

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

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<p><b>M.M., Appellant</b></p> <p>and</p> <p><b>U.S. POSTAL SERVICE, GREENSBORO POST OFFICE, Greensboro, NC, Employer</b></p>	<p>) ) ) ) ) ) )</p>	<p><b>Docket No. 24-0553</b></p> <p><b>Issued: July 30, 2025</b></p>
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*Appearances:*

*Michael J. Watson, for the appellant<sup>1</sup>*  
*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 April 30, 2024 appellant, through her representative, filed a timely appeal from a February 20, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> 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 an 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the February 20, 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.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish disability from work commencing March 18, 2022, causally related to her accepted January 31, 2022 employment injury; and (2) whether appellant has met her burden of proof to expand the acceptance of her claim to include lateral epicondylitis, olecranon bursitis, or an injury of extensor muscle/fascia/tendon of the right arm as causally related to her accepted January 31, 2022 employment injury.

## **FACTUAL HISTORY**

On February 1, 2022 appellant, then a 54-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2022 she injured her right elbow when she slipped and fell on ice while in the performance of duty. OWCP accepted her claim for right elbow contusion.<sup>4</sup> Since the January 31, 2022 date of injury, appellant has not returned to full-time work. As of March 18, 2022, she worked two hours per day in a modified rural carrier assignment. As of May 9, 2022, appellant worked between one to five hours per day, until she stopped work completely on November 7, 2022.

In a February 16, 2022 duty status report (Form CA-17), Dr. Lance Sisco, a Board-certified orthopedic surgeon, noted a history of the accepted January 31, 2022 employment injury and diagnosed bursitis/cubital tunnel syndrome of the right. He opined that appellant could work with restrictions.

Appellant filed claims for compensation (Form CA-7) for intermittent disability from work commencing March 18, 2022.

In narrative reports dated March 18 and 29, and May 3, 2022, CA-17 form reports dated March 18 and 29, May 3, and June 3, 2022, medical status questionnaires dated March 29 and April 5, 2022, and a letter dated May 17, 2022, Dr. Dax Varkey, an attending Board-certified orthopedic surgeon, recounted a history of appellant's accepted January 31, 2022 employment injury, provided examination findings, and reviewed diagnostic test results. He diagnosed possible distal triceps rupture, partial; cubital tunnel syndrome; lateral epicondylitis; olecranon bursitis with some mild distal biceps tendinitis; right tennis elbow and pain. In the March 29 and April 5, 2022 medical status questionnaires, Dr. Varkey checked a box marked "Yes" indicating that job duties or a workplace incident caused or significantly contributed to the injury or condition of right tennis elbow. In the CA-17 forms dated March 18 and 29, May 3, and June 3, 2022, he opined that appellant's right lateral epicondylitis and right elbow pain were due to the accepted January 31, 2022 employment injury. In the May 17, 2022 letter, Dr. Varkey noted magnetic resonance imaging (MRI) scan findings of a significant lateral epicondylitis and olecranon bursitis, and opined that "we think that medically this is related to her fall while at work." He concluded that appellant could resume full-time light-duty work with restrictions.

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<sup>4</sup> OWCP assigned the instant claim OWCP File No. xxxxxx593. In a prior claim under OWCP File No. xxxxxx781, OWCP accepted a January 13, 2011 traumatic injury for complete rotator cuff rupture of right shoulder, for which appellant underwent OWCP-authorized arthroscopic surgery of the right shoulder and rotator cuff on March 22, 2011. On October 13, 2023 OWCP administratively combined OWCP File No. xxxxxx781 with the instant claim, the latter of which serves as the master file.

A March 26, 2022 right elbow MRI scan provided impressions of advanced distal biceps tendinitis; mild tendinosis with low-grade partial thickness tear at the common extensor tendon origin; soft-tissue edema and trace amount of fluid overlie the olecranon posteriorly that may be possible post-traumatic or a mild olecranon bursitis; and intact triceps tendons.

In a development letter dated June 3, 2022, OWCP informed appellant that the medical evidence was insufficient to establish her claims for disability compensation. It advised her of the type of medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit the requested evidence.

