

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

T.S., Appellant)
and) Docket No. 25-0826
DEPARTMENT OF VETERANS AFFAIRS,)
JOHN D. DINGELL VA MEDICAL CENTER,)
Detroit, MI, Employer)
Issued: December 19, 2025

Appearances:
Appellant, pro se
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 August 15, 2025 appellant filed a timely appeal from a February 27, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 February 27, 2025 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 establish an injury in the performance of duty, as alleged.

FACTUAL HISTORY

On April 19, 2024 appellant, then a 60-year-old licensed practical nurse, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her right arm and the inability to move her fingers, due to factors of her federal employment including continuous use of her hands while distributing medications to veterans, overhead reaching, and pulling heavy drawers. She noted that she first became aware of her condition and realized its relation to her federal employment on October 5, 2001. On the reverse side of the claim form, the employing establishment controverted the claim asserting that there was no medical documentation to support the alleged injury.³ Appellant did not stop work.

In an April 29, 2024 letter, the employing establishment challenged appellant's occupational disease claim asserting that the medical evidence of record was insufficient to establish a firm medical diagnosis to establish a physical injury and further asserted that appellant's claim was untimely filed as Form CA-2 noted that she was aware of her condition since October 5, 2001.

In a May 1, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding appellant's claim. OWCP afforded the employing establishment 30 days to provide the necessary information.

In a May 7, 2024 letter, K.A., appellant's supervisor, reiterated that the employing establishment controverted the claim as appellant's disability form failed to establish a diagnosis and further alleged that she had not acted in the capacity of a medication nurse since December 2023. She reported that as a licensed practical nurse, appellant was assigned to the medication room to dispense medications to veterans. K.A. explained that medications were housed in an Omni cell, which was a multi-drawer cabinet with compartments within the drawers and in order to remove medications from the Omni cell, the nurse must wait for the flashing green

³ OWCP assigned the current claim OWCP File No. xxxxxx193. The record reflects that on April 19, 2024 appellant also filed a traumatic injury claim (Form CA-1) alleging that on October 5, 2023 she developed pain in her right hand, arm, and shoulder, due to passing medications to veterans while manually pulling heavy medication drawers open and closed while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted the claim stating that there was no medical documents to support the alleged injury. OWCP assigned that claim OWCP File No. xxxxxx449. On May 2, 2024 appellant called OWCP to inform them that OWCP File No. xxxxxx449 was assigned in error. OWCP advised her to submit a letter for retraction under that claim. On May 24, 2024 OWCP informed appellant that two separate cases had been created for the same injury and, therefore, OWCP File No. xxxxxx449 had been deleted. It further reported that all documents in that case had been moved to the current claim and all future correspondence or medical bills should be submitted with OWCP File No. xxxxxx193.

light, open the drawer, open the compartment door, remove medication, close the compartment door, and close the drawer. She noted that some drawers are located at the bottom of the Omni cell and the frequency of accessing the drawers varies based on medication needs. K.A. further reported that drawers and cabinets light up to indicate where medications are located which allows drawers and doors to open smoothly. She noted that in order to minimize effects of the activity of passing medications, the role of the medication nurse is altered nightly between licensed staff. K.A. reported that the placement of the medication drawers was reconfigured so that frequently used medications are located at the top and further noted that the medical nurse is not required to enter the medical room until 0500.

Appellant returned to full-time regular-duty work with no restrictions on October 10, 2023.

In a November 3, 2023 report, Dr. Jashvant Dani, an employing establishment staff physician, reported that appellant complained of right shoulder and elbow pain since October 5, 2023 after working a double shift, which worsened after pulling a medication cart drawer. He noted physical examination findings, ordered diagnostic testing, and provided light-duty work restrictions of no pulling, pushing, or lifting more than 10 pounds until her November 13, 2023 evaluation.

In a November 16, 2023 report, Dr. Sudhir Rao, Board-certified in anesthesiology and pain medicine, evaluated appellant for right shoulder pain, noted clinical examination findings, and diagnosed pain in right shoulder and pain right wrist. He provided light-duty work restrictions of no pulling, pushing, or lifting more than 10 pounds until her follow-up evaluation and recommended an orthopedic consult for the hand and to follow up with her primary care physician. In an emergency treatment report of even date, appellant was provided light-duty work restrictions of no pulling, pushing, or lifting greater than 10 pounds from November 30 through December 15, 2023.

In a November 30, 2023 form report, Dr. Rao reiterated his work restrictions.

In a January 17, 2024 referral order, Dedra Ford, a nurse practitioner, diagnosed carpal tunnel syndrome of right wrist and carpal tunnel syndrome of right upper limb and referred appellant to Dr. Jeffrey M. Hall, a Board-certified hand surgeon.

In a January 18, 2024 return to work disability form, Dr. William C. Sharp, a Board-certified internist, noted that appellant was under continuing care and provided work restrictions of no lifting, pushing, or pulling objects greater than 10 pounds for a duration of six months.

