

³ The Board notes that, following the October 17, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional cervical, shoulder, elbow, and left thumb conditions as causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On November 3, 2023 appellant, then a 52-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her shoulders, elbows, wrists, and hands due to factors of her federal employment, including 24 years of repetitive lifting, grasping, squeezing, and turning of her arms and hands to pick up and deliver mail. She noted that she first became aware of her condition on January 15, 2022 and realized its relationship to her federal employment on September 28, 2023.⁴ Appellant stopped work on January 15, 2022.

In an attached statement, appellant noted that she experienced burning and tingling in her hands due to continuously grasping, twisting, turning, squatting, climbing in and out of her postal vehicle, and heavy lifting while delivering mail to 600 to 700 addresses daily.

In support of her claim, appellant submitted a narrative medical report dated September 28, 2023 by Dr. John W. Ellis, a Board-certified family medicine specialist, regarding her neck and upper extremity conditions. Dr. Ellis noted that she related complaints of neck pain that radiated down her arms and weakness in her arms and hands, which she attributed to repetitive lifting of tubs and bundles weighing 20 pounds, casing and delivering mail weighing up to 70 pounds, securing straps, lifting and lowering the doors of her postal vehicle, pushing and pulling hampers, and climbing in and out of her postal vehicle. He also noted that appellant related symptoms of burning and tingling in her hands beginning in January 2022, for which she had undergone bilateral carpal tunnel release surgeries in August 2022. On physical examination, Dr. Ellis observed tenderness to palpation and trigger points in the cervical paraspinal musculature and trapezius muscles, decreased range of motion (ROM) of the cervical spine and shoulders, positive Tinel's tests at the elbows and wrists, positive Phalen's test at the wrists, weakness in the hands, and positive Finkelstein's and carpometacarpal (CMC) grind tests. He reviewed various diagnostic studies, including an electromyography and a nerve conduction velocity (EMG/NCV) study of the upper extremities dated May 11, 2023, computerized tomography (CT) scans of the cervical spine dated May 12, 2023, and a magnetic resonance imaging (MRI) scan of the cervical spine dated September 22, 2023. Dr. Ellis diagnosed cervical disc displacement, radiculopathy, and disc degeneration; bursitis, tendinitis, and impingement of the shoulders; medial and lateral epicondylitis and ulnar nerve lesions at the elbows; bilateral carpal tunnel syndrome (CTS) and de Quervain's tenosynovitis; and osteoarthritis of the CMC joint of the left thumb due to her work duties. He explained that small injuries to the musculoskeletal system can accumulate and cause inflammation when not enough time passes for the body to heal itself. Regarding the neck,

⁴ OWCP assigned the present claim OWCP File No. xxxxxx845. In a separate Form CA-2, also dated November 3, 2023, appellant alleged that she injured her lower back, legs, hips, ankles, and feet due to 24 years of repetitive lifting, grasping, pulling, and twisting her body in unnatural positions while in the performance of duty. She noted that she first became aware of her condition on March 1, 2021 and realized its relationship to her federal employment on September 28, 2023. OWCP assigned that claim OWCP File No. xxxxxx847. By letter dated November 7, 2023, it determined that it had created two separate cases for the same injury and, therefore, deleted OWCP File No. xxxxxx847 and moved all documents in the case record to OWCP File No. xxxxxx845.

Dr. Ellis indicated that repetitive movements put pressure on the spine, which caused compression of the nerves. Regarding the shoulders, he noted that repetitive overhead activity with the shoulder was a risk factor for impingement syndrome, and that appellant's shoulder injuries "developed during her work hours." Regarding the elbows, forearms, and wrists, Dr. Ellis noted that the ulnar and median nerves can get irritated and inflamed due to repetitive stress and that the forearm muscles and tendons also become damaged from overuse. He indicated that with respect to the left thumb, repetitive high stress activities, such as fingering each letter in preparation for casing and delivery, caused cartilage to wear away from the base of the thumb at the CMC joint.⁵

In a February 5, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded 60 days to respond. In a separate letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of the appellant's statements. OWCP afforded the employing establishment 30 days to respond.