In a June 22, 2022 letter, Dr. Varkey opined that appellant's significant lateral epicondylitis and olecranon bursitis noted on MRI scan were medically related to her fall at work. In a June 23, 2022 report, he stated that it was reasonable to consider surgery for the diagnosed right lateral epicondylitis condition.

By decision dated July 8, 2022, OWCP denied appellant's claim for wage-loss compensation commencing March 18, 2022, finding that the medical evidence of record was insufficient to establish disability from work commencing March 18, 2022, causally related to the accepted January 31, 2022 work injury.

On August 5, 2022 appellant requested reconsideration and submitted additional medical evidence.

In a July 21, 2022 report, Dr. Varkey recounted that appellant had no history of elbow pain prior to the fall and that she continued to have limitations and pain in the elbow. He stated that an MRI scan demonstrated a tear of the common forearm extensor tendon and recommended surgery. In a July 1, 2022 Form CA-17, Dr. Varkey continued to diagnose right elbow tendon tear and lateral epicondylitis. He opined that appellant could work full time with restrictions.

By decision dated August 9, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8121(a).

Appellant continued to file CA-7 forms for disability from work for a period commencing July 18, 2022.

In support of her claims, appellant submitted reports dated May 3, 17, June 22, July 19, 21, and August 29, 2022 from Dr. Varkey who opined that the diagnosed conditions were causally related to the accepted work injury and recommended that appellant continue to work with restrictions.

In a September 2, 2022 report, Dr. James Patton, a Board-certified neurologist, noted the history of appellant's January 31, 2022 work injury and presented examination findings of August 29, 2022. He requested that the acceptance of the case be expanded to include lateral epicondylitis, right elbow, olecranon bursitis, and a partial tear of the extensor tendon in the right arm as a direct result of appellant's slip and fall on ice on January 31, 2022. Dr. Patton explained that the mechanism of injury, slipping and falling with full weight on the right elbow, can cause tearing, impingements, and inflammation of the tendons that support the lower arm. He also explained how the mechanism of injury impacted and resulted in the diagnosed conditions, which were confirmed on MRI scan. Dr. Patton concluded that these diagnoses were a direct result of the January 31, 2022 employment injury. OWCP also received a Form CA-17 report dated

August 30, 2022 wherein Dr. Patton noted appellant's work restrictions and related that appellant had not been advised to return to work.

On December 1, 2022 appellant requested reconsideration of the July 8, 2022 decision.

On December 2, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions to Dr. Chason S. Hayes, a Board-certified orthopedic surgeon, for a second opinion examination to determine the nature and extent of any employment-related disability and whether the acceptance of her claim should be expanded to include right lateral epicondylitis, cubital tunnel syndrome, partial thickness tear of the forearm extensor tendon, and olecranon bursitis as causally related to the January 31, 2022 employment injury.

In a January 27, 2023 report, Dr. Hayes recounted the history of appellant's January 31, 2022 employment injury and provided physical examination findings. He opined that the claim should not be expanded to include right elbow lateral epicondylitis, cubital tunnel syndrome, or partial-thickness tear of the forearm extensor tendon as these conditions were degenerative in nature and not related to the accepted employment injury. Dr. Hayes opined that the olecranon bursitis should be considered part of the accepted work condition as it was a direct result of the contusion but, based on physical examination, it had resolved and did not require any further treatment. He concluded that the work-related conditions of right elbow contusion and olecranon bursitis had resolved as there were no objective findings that these conditions were still active and there was no need for further treatment. Dr. Hayes further opined that the work injury did not result in the need for surgery to repair the common extensor tendon, noting that the pathology involving the common extensor tendon and right lateral epicondylitis were degenerative in nature and not related to the work injury. Additionally, he opined that appellant could return to her date-of-injury position without restrictions. Dr. Hayes completed a January 22, 2023 work capacity evaluation (Form OWCP-5c) on January 22, 2023, reiterating his opinion on appellant's work capacity.