In a May 23, 2024 return-to-work school note, Dr. William Kesto, a Board-certified orthopedic surgeon, reported that appellant was evaluated on May 23, 2024 and required work limitations, noting that any repetitive pushing or pulling could aggravate the shoulder.

In a May 30, 2024 attending physician's report (Form CA-20), Dr. Kesto noted that appellant reported reinjuring her right shoulder at work in November despite restrictions provided by her primary care physician due to repetitive motions of pushing, pulling, and lifting resulting in pain. He discussed clinical findings and diagnosed right shoulder partial thickness of rotator cuff. Dr. Kesto provided work restrictions of no repetitive pushing or pulling which could aggravate the shoulder.

In a follow-up letter dated June 3, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that she had 60 days from the May 1, 2024 letter to submit the requested necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

Following OWCP's development letter, appellant submitted additional evidence in support of her claim.

In progress reports and work restriction forms dated November 16 through December 19, 2023, Dr. Rao documented appellant's upper extremity examination findings and provided light-duty work restrictions.

In support of her claim, appellant also submitted additional diagnostic studies including November 3, 2023 diagnostic studies of the right wrist and the right shoulder postoperatively, a January 17, 2024 durable medical equipment order for a carpal tunnel splint and referrals, a March 5, 2024 electromyography and nerve conduction velocity (EMG/NCV) study of the bilateral upper extremities demonstrating mild sensorimotor right carpal tunnel syndrome, and a May 17, 2024 magnetic resonance imaging (MRI) scan of the right shoulder revealing an impression of moderate rotator cuff tendinitis, mild acromioclavicular and glenohumeral arthrosis, and mild degeneration of the labrum.

By decision dated July 1, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted factors of her federal employment.

Following OWCP's decision, appellant continued to submit additional medical evidence in support of her claim.

In medical reports dated April 11 through July 30, 2024, Dr. Kesto discussed clinical examination findings and diagnosed right partial thickness rotator cuff tear, noting that the incomplete rotator cuff tear or rupture of the right shoulder was not specified as traumatic.

In a November 6, 2024 report, Dr. Sharp noted clinical examination findings and diagnosed rotator cuff tear, cervical radiculopathy, and carpal tunnel syndrome which he opined was caused by appellant's work injury. He noted that appellant should restrict repetitive motions, pushing, pulling, or lifting objects greater than 15 pounds.

In a November 18, 2024 report, Dr. Jeffrey M. Hall, a Board-certified hand surgeon, noted clinical examination findings and diagnosed right carpal tunnel syndrome. He opined that appellant's carpal tunnel was aggravated by her employment as a nurse due to significant gripping and grasping at her job. Dr. Hall reported that she was totally disabled as of September 18, 2024 and was anticipated to return to full- or modified-duty work on December 6, 2024.

By decision dated February 27, 2025, OWCP modified the July 1, 2024 decision to find that appellant had not established the implicated factors of her federal employment. Consequently, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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 employment injury.⁶ 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.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁹ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁰ An employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

⁴ *Supra* note 2.

⁵ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

⁶ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

⁷ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

⁸ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹⁰ *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹¹ *See K.H.*, *id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the employment factors occurred in the performance of duty, as alleged.

Appellant filed a Form CA-2 alleging that she developed a right hand and arm condition from engaging in continuous hand motions while performing the duties of her federal employment. She explained that she was mandated to a second shift and the constant use of her right hand and arm, including reaching above her head to retrieve medications from the cabinet and pulling from the bottom drawer on a regular basis, caused pain in her right arm and the inability to move her fingers.

The employing establishment did not dispute that appellant, at some point, performed these tasks. As there are no inconsistencies sufficient to cast serious doubt on the type of duties she alleged that she performed,¹² the Board finds that appellant has established the implicated factors of her federal employment.¹³

As appellant has established that the employment factors occurred in the performance of duty, as alleged, the question becomes whether the employment factors caused an injury.¹⁴ Because OWCP found that she had not established fact of injury, it did not evaluate the medical evidence of record submitted. Therefore, the case shall be remanded to OWCP to determine whether appellant sustained an injury causally related to the accepted factors of her federal employment.¹⁵ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's occupational disease claim.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the employment factors occurred in the performance duty, as alleged.

¹² *F.S.*, Docket No. 21-1040 (issued March 10, 2023); *I.J.*, Docket No. 20-0599 (issued November 22, 2022); *R.I.*, Docket No. 20-1616 (issued February 11, 2022).

¹³ *Id.*

¹⁴ See *G.O.*, Docket No. 25-0780 (issued September 16, 2025); *W.B.*, Docket No. 25-0441 (issued May 23, 2025).

¹⁵ *Id.*; see also *I.J.*, Docket No. 20-0599 (issued November 22, 2022); *T.M.*, Docket No. 20-0712 (issued November 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2025 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 19, 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