

<sup>3</sup> The Board notes that during the pendency of this appeal, OWCP issued a March 17, 2023 nonmerit decision denying merit review of the April 5, 2022 decision. OWCP's March 17, 2023 decision is null and void as the Board and OWCP may not simultaneously exercise jurisdiction over the same underlying issue in a case on appeal. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see e.g.*, *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004); *Douglas E. Billings*, 41 ECAB 880 (1990).

## **ISSUES**

The issues are: (1) whether OWCP properly denied appellant's requests for reimbursement of travel expenses on August 19 and September 17 and 23, 2021 as the conditions for which she sought treatment were neither causally related to, nor a consequence of, her accepted September 2, 2020 employment injury; and (2) whether OWCP abused its discretion in denying appellant's request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

## **FACTUAL HISTORY**

On September 4, 2020 appellant, then a 56-year-old miscellaneous clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2020 she was verbally assaulted by a citizen who used foul language as she attempted to collect census data. She became frightened, returned to her car, locked her doors, and drove into a water-filled ditch along the driveway injuring her neck and low back while in the performance of duty. Appellant stopped work on September 3, 2020. The record indicates that appellant resigned from the employing establishment, effective October 20, 2020. On October 20, 2020 OWCP accepted the claim for low back strain.<sup>4</sup> On January 8, 2021 it expanded its acceptance of the claim to include cervicalgia.

Appellant underwent cervical and lumbar spine x-rays on September 3, 2020, which demonstrated degenerative spondylosis in the cervical spine and small anterior osteophytes in the lumbar spine. In a report of even date, a nurse indicated that appellant sought treatment for lower back pain.

On September 9, 2020 Dr. Jay Alex Hartgrove, a dentist, examined appellant due to tooth pain following the September 2, 2020 employment incident. He found nothing suggestive of a fracture, but a heavy occlusion on tooth number 4. Dr. Hartgrove diagnosed trauma likely due to a motor vehicle accident (MVA).

Appellant sought treatment on September 15, 2020 from an emergency department due to toothache and low back pain.

In a note dated October 6, 2020, Dr. Kristi Tackett, an osteopath, described the September 2, 2020 employment incident. She recounted appellant's ongoing symptoms of right-sided jaw pain, neck pain, and lower back pain. Dr. Tackett recommended a lumbar magnetic resonance imaging (MRI) scan. She diagnosed lumbar radiculopathy, cervicalgia, and jaw pain.

On October 23, 2020 appellant underwent a lumbar MRI scan which demonstrated mild facet hypertrophy and mild neuroforaminal narrowing and disc bulges at the lower two lumbar levels. In notes dated November 3 and 23, 2020, Dr. Tackett opined that the findings on appellant's MRI scan were directly related to and aggravated by the accepted employment injury.

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<sup>4</sup> Appellant filed claims for compensation (Form CA-7) for disability from work for the period September 4, 2020 through February 9, 2022. OWCP did not issue a final decision on period of claimed disability prior to the June 7, 2022 appeal to the Board. Therefore, the Board will not address this issue on appeal. See 20 C.F.R. § 501.2(c).

Appellant submitted a series of physical therapy notes beginning November 12, 2020 through January 29, 2021 addressing her back and neck.

On January 12, 2021 Dr. Tackett noted appellant's history of injury on September 2, 2020 and recounted her current symptoms of neck pain with left arm tremor, low back pain radiating into her left leg. She diagnosed low back pain, lumbar radiculopathy, and cervicalgia.

In notes dated January 20 and 22, 2021, Dr. John Kelly, a Board-certified neurologist, described appellant's history of injury on September 2, 2020 and recounted her symptoms of pain in her neck, shoulders, coccyx, and spine. He opined that the mild facet arthropathy and mild neuroforaminal narrowing as described on appellant's October 23, 2020 MRI scan could not have been caused by her September 2, 2020 employment injury and were preexisting degenerative changes. Dr. Kelly reported that he did not have enough information to causally link the left-sided radiculopathy to the September 2, 2020 employment injury. He diagnosed sciatica of the left side associated with disorder of the lumbosacral spine, and dorsopathies of the lumbosacral region.