OWCP thereafter received medical reports dated April 27, 2021 through February 2, 2024 by Dr. Daniel Harris, Board-certified in anesthesiology and pain medicine, who documented his treatment of appellant approximately once per month for complaints of back, neck, shoulder, hip, knee, and foot pain. From April 27 through September 10, 2021, he noted her complaints of pain in her lower back and buttocks and administered lumbar medial branch blocks and radiofrequency nerve ablations. On January 6, 2022, Dr. Harris indicated that appellant related complaints of non-radiating pain in her cervical and lumbar spine and bilateral shoulder and foot pain and that her rheumatologist had recently diagnosed her with ankylosing spondylitis and polymyalgia rheumatica for which she was taking hydroxychloroquine with some benefit. On March 2, 2022, he noted that she related that she did not feel she could perform the full duties of her job as a mail carrier. On January 24 and February 21, 2023, Dr. Harris indicated that appellant was receiving treatment for neck and back pain due to a motor vehicle accident, which occurred in August 2022. On April 11, 2023, he noted that she related that she "believed at least some of her pain may be related to her work." Dr. Harris administered an injection to appellant's cervical spine on August 2, 2023. On December 13, 2023, he noted that she related a significant increase in her right shoulder pain, and, on February 1, 2024, he administered an injection to her right shoulder. Dr. Harris diagnosed lumbar spondylosis without myelopathy or radiculopathy, lumbar intervertebral disc degeneration, chronic pain syndrome, long-term use of opioid analgesics, sacroiliitis, hip pain, bilateral CTS, cervicalgia, cervical spondylosis, and lumbar and cervical radiculopathy due to degenerative joint disease of the spine.

An MRI scan of the cervical spine dated March 14, 2023 revealed mild degenerative disc disease with canal stenosis and neuroforaminal stenosis from C5 to C7.

An EMG/NCV study of the upper extremities dated May 11, 2023, revealed subtle cervical radiculopathy from C5 to C7, bilaterally and left-sided CTS and cubital tunnel syndrome.

⁵ OWCP received a separate report also dated September 28, 2023 by Dr. Ellis addressing her back and lower extremities. He opined that her medical conditions to her spine, bilateral hips, knees and feet were due to the repetitive work she had performed since 1998. OWCP also received a position description for rural carrier.

A CT scan of the cervical spine dated May 12, 2023 revealed multilevel disc degeneration and facet arthropathy.

An x-ray of the right shoulder dated December 13, 2023 was normal.

An MRI scan of the right shoulder dated January 24, 2024 revealed supraspinatus tendinosis with high-grade rim rent tear and moderate fluid accumulation within the subacromial bursa.⁶

In a February 7, 2024 e-mail in response to OWCP's development letter, J.N., an employing establishment manager, noted that appellant had not worked for the employing establishment since January 2022. She indicated that when working for the employing establishment she retrieved packages from hampers, lifted tubs, pushed the hamper to her vehicle, and was allowed to take breaks as needed.

On February 8, 2024, OWCP received an additional statement from appellant describing her job duties and activities outside of work.

In a follow-up letter dated February 27, 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 February 5, 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. No further evidence was received.

By decision dated April 5, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

On April 30, 2024, appellant, through her representative, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated June 5, 2024, OWCP's hearing representative set aside the April 5, 2024 decision and remanded the case for further medical development. The hearing representative instructed OWCP to refer appellant to a second opinion physician for evaluation.

