United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
and	)	**Docket No. 25-0061**
	)	**Issued: January 30, 2025**
DEPARTMENT OF VETERANS AFFAIRS, IRON MOUNTAIN VA MEDICAL CENTER, Iron Mountain, MI, Employer	)	

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 25, 2024 appellant, through counsel, filed a timely appeal from a September 30, 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.

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include left leg weakness, right shoulder rotator cuff tear, presumed biceps tendon tear, severe shoulder tendinitis, and/or right shoulder post-traumatic osteoarthritis of the glenohumeral

[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*.

joint as causally related to, or as a consequence of, her accepted December 19, 2011 employment injury.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances as set forth in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On December 20, 2011 appellant, then a 46-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2011 she injured her right shoulder, elbow, knee, and back when she slipped and fell on ice in the clinic parking lot, while in the performance of duty. On February 7, 2012 OWCP accepted the claim for a closed dislocation of sacrum and closed dislocation of lumbar vertebra. On February 28, 2012 it expanded its acceptance of the claim to include temporary aggravation of lumbosacral spondylosis without myelopathy, bilateral sacroiliac strain, and enthesopathy of the right hip region (right hip bursitis).[4]

On June 22, 2022 appellant, through counsel, requested that OWCP further expand its acceptance of the claim to include an anterior dislocation of the right shoulder.

In a July 28, 2021 report, Dr. John Culliney, a Board-certified radiologist, noted that appellant presented with pain and stiffness in the left shoulder which began two weeks prior after a fall. In an addendum, he revised the history of injury to reflect right shoulder pain, apparently from previous trauma. Magnetic resonance imaging (MRI) scans of appellant's lumbar spine and right shoulder were performed. Dr. Culliney indicated that the right shoulder MRI scan demonstrated abnormal appearance to the shoulder which may be related to a recent anterior dislocation; probable Bankart lesion and subtle Hill-Sachs contusion; abnormal appearance to the supraspinatus and subscapularis tendons which may be related to partial tears, especially if there had been a recent shoulder dislocation; small glenohumeral joint effusion, possibly complicated due to a small underlying hemarthrosis; degenerative changes at the acromioclavicular (AC) joint, which impinged upon the musculotendinous junction of the supraspinous tendon; and bicipital tendinitis.

In an April 6, 2022 report, Dr. Scott H. Warren, a Board-certified orthopedic surgeon, noted that appellant was seen again following a right shoulder injection 10 months prior. He indicated that she wanted to document that she had suffered a fall due to left leg weakness that she had experienced since her work-related December 2011 fall. Appellant explained that her leg would give out on her without warning. She reported that her leg gave out on June 12, 2021 and she had reached for the guidepost on her son's boat trailer to catch herself. However, the guidepost had a nylon sleeve and appellant's hand slipped off which caused her to fall backward and injure her right shoulder. Dr. Warren noted examination findings and provided an impression of moderate improvement post injection and probable right proximal biceps rupture.

[3] Docket No. 24-0414 (issued June 4, 2024).

[4] The record indicates that appellant resigned from the employing establishment effective April 4, 2019.

In a development letter dated July 19, 2022, OWCP informed appellant of the deficiencies of her claim for expansion. It advised her of the type of medical evidence necessary and afforded her 30 days to provide the necessary evidence.

In an August 16, 2022 report, Dr. Andrew Matheus, a Board-certified family medical specialist, provided a history of appellant's left leg giving out in June of the prior year, causing her to fall backward and dislocate her right shoulder anteriorly. He noted that an MRI scan of her right shoulder demonstrated tear of the supraspinatus and rotator cuff, severe shoulder tendinitis, and presumed biceps tendon tear. Dr. Matheus also noted that appellant continued to struggle with left leg weakness since her work injury, with frequent falls and injuries on several occasions. He reported examination findings of right shoulder pain with abduction and external rotation. Dr. Matheus provided an assessment of right shoulder rotator cuff tear.

In an August 31, 2023 letter, OWCP again informed appellant of the deficiencies of her claim for expansion. It advised her of the type of medical evidence needed and afforded her 30 days to provide the necessary evidence. No response was received.

By decision dated October 11, 2023, OWCP denied appellant's request for expansion of the acceptance of the claim to include additional diagnoses of left leg weakness, right shoulder rotator cuff tear, severe shoulder tendinitis, and presumed biceps tendon tear. It found that the medical evidence of record was insufficient to establish causal relationship between the additional diagnosed conditions and the accepted employment injury.

On October 24, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 11, 2024. Appellant testified that she suffered weakness from her left lower extremity after her 2011 accepted back condition worsened. She recounted that she had undergone radio frequency ablation in 2012, which helped relieve the back pain. Thereafter appellant would sporadically go to a chiropractor for continued treatment. She indicated that the pain recurred in 2016. Appellant also testified as to her fall and right shoulder injury on June 12, 2021, when her left leg gave out. She also testified that she had another fall in August 2021 which resulted in a torn right knee meniscus for which she underwent surgery.