On March 1, 2023 OWCP again referred the claim, along with a revised SOAF, and a series of questions to Dr. Hayes, for a supplemental report regarding whether the acceptance of appellant's claim should be expanded to include additional right arm conditions.

In an undated report, Dr. Hayes related that the revised SOAF did not change any of his responses provided in his January 27, 2023 report. He noted that while he did not have a copy of Dr. Patton's medical reports, appellant's physical examination findings consisted of tenderness over the lateral condyle and over the cubital tunnel and the subjective complaints were not consistent with the objective findings related to the accepted work injury. Dr. Hayes reiterated his opinion that appellant's right lateral epicondylitis, right cubital tunnel syndrome, and partial thickness tear of the forearm extensor tendon were degenerative in nature and that the accepted January 31, 2022 work injury did not aggravate, accelerate, or precipitate any of those conditions. He also reiterated his opinion that appellant was capable of returning to her date-of-injury position.

In a separate report dated June 13, 2023, Dr. Hayes reviewed Dr. Patton's August 29, 2022 report and disagreed that appellant was suffering from lateral epicondylitis, olecranon bursitis and a partial tear of the extensor tendon/lateral epicondylitis as a direct result of her January 31, 2022 work injury. He explained that although a fall on the elbow commonly causes olecranon bursitis, which is traumatic in nature, at the time of his evaluation, she had no swelling or bursitis which

indicated that the condition had resolved. Dr. Hayes opined that the lateral epicondylitis/partial tear of the extensor tendon was the result of repetitive activity and that it was degenerative in nature, not related to trauma. This was based on MRI scan findings of advanced degeneration of the distal biceps tendon and mild tendinosis of the common extensor tendon and that there was no claim that appellant had injured her biceps in the fall. Dr. Hayes also indicated that the mechanism of injury, a fall on the elbow, would not allow for the development of a traumatic overload of the extensor tendon, which would result from a fall injuring the wrist with forced flexion against resisted extension. In a March 14, 2023 Form OWCP-5c, he again opined that appellant could perform her date-of-injury job without restriction.

By decision dated June 30, 2023, OWCP denied modification of its prior decision. It accorded the weight of the medical evidence to the second opinion reports of Dr. Hayes who did not support the requested expansion of the acceptance of the claim to include appellant's additional diagnosed right arm conditions, or her claimed disability from work.

On July 16, 2023 appellant requested reconsideration and submitted additional medical evidence from Dr. Patton.

In July 5 and 10, 2023 reports, Dr. Patton noted his disagreements with Dr. Hayes' second opinion reports. He explained how the mechanism of injury on January 31, 2022 resulted in appellant's diagnoses of lateral epicondylitis, olecranon bursitis, and injury of extensor muscle, fascia, tendon at right forearm level, which were confirmed by MRI scan findings.

Appellant continued to file Form CA-7 claims requesting wage-loss compensation for disability from work. She also continued to submit progress reports and CA-17 forms from Dr. Patton restating his opinion that appellant's diagnoses of right elbow lateral epicondylitis, olecranon bursitis, and right arm injury of extensor muscle, fascia, tendon at forearm level and work restrictions were causally related to her January 31, 2022 employment injury.

On October 11, 2023 OWCP determined that a conflict existed in the medical opinion evidence between Dr. Patton, appellant's treating physician, and Dr. Hayes, the second opinion physician, as to whether the acceptance of appellant's claim should be expanded to include the diagnoses of right lateral epicondylitis and right olecranon bursitis, and whether appellant was capable of returning to her date-of-injury position without restrictions due to her accepted employment injury. On November 8, 2023 it referred appellant, along with a SOAF, a series of questions, and the case record, to Dr. Mark A. Rowley, a Board-certified orthopedic surgeon, for an impartial medical examination. OWCP requested Dr. Rowley to provide an opinion regarding "whether [appellant] was capable of returning to work in any capacity (including light duty) since she stopped working completely on November 7, 2022 based on the evidence of record."