On February 16, 2021 Dr. Sarah E. Crawford, an osteopath specializing in family medicine, examined appellant and recounted her symptoms of neck pain radiating into her left arm. She diagnosed low back pain, lumbar radiculopathy, and cervicalgia.

On March 3, 2021 appellant underwent a cervical MRI scan which was read as negative. She underwent left upper extremity electromyogram and nerve conduction (EMG/NCV) studies on March 25, 2021 which demonstrated slowed conduction on the median nerve across the wrist and ulnar nerve forearm, but no findings to suggest left median or ulnar nerve, or cervical spine root level compression.

In March 3 and 16, 2021 reports, Dr. Richard King, a Board-certified family practitioner, examined appellant due to memory loss. He recounted appellant's history of injury on September 2, 2020 and noted that she did not remember driving, but ended up in a ditch. Appellant asserted that she hit her head and lost consciousness. Dr. King also noted her nonemployment-related diagnoses of post-traumatic stress disorder (PTSD), disassociation, and depression and found that there was no obvious etiology for her memory loss. He diagnosed minor neurocognitive disorder.

In a May 18, 2021 note, Dr. Michael Harned, a physician Board-certified in pain medicine, examined appellant and recounted her history of injury in 2020 resulting in neck and back pain. He reviewed appellant's lumbar MRI scan and found L5-S1 disc herniation. Dr. Harned also found that appellant's EMG/NCV testing demonstrated left S1 radiculopathy. He administered a lumbar interlaminar epidural steroid injection on June 3, 2021.

On May 20, 2021 Dr. Frederick Schmitt, a clinical neuropsychologist, recounted appellant's history of an MVA in September 2020 resulting in a change in consciousness, spinal injuries, and amnesia. He listed her preexisting conditions of bipolar disorder, PTSD, Meniere's disease, migraine, traumatic brain injury, and two possible dissociative episodes. Dr. Schmitt noted that appellant continued to experience depression and stress following the accepted employment injury. He diagnosed mild neurocognitive disorder secondary to multiple etiologies. Dr. Schmitt recommended reassessment in 12 to 18 months due to the recent MVA.

On September 9, 2021 appellant requested authorization for a paravertebral facet joint injection, a nerve block, and nerve block on the paravertebral spinal nerves and branches performed on August 19, 2021.

In a September 9, 2021 letter, OWCP noted that appellant had requested mileage reimbursement for medical appointments on August 19, 2021.<sup>5</sup> It requested a report or ledger from her physician indicating that she attended an examination or treatment on those dates for her accepted employment injuries.

OWCP continued to receive medical evidence. On July 7, 2021 Dr. Zachary D. Klinger, an osteopath specializing in anesthesiology, performed a bilateral L4, L5 medial branch block.

Appellant reported that she had received an OWCP-authorized nerve block on August 19, 2021 and that she sought dental treatment on August 23, 2021. On September 21, 2021 she requested physical therapy/occupational therapy authorization for injury to the scapholunate ligament and acute pain in the left shoulder from September 20, 2021 through December 31, 2021.

In an October 6, 2021 letter, OWCP noted that appellant had requested reimbursement for travel, meals, and an overnight stay for a medical appointment on September 17, 2021.<sup>6</sup> It requested a report or ledger from her physician that indicated that she attended an examination or treatment for those dates. OWCP noted that treatments for her wrist and shoulder were not accepted as medically necessary or as causally related to her accepted employment injuries.

OWCP continued to receive evidence. In a February 20, 2021 note, a physician assistant discussed appellant's symptom of pain with left shoulder rotation. An August 19, 2021 report from Dr. Zachary D. Klinger, an osteopath, indicated he performed a second bilateral L4, L5 lumbar medial branch block on that date.

On October 15, 2021 appellant requested that her physician change her medical records to reflect upper extremity and hand pain.