OWCP subsequently received a June 12, 2021 emergency department report, wherein Dr. Stephen W. Hubbard, a family medicine specialist, related appellant's fall and diagnosed back strain and shoulder strain. A June 12, 2021 pelvis x-ray was negative for acute fracture.

Physical therapy reports regarding appellant's right shoulder dated August 25 and September 9 and 22, 2021 were also received.

By decision dated February 15, 2024, OWCP's hearing representative affirmed the October 11, 2023 decision.

Appellant, through counsel, filed an appeal with the Board on March 11, 2024. By decision dated June 4, 2024, the Board affirmed OWCP's February 15, 2024 decision, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted employment injury and the additional diagnosed conditions of left leg weakness, right shoulder

rotator cuff tear, presumed biceps tendon tear, and/or severe shoulder tendinitis and her accepted December 19, 2011 employment injury.[5]

Subsequently, OWCP received an unsigned April 29, 2024 medical report which provided a history of appellant's falls, including one of the falls related to her left knee giving out which resulted in a dislocation of her right shoulder. The report noted appellant's examination findings and right shoulder x-ray findings, which showed advance osteoarthritis of the glenohumeral joint, significant narrowing consistent with areas of Grade 4, and osteophyte formation along the interior humeral head neck junction. Additionally, it provided an assessment of right shoulder post-traumatic osteoarthritis with potential injury to the rotator cuff and biceps tendon.

In a June 10, 2024 report, Dr. Culliney indicated that the right shoulder MRI scan revealed post-traumatic osteoarthritis of the right shoulder; focal full-thickness tear supraspinatus tendon; infraspinatus and subscapularis tendinosis; moderate degenerative changes AC (acromio-clavicular) joint with type II acromion which impinges upon the rotator cuff; and slight medial subluxation long head of the biceps tendon with biceps tendinitis.

On September 27, 2024 appellant, through counsel, requested reconsideration.

In a developmental letter dated October 21, 2024, OWCP informed appellant of the deficiencies of her claim for a possible consequential condition of post-traumatic osteoarthritis of the glenohumeral joint, right shoulder in relation to her December 19, 2011 employment injury. It advised her of the type of medical evidence necessary and afforded her 30 days to provide the necessary evidence. No response was received.

By decision dated September 30, 2024, OWCP denied modification of its prior decision.[6] It further noted that appellant had not submitted medical evidence supporting that she sustained post-traumatic osteoarthritis of the glenohumeral joint causally related to her December 19, 2011 employment injury.

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.[7] To establish causal relationship between the condition as well as any additional conditions claimed and the employment injury, an employee must submit rationalized medical evidence.[8] 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

[5] *Supra* note 3.

[6] OWCP indicated that it was denying modification of the Board's June 4, 2024 decision; however, Board decisions and orders are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d).

[7] *S.S.*, Docket No. 23-0391 (issued October 24, 2023); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

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

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

The claimant bears the burden of proof to establish a claim for any consequential injury.[10] 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.[11] 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,[12] unless it is the result of an independent intervening cause attributable to the claimant's own conduct.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include left leg weakness, right shoulder rotator cuff tear, presumed biceps tendon tear, severe shoulder tendinitis, and/or right shoulder post-traumatic osteoarthritis of the glenohumeral joint as causally related to, or as a consequence of, her accepted December 19, 2011 employment injury.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of OWCP's February 15, 2024 decision because the Board considered that evidence in its June 4, 2024 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.[14]

An unsigned April 29, 2024 report provided a history of appellant's falls, including one of the falls related to her left knee giving out which resulted in a dislocation of her right shoulder. It provided an assessment of right shoulder post-traumatic osteoarthritis with potential injury to the rotator cuff and biceps tendon. The Board has held, however, that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[15]

Appellant also submitted a report from a June 10, 2024 MRI scan of the right shoulder. However, diagnostic studies, standing alone, lack probative value on causal relationship as they

[9] *T.K., id.*; *I.J.*, 59 ECAB 408 (2008).

[10] *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

[11] *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

[12] *See L.M.*, Docket No. 23-0605 (issued December 5, 2023); *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

[13] *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

[14] *J.D.*, Docket No. 21-0425 (issued January 24, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

[15] *C.W.*, Docket No. 25-0046 (issued December 19, 2024); *R.J.*, Docket No. 17-1365 (issued May 8, 2019); *Merton J. Sills*, 39 ECAB 572 (1988).

do not address whether employment factors caused the diagnosed condition.[16] Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met her burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include left leg weakness, right shoulder rotator cuff tear, presumed biceps tendon tear, severe shoulder tendinitis, and/or right shoulder post-traumatic osteoarthritis of the glenohumeral joint as causally related to, or as a consequence of, her accepted December 19, 2011 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 30, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 30, 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

[16] *See T.L.*, Docket No. 22-0881 (issued July 17, 2024); *C.S.*, Docket No. 19-1279 (issued December 30, 2019).