In a December 12, 2023 report, Dr. Rowley recounted appellant's history of injury on January 31, 2022, and his review of the SOAF, and the medical record. He reported that January 31, 2022 x-rays of appellant's right elbow were negative for fracture or dislocation and a March 26, 2022 MRI scan demonstrated mild tendinosis of the common elbow extensor tendon with low-grade partial tear. Dr. Rowley noted appellant's medical treatment of activity modification, physical therapy, and corticosteroid injections with recommendations for surgical repair of the partial tear of the elbow extensor tendon. He reported an essentially normal examination of the right elbow. Dr. Rowley initially explained that an "injury of extensor muscle/fascia/tendon at forearm level of right arm" was not a firm or valid diagnosis as it did not

identify any particular medical condition or disease of underlying pathology. He opined that the January 31, 2022 employment injury did not directly cause, aggravate, accelerate, or precipitate the additional diagnosed conditions of lateral epicondylitis, olecranon bursitis, and injury of extensor muscle/fascia/tendon at forearm level of right arm. Dr. Rowley explained that the lateral epicondylitis and associated tendinosis of the elbow tendon/partial tear were age-related degenerative conditions, not related to trauma, and his examination did not identify olecranon bursitis. He further opined that the January 31, 2022 injury directly caused a right elbow contusion which had resolved with no permanent injury. Dr. Rowley explained that bone contusions were self-limiting conditions expected to resolve within six weeks with a return to base line function. There was also no permanent injury related to the January 31, 2022 injury as the diagnostic studies of record were negative for fracture or dislocation. Dr. Rowley further opined that the January 31, 2022 work injury did not aggravate any preexisting condition, noting that the lateral epicondylitis and tendinosis/partial tear of the extensor tendon found on MRI scan were age-related, degenerative conditions and not related to the January 31, 2022 work-related injury. Based on the fact that the right elbow contusion had resolved with no permanent injury, Dr. Rowley opined that there were no residuals from the January 31, 2022 work injury and appellant was capable of returning to her date-of-injury position. In an accompanying Form OWCP-5c also dated December 12, 2023, Dr. Rowley reiterated his opinion regarding appellant's work capacity.

By decision dated February 20, 2024, OWCP denied modification of its June 30, 2023 decision. It accorded the special weight of the medical evidence to Dr. Rowley, the impartial medical examiner (IME), with regard to appellant's expansion and disability claims.

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

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled for work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>8</sup>

Under FECA, the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>9</sup> Disability is, thus, not synonymous with physical impairment which may or may not result in an incapacity to earn

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> See *S.F.*, Docket No. 20-0347 (issued March 31, 2023); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> See *S.F.*, *id.*; *Y.D.*, Docket No. 20-0097 (issued August 25, 2020); *L.S.*, Docket No. 18-0264 (issued January 28, 2020); *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

<sup>8</sup> 20 C.F.R. § 10.5(f); *S.F.*, *id.*; *J.M.*, Docket No. 18-0763 (issued April 29, 2020); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

<sup>9</sup> *Id.* at § 10.5(f); see *J.T.*, Docket No. 19-1813 (issued April 14, 2020); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

wages.<sup>10</sup> An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages that he or she was receiving at the time of injury, has no disability and is not entitled to compensation for loss of wage-earning capacity.<sup>11</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing employment, the employee is entitled to compensation for any loss of wages.<sup>12</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>13</sup>

Section 8123(a) of FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>14</sup> 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.<sup>15</sup>

In a situation where OWCP secures an opinion from an IME for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification and/or elaboration, OWCP has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.<sup>16</sup>

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

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

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Patton, appellant's treating physician, and Dr. Hayes, OWCP's second opinion physician, regarding the issue of whether appellant had disability from work commencing March 18, 2022 stemming from the January 31, 2022 work injury. Dr. Patton noted appellant's work restrictions and related that appellant had not been advised to return to work. Dr. Hayes

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<sup>10</sup> *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>11</sup> See *D.N.*, Docket No. 19-1344 (issued November 6, 2020); *G.R.*, Docket No. 19-0940 (issued December 20, 2019); *S.M.*, 58 ECAB 166 (2006); *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>12</sup> *J.T.*, *supra* note 9; *S.L.*, *supra* note 8.