On July 8, 2024, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Shawn P. Granger, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated July 17, 2024, Dr. Granger reviewed the medical record and SOAF, noted appellant's complaints and description of her job duties, and documented his physical examination findings. He diagnosed bilateral CTS and sprains of the lumbar spine, cervical spine, and pelvis. Dr. Granger opined that appellant experienced a worsening of bilateral CTS due to occupational exposure. He also opined that the other diagnosed conditions were not work related, as there had been no precipitating injuries. Dr. Granger explained that appellant's right shoulder complaints

⁶ OWCP also received a May 1, 2023 MRI scan of the lumbar spine; CT scans of the pelvis, thoracic spine, and lumbar spine dated May 12, 2023; an x-ray of the lumbar spine dated May 12, 2023; and an EMG/NCV study of the lower extremities dated May 18, 2023.

began after she ceased working as a rural mail carrier. He noted that her low back worsened with the development of polymyalgia rheumatica and improved with use of medication for that condition, which was unrelated to her employment duties.

By *de novo* decision dated August 21, 2024, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

OWCP continued to receive evidence, including a September 5, 2024 narrative report by Dr. Ellis, which addressed appellant's cervical spine and upper extremity conditions. Dr. Ellis noted his review of Dr. Granger's July 17, 2024 report and reiterated his opinion that the diagnosed conditions of cervical disc displacement, radiculopathy, and disc degeneration; bursitis, tendinitis, and impingement syndrome of the shoulders; medial and lateral epicondylitis and ulnar nerve lesions at the elbows; bilateral CTS and de Quervain's tenosynovitis; and left CMC joint osteoarthritis were caused by her work duties. He explained that those areas of appellant's body were subjected to constant strain due to the mechanics of her daily tasks, including lifting, repetitive outstretched overhead reaching, and reaching across her body in awkward positions. Dr. Ellis opined that her job duties over the course of 24 years caused significant cumulative trauma to her musculoskeletal and nervous systems, resulting in permanent conditions that were directly attributable to her employment.

On September 13, 2024, appellant, through her representative, requested reconsideration of OWCP's August 21, 2024 decision.

On September 19, 2024, OWCP forwarded the September 5, 2024 report of Dr. Ellis regarding appellant's cervical spine and upper extremities to Dr. Granger for his review and comment.

In a September 27, 2024 addendum to his July 17, 2024 report, Dr. Granger noted his review of Dr. Ellis' September 5, 2024 report. He opined, "I believe the diagnosis of [CTS] could be attributed to chronic occupational exposure and would be appropriately deemed as such." Dr. Granger indicated that appellant had undergone bilateral CTS release surgeries, and that the findings at the time of his examination were most consistent with diabetic polyneuropathy versus a compressive neuropathy. Regarding the cervical, elbow, and left thumb conditions diagnosed by Dr. Ellis, he noted that they were common orthopedic conditions that accompany normal aging of the body and spine. Dr. Granger explained that cervical radiculopathy should involve motor weakness, which appellant did not have during his examination on July 17, 2024. He also noted that her responses to sensory examinations were inconsistent and unreliable. Regarding the right shoulder condition, Dr. Granger indicated that repetitive use could contribute to tendinitis, bursitis, and impingement, but that there was a lack of documentation in the medical records of repetitive use of the right shoulder at work. He also indicated that appellant's CMC arthritis was due to aging and noted a lack of any history of sprain to the posterior oblique ligament which could have led to basilar thumb arthrosis.

By decision dated October 17, 2024, OWCP accepted appellant's claim for bilateral CTS.

By separate decision also dated October 17, 2024, OWCP denied expansion of the acceptance of appellant's claim to include disc displacement, radiculopathy, and disc degeneration of the cervical spine; derangement, bursitis, tendinitis, and impingement syndrome of the

shoulders; bilateral medial and lateral epicondylitis, de Quervain's tenosynovitis, and ulnar nerve lesions; and left thumb CMC osteoarthritis due to appellant's accepted employment factors.

