*, Docket No. 21-0080 (issued August 16, 2022); *C.P.,* Docket No. 21-0173 (issued March 23, 2022); *S.M.,* Docket No. 18-0673 (issued January 25, 2019); *C.S.,* Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

[5] *Id.*

[6] *See T.F.,* Docket No. 17-0645 (issued August 15, 2018); *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] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller,* 55 ECAB 483, 487 (2004).

[11] *A.T.,* Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

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

[13] *H.B.*, Docket No. 19-0926 (issued September 10, 2020); *D.P.,* Docket No. 23-0374 (issued August 19, 2024); *Darlene R. Kennedy,* 57 ECAB 414, 416 (2006); *James P. Roberts,* 31 ECAB 1010 (1980).

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 -- ISSUES 1 & 2

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

OWCP determined that a conflict in the medical opinion evidence existed between Dr. Main, appellant's treating physician, and Dr. Shivaram, OWCP's second opinion physician, regarding whether appellant had continuing disability or residuals on or after August 2, 2021, causally related to the accepted August 16, 2017 employment injury; and whether she met her burden of proof to expand the acceptance of her claim to include additional bilateral upper extremity conditions as causally related to, or as a consequence of her accepted August 16, 2017 employment injury. In order to resolve the conflict, it properly referred appellant to Dr. Shadid for an impartial medical examination, pursuant to 5 U.S.C. § 8123.[15]

In his October 10, 2022 report, Dr. Shadid, opined that appellant had no further disability or residuals causally related to the accepted August 16, 2017 employment injury. He explained that, based on her diagnostic imaging, mechanism of injury, clinical course, and examination findings, she had no objective evidence of her accepted August 16, 2017 employment injury. Dr. Shadid further opined that appellant's degenerative arthritis of the left shoulder, early degenerative arthritis of the right shoulder, and cervical radiculopathy with cervical stenosis conditions were not causally related to the accepted August 16, 2017 employment injury. He advised that diagnostic testing only demonstrated chronic findings and opined that there were no acute findings or material changes to support work-related precipitation, aggravation, or acceleration of appellant's preexisting left shoulder conditions. Dr. Shadid opined that appellant's preexisting degenerative arthritis of the left shoulder, early degenerative arthritis of the right shoulder, and cervical radiculopathy with cervical stenosis had naturally progressed. However, with regard to continuing disability and residuals, Dr. Shadid did not specifically address whether appellant continued to have disability and/or residuals on or after August 2, 2021 causally related to the accepted employment injury.[16] Furthermore, with regard to expansion, IME Dr. Shadid's opinion was conclusory/insufficiently rationalized.

In a situation where OWCP secures an opinion from an IME for the purpose of resolving a conflict in the medical opinion evidence and the opinion from such examiner requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.[17]

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[14] 20 C.F.R. § 10.321. *See also J.H.,* Docket No. 22-0981 (issued October 30, 2023); *James P. Roberts, id.*; *Gary R. Sieber,* 46 ECAB 215, 225 (1994).

[15] *See supra* note 12.

[16] The Board notes OWCP's September 12, 2022 referral did not ask the IME to specifically address whether appellant continued to have disability and/or residuals on or after August 2, 2021 causally related to the accepted employment injury.

[17] *S.R.,* Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner),* 40 ECAB 232, 238 (1988); *April Ann Erickson*, 28 ECAB 336 (1977).

The case must therefore be remanded for further development of the medical evidence. On remand, OWCP shall refer the case record, a SOAF, and if necessary appellant, to Dr. Shadid for a supplemental opinion that specifically addresses whether appellant continued to have disability or residuals on or after August 2, 2021 causally related to the accepted August 16, 2017 employment injury, and provides a rationalized explanation of whether she sustained additional bilateral upper extremity conditions causally related to, or as a consequence of, the accepted August 16, 2017 employment injury. If Dr. Shadid is unable to clarify his original report or if his supplemental report is vague, speculative, or lacking in rationale, OWCP must refer the case to a new IME for the purpose of obtaining a rationalized medical opinion on these issues.[18] After this and other such 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.

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2024 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: August 28, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[18] *See R.W.*, Docket No. 24-0746 (issued September 30, 2024); *M.C.,* Docket No. 22-1160 (issued May 9, 2023); *Talmadge Miller*, 47 ECAB 673 (1996).