

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

J.H., Appellant

and

**U.S. POSTAL SERVICE, STAMFORD
PROCESSING & DISTRIBUTION CENTER,
Stamford, CT, Employer**

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) **Docket No. 25-0565**
) **Issued: June 24, 2025**
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Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 21, 2025 appellant, through counsel, filed a timely appeal from a May 15, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right upper extremity condition causally related to the accepted September 29, 2023 employment incident.

FACTUAL HISTORY

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

On October 5, 2023 appellant, then a 65-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 29, 2023 she injured her right hand, thumb, and upper extremity when she handled oversized parcels while in the performance of duty. She stopped work on September 30, 2023.

By decision dated December 18, 2023, OWCP denied appellant's traumatic injury claim, finding that she had not established a right upper extremity condition causally related to the accepted September 29, 2023 employment incident.

On March 22, 2024 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

By decision dated June 11, 2024, OWCP denied modification of its December 18, 2023 decision⁴

On June 26, 2024 appellant, through counsel, requested reconsideration.

By decision dated June 27, 2024, OWCP denied modification of its June 11, 2024 decision.

Appellant, through counsel, appealed to the Board.

While the Board appeal was pending, appellant submitted an August 22, 2024 report by Timothy Steffen Dahl, a physician assistant, wherein he diagnosed partial right rotator cuff tear, right acromioclavicular joint hypertrophy, and right elbow tendinitis. Mr. Dahl noted work restrictions.

³ Docket No. 24-0748 (issued September 20, 2024).

⁴ On June 12, 2024 OWCP administratively combined appellant's prior claims under OWCP File No. xxxxxx627, accepted for a left ankle sprain and contusion sustained on September 29, 2023, OWCP File No. xxxxxx684 accepted for cervical strain, lumbar strain, and chest wall sprain sustained on May 14, 2020, and OWCP File No. xxxxxx682, accepted for a left leg and foot injury sustained on December 16, 2008, with the present claim, OWCP File No. xxxxxx741. OWCP designated OWCP File No. xxxxxx741 as the master file.

On September 5, 2024 Dr. Luis C. Grau, a Board-certified orthopedic surgeon, requested authorization for a planned right shoulder arthroscopy with rotator cuff debridement vs repair, biceps tenotomy vs. tenodesis, subacromial decompression, and distal clavicle resection.

By decision dated September 20, 2024,⁵ the Board affirmed OWCP's June 27, 2024 decision.

On April 1, 2025 appellant, through counsel, requested reconsideration.

OWCP subsequently received a February 19, 2025 report, wherein Dr. Richard A. Gasalberti, a Board-certified physiatrist, related that lifting, pulling, and "throwing" packages commencing in 2016 for 40 hours a week, with an increase during the holidays, caused irritation and wear and tear of the shoulder joint. Dr. Gasalberti recounted that on September 29, 2023, appellant "lifted a heavy box and she heard a pop [i]n her right shoulder." He diagnosed a right supraspinatus tendon tear. Dr. Gasalberti opined that "to a reasonable degree of medical and surgical certainty that [appellant's] condition was caused by [the September 29, 2023] work[-] related injury." He explained that repetitive lifting, pushing, pulling, carrying, and throwing packages contributed to, accelerated, and permanently aggravated these medical conditions by repetitive trauma to her right shoulder.

In an April 3, 2025 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual additional evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response, appellant submitted an April 4, 2025 statement in which she asserted that the employment incident caused swelling and ruptures in her right thumb, wrist, and shoulder, which required hospital treatment.

OWCP also received a series of e-mails between appellant and the employing establishment dated from September 29, 2023 through December 4, 2024 regarding completion of a Form CA-1 and her request for light-duty work. In a September 29, 2023 e-mail, appellant asserted that earlier that day while working on a machine she was struck by a nonmachinable parcel weighing approximately 70 pounds. She injured the fingers of her left hand, which began to swell.

By decision dated May 15, 2025, OWCP denied modification of the June 27, 2024 decision.⁶

⁵ Docket No. 24-0748 (issued September 20, 2024).

⁶ Although appellant, through counsel, requested reconsideration from the Board's September 20, 2024 decision, OWCP is not authorized to review Board decisions. The decisions and orders of the Board 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). Accordingly, OWCP's June 27, 2024 decision is the appropriate subject of possible modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁸ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁹ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² The opinion of the physician must be based upon a complete factual and medical background, 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 incident.¹³

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

⁷ *Supra* note 3.

⁸ *See S.F.*, Docket No. 23-0264 (issued July 5, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

¹⁰ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

¹¹ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹³ *M.T.*, Docket No. 24-0103 (issued March 28, 2024); *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *see also Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *N.N.*, Docket No. 24-0510 (issued July 16, 2024); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

ANALYSIS

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

The Board preliminarily notes that it is unnecessary to consider the evidence submitted prior to the issuance of OWCP's June 27, 2024 decision, which was previously considered by the Board in its September 20, 2024 decision affirming OWCP's denial of modification of the June 11, 2024 decision denying appellant's occupational disease claim. Findings made in prior Board decisions are *res judicata* and cannot be considered absent further merit review by OWCP under section 8128 of FECA.¹⁵

Dr. Gasalberti, in his February 19, 2025 report, recounted an accurate, detailed history of injury. Additionally, he differentiated between the physical effects of her position commencing in 2016, and the accepted September 29, 2023 employment incident. Dr. Gasalberti opined that the September 29, 2023 employment incident resulted in a right supraspinatus tendon tear because of irritation and wear and tear to the right shoulder joint caused by repetitive lifting, pulling, and processing packages. He explained that repetitive lifting, pushing, pulling, carrying, and throwing packages contributed to, accelerated, and permanently aggravated her right shoulder conditions.¹⁶ Although Dr. Gasalberti's opinion is insufficiently rationalized to establish causal relationship, it is sufficient to require further development of the medical evidence.¹⁷

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹⁸ OWCP has an obligation to see that justice is done.¹⁹

The Board shall, therefore, remand the case to OWCP for further development of the medical evidence. On remand, OWCP shall refer appellant, along with a statement of accepted facts and the case record to a specialist in the appropriate field of medicine for a reasoned opinion regarding whether appellant sustained an injury causally related to the accepted September 29,

¹⁵ *A.D.*, Docket No. 25-0301 (issued April 24, 2025); *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). *See also* 5 U.S.C. § 8128.

¹⁶ The Board notes that in reports dated October 4 and 18, 2023 and June 19, 2024, Dr. Gasalberti opined that the September 29, 2023 employment incident exacerbated preexisting right shoulder pain caused by a January 31, 2023 MVA.

¹⁷ *L.N.*, Docket No. 25-0173 (issued March 6, 2025); *J.K.*, Docket No. 20-0816 (issued May 4, 2022); *M.H.*, Docket No. 18-1068 (issued June 2, 2020); *J.H.*, *supra* note 9; *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *John J. Carlone*, *supra* note 11; *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁸ *Id.*; *see also C.S.*, Docket No. 24-0819 (issued October 16, 2024); *S.G.*, Docket No. 22-0330 (issued April 4, 2023); *see M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

¹⁹ *See L.N.*, *supra* note 17; *C.M.*, *supra* note 17; *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, *supra* note 11.

2023 employment incident. If the second opinion physician disagrees with the opinion of Dr. Gasalberti, he or she must provide a fully-rationalized explanation of why the accepted employment incident is insufficient to have caused or aggravated appellant's medical condition. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2025 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: June 24, 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