

² The Board notes that following the June 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.*

In a letter dated January 30, 2024, the employing establishment controverted the claim asserting that appellant was not at work on the claimed injury date.

In a development letter dated January 30, 2024, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of factual and medical evidence necessary to establish her claim. OWCP provided a questionnaire for appellant's completion. It afforded her 60 days to respond.

In response appellant submitted a May 25, 2023 emergency department report from Dr. David William Trinco, a Board-certified emergency medicine physician, noting that appellant was seen that day for right shoulder pain complaints. He diagnosed shoulder pain which he attributed to overexertion from strenuous load or movement.

Appellant also submitted a state workers' compensation form report dated May 30, 2023 from Thomas R. Pickett, a physician assistant, who diagnosed right shoulder joint sprain. Mr. Pickett described the injury as occurring on May 22, 2023, when appellant attempted to pick up a misdelivered package of dog food and the load shifted causing her to strain her right shoulder.

A May 30, 2023 encounter report from Mr. Pickett, which was cosigned by Dr. Wayne J. Cumings, an osteopath Board-certified in family medicine and osteopathic preventive medicine, noted an injury history, provided examination findings, reviewed an x-ray interpretation, and diagnosed right shoulder joint sprain. Mr. Pickett responded "Yes" to the question of whether the injury was causally related to the industrial incident of May 22, 2023.

OWCP also received a January 17, 2024 state workers' compensation form report from Fariba Mazdeh, a nurse practitioner, diagnosing right shoulder sprain. Ms. Mazdeh noted a May 22, 2023 injury date and that appellant was seen on January 17, 2024. In a duty status report (Form CA-17) of even date, she noted a May 22, 2023 injury date, diagnosed right shoulder sprain due to the injury, and provided work restrictions. In a January 17, 2024 encounter report, Dr. Roman Kovac, an osteopathic physician specializing in family medicine and occupational medicine, provided a description of how the injury occurred on May 22, 2023, together with appellant's statement of shoulder pain continuing following the injury. Examination findings were reported with a diagnosis of right shoulder joint sprain.

Encounter reports dated January 25 and February 7, 2024 from Dr. Kovac noted appellant's history of injury and that her last day of work was May 24, 2023. Appellant related that her shoulder pain was progressively worsening. Diagnoses included right shoulder joint sprain and strain of neck level muscle, fascia, and tendon. Under incident summary, Dr. Kovac responded "Yes" as to whether diagnosis was work related.

In a follow-up letter dated March 5, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the January 30, 2024 letter to submit the requested supporting 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.

Appellant subsequently submitted a May 25, 2023 state workers' compensation form report from Dr. Trinco reporting a May 22, 2023 date of injury and May 25, 2023 as the date employer was notified. Dr. Trinco described the injury as occurring when appellant dropped a box

of dog food after a bag shifted in the box. He diagnosed right shoulder pain, which he attributed to the May 22, 2023 incident.

OWCP also received a May 30, 2023 encounter report from Dr. Cummings, who described the injury as occurring on May 22, 2023 when appellant tried to pick up a misdelivered package of dog food, the load shifted and she strained her right shoulder.

Appellant also submitted a January 25, 2024 Form CA-17 from Ms. Mazdeh noting a May 22, 2023 date of injury, providing work restrictions, and diagnosing right shoulder joint sprain and neck muscle, fascia, and tendon strain.

In a March 22, 2024 encounter report, Mr. Pickett diagnosed right shoulder joint sprain and neck muscle, fascia, and tendon strain, which he attributed to the May 22, 2023 incident.

By decision dated April 12, 2024, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted May 26, 2023 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On June 10, 2024 appellant requested reconsideration. In support of her request, she submitted a statement describing that she injured her right arm and shoulder on May 22, 2023 when a big box of dog food shifted that she had lifted. Appellant also submitted a June 3, 2024 Form CA-1 noting an injury date of May 22, 2023, and again described injuring her right shoulder and arm when a big box of dog food shifted that she had lifted.

By decision dated June 18, 2024, OWCP denied reconsideration of the merits of appellant's claim, finding that the evidence was insufficient to warrant review of the April 12, 2024 decision. It included the following: "NOTE: Being that the previous factual (statements) and medical evidence of the case file establish your date of injury as 05/22/2023 *versus* 05/26/2023, we have administratively changed the date of injury to 05/22/2023." (Emphasis in the original.)

The Board, having duly considered the matter, concludes that OWCP improperly denied appellant's request for reconsideration of the merits of her claim.

With her request for reconsideration, appellant submitted a corrected Form CA-1 indicating that she injured herself in the performance of duty on May 22, 2024, which was accompanied by a narrative statement explaining that she injured her right shoulder when lifting a large bag of dog food. On June 18, 2024 OWCP denied her request for reconsideration of the merits of her claim. In doing so, it noted that based on its review of the factual and medical evidence of record, it had "administratively" changed appellant's claimed date of injury from May 26, 2023 to May 22, 2023. The Board finds that this action on the part of OWCP constituted a modification of appellant's claim and, thus, a merit review of the claim was warranted.³

Therefore, the Board shall remand the case to OWCP to conduct an appropriate merit review of the claim, including considering and addressing the reports signed and cosigned by

³ See *C.F.*, Docket No. 22-0806 (issued July 12, 2023); see also *B.S.*, Docket No. 13-2010 (issued September 26, 2014) (The Board explained that the determination of whether evidence submitted by appellant suffices to establish an element of his claim, rather than whether the standard for reconsideration has been met, constitutes a merit review).

Drs. Kovac and Cummings. Following this and such other development as deemed necessary, it shall issue an appropriate merit decision. Accordingly,

IT IS HEREBY ORDERED that the decision of the Office of Workers' Compensation Programs dated June 18, 2024 is set aside. The case is remanded for further proceedings consistent with this order of the Board.

IT IS HEREBY ORDERED THAT the June 18, 2024 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this order of the Board.

Issued: February 5, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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