<sup>13</sup> *Id.*; *Fereidoon Kharabi*, *supra* note 7.

<sup>14</sup> 5 U.S.C. § 8123(a); see also 20 C.F.R. § 10.321.

<sup>15</sup> See *D.M.*, Docket No. 22-1139 (issued January 19, 2023); *K.D.*, Docket No. 19-0281 (issued June 30, 2020); *Y.A.*, 59 ECAB 701 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>16</sup> *T.C.*, Docket No. 23-1036 (issued April 18, 2024); *P.J.*, Docket No. 23-1168 (issued February 6, 2024); *M.N.*, Docket No. 21-0980 (issued July 24, 2023); *C.C.*, Docket No. 22-1315 (issued July 23, 2023); *T.C.*, Docket No. 20-1170 (issued January 29, 2021); *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988).

opined that appellant could perform her date-of-injury job without restrictions. In order to resolve the conflict, it properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Rowley for an impartial medical examination.<sup>17</sup>

Based on Dr. Rowley's December 12, 2023 IME opinion, OWCP opined that appellant was not disabled from work commencing November 7, 2022 due to the accepted January 31, 2022 employment injury. The Board finds that at the time OWCP referred appellant to Dr. Rowley, it requested that he provide an opinion regarding whether appellant was capable of returning to work since she stopped work on November 7, 2022, rather than whether she was capable of returning to work since she stopped work commencing March 18, 2022 as claimed and addressed by OWCP in its prior decisions. As such, OWCP should have referred appellant to Dr. Rowley for an addendum report and a rationalized medical opinion on the issue of whether the accepted condition rendered appellant disabled from work commencing March 18, 2022.<sup>18</sup>

Upon return of the case record, OWCP shall refer appellant, if necessary, an updated SOAF, and the medical evidence of record, to Dr. Rowley for a supplemental opinion as to whether appellant was disabled from work commencing March 18, 2022. After this and other such further development of the case record, OWCP shall issue a *de novo* decision regarding whether appellant has met her burden of proof to establish disability from work commencing March 18, 2022, causally related to her accepted January 31, 2022 employment injury.

### **LEGAL PRECEDENT -- ISSUE 2**

Where 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>19</sup>

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.<sup>20</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>21</sup> Additionally, the opinion of the physician 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 specific employment factor(s) identified by the claimant.<sup>22</sup>

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<sup>17</sup> *L.Y.*, Docket No. 20-0398 (issued February 9, 2021); *B.S.*, Docket No. 19-1717 (issued August 11, 2020).

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *T.C.*, *supra* note 16.

<sup>19</sup> *L.M.*, Docket No. 23-1040 (issued December 29, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>20</sup> *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

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

<sup>22</sup> *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

## ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include lateral epicondylitis, or an injury of extensor muscle/fascia/tendon of the right arm causally related to her accepted January 31, 2022 employment injury.

As previously noted, OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Patton, appellant's treating physician, and Dr. Hayes, a second opinion examiner, regarding whether the claim should be expanded to include additional medical conditions. With regard to the expansion claim, Dr. Patton opined that the additional conditions of right lateral epicondylitis, right olecranon bursitis, and injury of extensor muscle/fascia/tendon at forearm level of right arm were causally related to the January 31, 2022 work injury. Dr. Hayes opined that the claim should be expanded to include a resolved right olecranon bursitis, but not expanded to include the preexisting conditions of right lateral epicondylitis or injury of extensor muscle/fascia/tendon at forearm level of right arm. OWCP properly referred appellant, pursuant to 5 U.S.C. § 8123(a), to Dr. Rowley for an impartial medical examination to resolve the conflict in medical opinion regarding the conditions of right lateral epicondylitis, and injury of extensor muscle/fascia/tendon at forearm level of right arm.<sup>23</sup>

In his December 12, 2023 report, Dr. Rowley indicated that injury of extensor muscle/fascia/tendon at forearm level of right arm was not considered a diagnosis as it did not identify any particular medical condition or disease of underlying pathology. He opined that the January 31, 2022 work injury did not directly cause, aggravate, accelerate, or precipitate the additional diagnosed condition of lateral epicondylitis. Dr. Rowley also opined that the lateral epicondylitis and associated tendinosis of the elbow tendon/partial tear seen on MRI scan were age-related degenerative conditions, not related to trauma. Thus, he concluded that the January 31, 2022 work injury did not aggravate any preexisting condition.