In an October 19, 2021 development letter, OWCP informed appellant that she had not submitted sufficient medical evidence to establish that she injured her left shoulder on September 2, 2020. It requested a detailed narrative medical report with medical rationale supporting causal relationship between her accepted employment injury and upper extremity conditions.

OWCP continued to receive medical evidence. Appellant underwent physical therapy for her left shoulder pain on March 13, 2020, prior to her accepted September 2, 2020 employment injury. On April 24, 2020 Dr. Robert Royalty, a Board-certified orthopedic surgeon, diagnosed left shoulder pain. Appellant underwent a left shoulder MRI scan on May 22, 2020 which demonstrated minimal to mild degenerative changes.

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<sup>5</sup> The case record reflects that appellant claimed reimbursement for 154 miles of travel on August 19, 2021.

<sup>6</sup> The case record reflects that appellant claimed reimbursement for 154 miles of travel on September 17, 2021.

On July 7, 2021 Dr. Jonathan A. Kark, an orthopedic surgeon, examined appellant due to left upper extremity pain which she attributed to the accepted employment injury of September 2, 2020.

In July 29 and September 17, 2021 notes, Dr. Chase T. Kluemper, an orthopedic surgeon, examined appellant due to left wrist pain, sprain of the left scapholunate ligament, and acute pain of the left shoulder.

On September 28, 2021 Dr. Michael E. Harned, a physician Board-certified in pain medicine, examined appellant due to her reports of left shoulder and elbow pain beginning at the end of 2019. He performed a physical examination and reviewed September 28, 2021 x-rays, reporting mild degenerative changes of the acromioclavicular (AC) joint with mild osteophytes of the inferior acromion. Dr. Harned diagnosed chronic left shoulder pain and recommended physical therapy for this condition.

On October 22, 2021 a physician assistant diagnosed chronic left shoulder pain.

In a November 21, 2021 note, Dr. Kluemper diagnosed left cubital tunnel syndrome, left shoulder subacromial impingement, and left long head biceps tendinitis.

On November 27, 2021 appellant requested reimbursement for travel expenses on August 19 and September 17 and 23, 2021.<sup>7</sup>

In a letter dated December 15, 2021, OWCP approved physical therapy due to appellant's accepted cervical condition, but not for her left shoulder.

OWCP continued to receive medical evidence. In a report dated December 7, 2021, Dr. Srinath Kamineni, an orthopedic surgeon, found that since a traffic accident appellant's left shoulder had been symptomatic. On December 27, 2021 appellant underwent a left shoulder arthroscopy with debridement, lysis of adhesions, and subacromial decompression.

In a letter received on January 2, 2022, appellant requested that her claim be expanded to include her left shoulder and hand conditions as causally related to her accepted September 2, 2020 employment injury. On January 3, 2022 she again requested reimbursement for travel expenses and medical treatment on September 17, 2022.

By decision dated January 21, 2022, OWCP denied appellant's request for reimbursement of travel expenses for the dates August 19 and September 17 and 23, 2021, finding that she did not seek treatment for her accepted employment injuries on these dates. It further denied her request to expand the acceptance of her claim to include an additional left shoulder condition as due to her accepted September 2, 2020 employment injury.

On January 27, 2022 appellant requested reconsideration and provided additional argument and medical evidence. She contended that due to the September 2, 2020 employment injury, she experienced a concussion, minor cognitive impairment, dental injury, spinal stenosis, strain of

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<sup>7</sup> The case record reflects that appellant also claimed reimbursement for 154 miles of travel on September 23, 2021.

fascia, neck pain, and left shoulder and hand issues. Appellant further contended that the September 2, 2020 verbal assault aggravated her preexisting PTSD. She asserted that the September 17, 2021 travel was for an OWCP-approved spinal stenosis nerve block. Appellant alleged that the September 17 and 23, 2020 medical appointments were for hand and wrist conditions related to the September 2, 2020 employment injury, including a triangular fibrocartilage complex (TFCC) and ligament sprain.