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 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 the claimant's own intentional misconduct.⁸ 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 result of a compensable primary injury.⁹

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence.¹⁰ 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 be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

Section 8123(a) of FECA provides, in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or an impartial medical examiner (IME)) who shall make an examination."¹² This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹³ When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

⁷ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁸ *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

⁹ *J.M., id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

¹⁰ *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹¹ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

¹² 5 U.S.C. § 8123(a).

¹³ 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

¹⁴ *See W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001) *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

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

In his September 28, 2023 and September 5, 2024 reports, Dr. Ellis described appellant's work duties, noted her history of neck and upper extremity pain, reviewed her diagnostic studies, and documented physical examination findings. He diagnosed cervical disc displacement, radiculopathy, and disc degeneration; bursitis, tendinitis, and impingement syndrome of the shoulders; medial and lateral epicondylitis and ulnar nerve lesions at the elbows; bilateral CTS and de Quervain's tenosynovitis; and osteoarthritis of the CMC joint of the left thumb. Dr. Ellis explained that the repetitive movements of appellant's job resulted in compression of the nerves of the cervical spine and that overhead activity of the shoulder, especially repeated activity, is a risk factor for shoulder impingement syndrome. Regarding the elbows and forearms, he noted that repetitive stress irritated and inflamed the ulnar nerves and that her forearm muscles and tendons were damaged with overuse. Dr. Ellis, in addressing appellant's left thumb condition, indicated that repetitive high stress activities, such as fingering each letter in preparation for casing and delivery, causes the cartilage to wear away from the base of the thumb at the CMC joint. He also explained that cumulative trauma symptoms developed from the accumulation of repeated small injuries or stresses to the musculoskeletal system with insufficient passage of time to allow the body to heal itself.

Dr. Granger, in his July 17 and September 27, 2024 second opinion evaluation reports, reviewed appellant's history of injury and medical records. He performed a physical examination and opined that appellant experienced a worsening of bilateral CTS due to occupational exposure but that her neck, shoulder, and elbow complaints were not work related. Dr. Granger noted that her diagnosed neck, shoulder, and elbow conditions were common orthopedic conditions that accompanied normal aging of the body and spine. He indicated that cervical radiculopathy should involve motor weakness, which appellant did not have on examination. Dr. Granger also noted that appellant's responses to sensory examinations were inconsistent and unreliable. Regarding the right shoulder condition, he opined that repetitive use could contribute to tendinitis, bursitis, and impingement, but that there was a lack of documentation of right shoulder complaints due to repetitive use at work in the medical records. Dr. Granger attributed the CMC arthritis to aging and noted that there was no history of sprain to the posterior oblique ligament upon which basilar thumb arthrosis could be attributed.

As noted above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination.¹⁵ The Board finds that a conflict in medical opinion exists between Dr. Ellis and Dr. Granger regarding whether the acceptance of appellant's claim should be expanded to include additional cervical, shoulder, elbow, or left thumb conditions as causally related to the accepted employment factors.¹⁶

The case must, therefore, be remanded for further development. On remand, OWCP shall refer appellant, along with the case record, an updated SOAF, and a series of questions, to an IME

¹⁵ See *E.B.*, Docket No. 23-0169 (issued August 24, 2023); *S.S.*, Docket No. 19-1658 (issued November 12, 2020); *C.S.*, Docket No. 19-0731 (issued August 22, 2019).

¹⁶ *D.W.*, Docket No. 24-0157 (issued March 26, 2024); *S.T.*, Docket No. 21-0906 (issued September 2, 2022); *S.M.*, Docket No. 19-0397 (issued August 7, 2019).

for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a).¹⁷ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has met her burden of proof to expand the acceptance of her claim to include additional cervical, shoulder, elbow, or left thumb conditions as causally related to the accepted employment factors.

ORDER

IT IS HEREBY ORDERED THAT the October 17, 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: January 23, 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

¹⁷ *Y.M.*, Docket No. 23-0091 (issued August 4, 2023); *V.B.*, Docket No. 19-1745 (issued February 25, 2021).