With regard to the additional claimed conditions of lateral epicondylitis and injury of extensor muscle/fascia/tendon right arm, the Board finds that Dr. Rowley's December 12, 2023 IME report represents the special weight of the medical evidence that such conditions are not causally related, either directly, aggravated, accelerated, or precipitated by the accepted January 31, 2022 employment injury. Dr. Rowley's opinion is based on a proper factual and medical history and contains a detailed explanation of why the lateral epicondylitis and tendinosis/partial tear of the extensor tendon are not causally related, either directly, aggravated, accelerated or precipitated by the accepted employment injury. He specifically noted that those conditions, which were found on MRI scan, were age-related, degenerative conditions not related to trauma. As the medical evidence of record is insufficient to establish expansion of the claim to include the additional claimed conditions of lateral epicondylitis and tendinosis/partial tear of the extensor tendon and "injury of extensor muscle/fascia/tendon right arm," the Board finds that appellant has not met her burden of proof in this regard.

The Board further finds that the case is not in posture for decision regarding whether the condition of olecranon bursitis should be accepted.

In a September 2, 2022 report, Dr. Patton, appellant's treating physician, diagnosed olecranon bursitis, based on an MRI scan, and opined that it was caused by appellant's accepted

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<sup>23</sup> See *supra* note 16.

employment injury. In his January 27, 2023 report, Dr. Hayes opined that appellant's olecranon bursitis should be considered part of the accepted work condition as it was a direct result of the contusion but, based on physical examination, it had resolved and did not require any further treatment. Therefore, when OWCP referred appellant to Dr. Rowley for an impartial medical evaluation, no conflict existed in the medical opinion evidence regarding whether appellant's diagnosed olecranon bursitis condition was causally related to his accepted injury. As there was no conflict in medical evidence pursuant to 5 U.S.C. § 8123(a) as to whether the olecranon bursitis condition was work related, the referral to Dr. Rowley constitutes a second opinion examination.<sup>24</sup> Accordingly, Dr. Rowley's opinion is insufficient to carry the special weight of an IME and should instead be considered for its own intrinsic value.<sup>25</sup>

Dr. Rowley indicated that his examination did not identify olecranon bursitis. The Board therefore finds that a conflict exists in the medical evidence as to whether appellant's olecranon bursitis condition should be accepted between appellant's treating physician Dr. Patton, and Dr. Rowley.

The Board finds that the case must be remanded because there exists an unresolved conflict in medical opinion evidence regarding whether appellant's olecranon bursitis condition should be accepted pursuant to 5 U.S.C. § 8123(a). OWCP shall refer appellant, together with the case record and an updated SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination to resolve the conflict. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision regarding whether appellant was disabled from work commencing March 18, 2022, causally related to her accepted January 31, 2022 employment injury. The Board further finds that appellant has not met her burden of proof to expand the acceptance of her claim to include lateral epicondylitis and tendinosis/partial tear of the extensor tendon or an injury of extensor muscle/fascia/tendon of the right arm causally related to her accepted January 31, 2022 employment injury. The Board also finds, however, that the case is not in posture for decision regarding whether the acceptance of appellant's claim should be expanded to include the additional condition of olecranon bursitis.

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<sup>24</sup> *R.L.*, Docket No. 20-1611 (issued September 30, 2022); *see S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *see also Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the IME was not afforded the special weight of the evidence but was considered for its own intrinsic value as he was a second opinion specialist).

<sup>25</sup> *R.L.*, *id.*; *Cleopatra McDougal-Saddler*, *id.*; *F.R.*, Docket No. 17-1711 (issued September 6, 2018).