On April 15, 2021 Dr. Kark examined appellant due to left upper extremity pain which she attributed to the accepted employment injury of September 2, 2020. In a note dated May 5, 2021, he recounted appellant's symptoms of left upper extremity pain following her September 2020 employment injury. Dr. Kark found that appellant experienced catching in her left elbow with some numbness and tremors in her left hand.

Dr. Royalty completed a note dated May 10, 2021 addressing appellant's new complaint of left shoulder pain and weakness which she attributed to an assault at work. He diagnosed left shoulder pain and recommended an MRI scan.

On September 28, 2021 a physician assistant referred appellant to physical therapy due to chronic left shoulder pain. In a note dated October 22, 2021, the physician assistant examined appellant due to her left shoulder and elbow pain.

In a February 11, 2022 development letter, OWCP noted that appellant had claimed additional psychiatric, left shoulder, and left hand conditions due to the September 2, 2020 employment injury. It requested a narrative medical report supporting causal relationship between these diagnosed conditions and her accepted September 2, 2020 employment injury.

OWCP continued to receive medical evidence. In a January 5, 2022 note, Dr. Kamineni described a history of left shoulder pain on September 2, 2020 following an MVA.

On February 11, 2020 appellant alleged that OWCP had reimbursed her for her left shoulder surgery copay and that therefore it had accepted this condition as employment related. She provided a January 5, 2022 physical therapy note and a February 11, 2022 statement that OWCP had made payments on September 28 and December 27, 2021.

On February 22, 2022 Mr. Cecil referred appellant for physical therapy following her left shoulder surgery.

OWCP continued to receive medical evidence. On August 24, 2021 appellant underwent an MRI scan of the left wrist, which demonstrated a suspected tear of the central TFCC and sprains of the dorsal extrinsic ligaments of the wrist, as well as moderate degenerative arthrosis at the basal joint of the thumb.

Dr. Harned completed an undated attending physician's report (Form CA-20) and diagnosed degenerative disc and joint disease. He indicated by checking a box marked "Yes" that this condition was due to an accident.

In a February 21, 2022 note, Dr. Kluemper found that appellant's wrist had improved and that her left shoulder was recovering following surgery.

On February 22, 2022 Dr. Kamineni completed a Form CA-20 and described appellant's MVA. He diagnosed chronic left shoulder pain and degenerative changes of the AC joint. Dr. Kamineni indicated by checking a box marked "Yes" that the diagnosed conditions were caused or aggravated by the employment activity. He first examined appellant on September 28, 2021.

Dr. Kluemper completed a Form CA-20 on March 22, 2022. He noted appellant's history of injury as an MVA following a verbal assault at work on September 2020. Dr. Kluemper diagnosed a sprain of the left scapholunate ligament and a TFCC injury. He indicated by checking a box marked "Yes" that the diagnosed conditions were caused or aggravated by the employment activity.

In a March 24, 2022 note, Dr. Kamineni recounted appellant's report of left shoulder pain beginning on September 2, 2020 due to an MVA.

By decision dated April 5, 2022, OWCP modified its January 21, 2022 decision in part, finding that appellant had established that she underwent authorized medical treatment on August 19, 2021 entitling her to reimbursement for mileage. It further affirmed the January 21, 2022 decision in part, summarily denying modification of the remainder of the January 21, 2022 decision.

On May 6, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She submitted additional medical evidence.

By decision dated June 1, 2022, OWCP denied appellant's May 6, 2022 request for an oral hearing, noting that she had previously requested reconsideration and that OWCP had issued a decision on April 5, 2022. It explained that, under 5 U.S.C. § 8124(b)(1), she was not entitled to a hearing on the same issue as a matter of right. OWCP also considered whether to grant a discretionary hearing and found that the issue could be addressed by requesting reconsideration and submitting evidence not previously considered.

### **LEGAL PRECEDENT -- ISSUE 1**

OWCP's regulations provide that the employee is entitled to reimbursement for reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances, or supplies.<sup>8</sup> To determine a reasonable travel distance, it will consider the availability of services, the employee's condition, and the means of transportation. Effective August 29, 2011, the most recent regulations provide that a roundtrip distance of up to 100 miles is considered a reasonable distance to travel.<sup>9</sup> If roundtrip travel of more than 100 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel

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<sup>8</sup> 20 C.F.R. § 10.315(a).

<sup>9</sup> *Id.*

expenses are reasonable and necessary, and are related to obtaining authorized medical services, appliances, or supplies.<sup>10</sup>

Pursuant to FECA Bulletin No. 14-02, when a claimant submits a travel reimbursement in excess of 100 miles for a single date of service, the bill will automatically be suspended, and the Central Bill Processing provider will send notification to OWCP's claims examiner.<sup>11</sup> FECA Bulletin No. 14-02 notes that, in some limited circumstances, it may be necessary for a claimant to travel more than 100 miles on a regular basis, such as when the claimant lives in a remote area.<sup>12</sup>

In interpreting this section, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.<sup>13</sup> The only limitation on OWCP's authority is that of reasonableness. OWCP may authorize medical treatment but determine that the travel expense incurred for such authorized treatment was unreasonable or unnecessary.<sup>14</sup>

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.<sup>15</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>16</sup> A physician's opinion on whether there is a causal relationship between a diagnosed condition and the employment injury must be based on a complete factual and medical background.<sup>17</sup> 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 the accepted employment injury.<sup>18</sup>

### **ANALYSIS -- ISSUE 1**

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

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<sup>10</sup> *Id.* at 10.315(b).

<sup>11</sup> FECA Bulletin No. 14-02 (issued January 29, 2014).

<sup>12</sup> *Id.*

<sup>13</sup> *V.L.*, Docket No. 23-0061 (issued August 22, 2023); *S.M.*, Docket No. 19-0989 (issued May 12, 2020); *G.C.*, Docket No. 19-0298 (issued June 24, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> *R.B.*, Docket No. 22-0173 (issued July 26, 2022); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>16</sup> *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>17</sup> *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>18</sup> *Id.*

By decision dated April 5, 2022, OWCP modified its January 21, 2022 decision in part, finding that appellant had established that she underwent authorized medical treatment on August 19, 2021 entitling her to reimbursement for mileage. It further affirmed the January 21, 2022 decision in part, but summarily denied modification of the remainder of the January 21, 2022 decision.<sup>19</sup>

Section 8124(a) of FECA provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation.<sup>20</sup> Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind a decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>21</sup>

In the April 5, 2022 decision, OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision.<sup>22</sup> Rather, it summarily denied modification of the remainder of the January 21, 2022 decision, without sufficiently explaining why the medical evidence of record was insufficient to establish that the travel on August 19 and September 17 and 23, 2021 was for treatment of medical conditions which were causally related to, or a consequence of, her September 2, 2020 employment injury. OWCP's failure to provide factual findings and fully explain the basis for its conclusion precludes the Board's review of the decision.<sup>23</sup>

The Board shall, therefore, set aside OWCP's April 5, 2022 decision and remand the case for a *de novo* decision, pursuant to the standards set forth in 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126.<sup>24</sup>

### **CONCLUSION**

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

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<sup>19</sup> See *D.B.*, Docket No. 20-1280 (issued March 2, 2021); *Y.C.*, Docket No. 19-1712 (issued November 6, 2020)

<sup>20</sup> 5 U.S.C. § 8124(a).

<sup>21</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>22</sup> 20 C.F.R. § 10.126; *D.O.*, Docket No. 22-0315 (issued June 29, 2022); *D.W.*, Docket No. 18-0483 (issued March 7, 2019).

<sup>23</sup> See *Order Remanding Case*, Docket No. 19-1533 (issued April 30, 2020); *Y.C.*, *supra* note 19.

<sup>24</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 5, 2022 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. The June 1, 2022 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: February 21, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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