

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

(2) whether appellant has established continuing residuals or disability of the temporary aggravation of right shoulder osteoarthritis on or after June 29, 2024 causally related to the accepted March 13, 2020 employment injury.

### **FACTUAL HISTORY**

On July 13, 2020 appellant, then a 49-year-old customer service clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2020, she injured her right shoulder when lifting a tub of presorted mail while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx109.<sup>3</sup>

By decision dated August 26, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted March 13, 2020 employment incident.

On September 4, 2020, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on December 3, 2020.

By decision dated February 16, 2021, OWCP's hearing representative modified the August 26, 2020 decision to find that the medical evidence of record was sufficient to establish diagnosed medical conditions; however, the claim remained denied as the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the accepted March 13, 2020 employment incident.

On December 13, 2021, appellant, through counsel, requested reconsideration.

By decision dated March 8, 2022, OWCP denied modification of the February 16, 2021 decision.

On May 13, 2022, appellant, through counsel, filed a timely appeal from the March 8, 2022 merit decision. In a March 14, 2023 order,<sup>4</sup> the Board set aside the March 8, 2022 decision and remanded the case for OWCP to administratively combine OWCP File Nos. xxxxxx109 and xxxxxx384.<sup>5</sup>

On May 1, 2023, OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Paul Legant, a Board-certified orthopedic

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<sup>3</sup> On August 5, 2020, appellant filed an occupational disease claim (Form CA-2) alleging that she developed a repetitive strain injury to unspecified muscle/fascia/tendon at right wrist and right hand due to factors of her federal employment, including lifting and throwing parcels up to 70 pounds or more, lifting tubs of presort mail weighing up to 30 pounds, unloading trucks of parcels, and general processing of mail. OWCP assigned that claim OWCP File No. xxxxxx384, and on July 25, 2023 accepted it for right wrist de Quervain's tendinitis.

<sup>4</sup> Docket Nos. 22-0855 & 22-0856 (issued March 14, 2023).

<sup>5</sup> On March 16, 2023, OWCP administratively combined the claims, with File No. xxxxxx109, designated as the master file.

surgeon, for a second opinion examination to determine whether appellant's bilateral shoulder conditions were causally related to the March 13, 2020 employment incident.

In a June 12, 2023 report, Dr. Legant reviewed the SOAF and the medical record. He provided appellant's physical examination findings and opined that her musculoskeletal injuries causally related to the March 13, 2020 work incident included right shoulder acute rotator cuff tear, superimposed upon preexisting rotator cuff tendinopathy, and glenohumeral arthritis. Dr. Legant further noted that he did not believe her musculoskeletal injuries causally related to March 13, 2020 work incident were the cause of her gradual progressive right shoulder osteoarthritis. He opined that the March 13, 2020 work incident did not cause, aggravate, accelerate, or precipitate the diagnosed conditions of chronic tendinitis of rotator cuff right shoulder, osteoarthritis of the right shoulder and/or right shoulder sprain. Dr. Legant further opined that appellant did not have an aggravation of a previous right shoulder condition. He indicated that her disability from work was unrelated to the March 13, 2020 work injury and was caused by her gradual progressive preexisting right shoulder osteoarthritis.<sup>6</sup>

By decision dated July 28, 2023, OWCP accepted the claim for right rotator cuff tear.

By separate decision also dated July 28, 2023, OWCP denied expansion of the acceptance of the claim to include rotator cuff tendinopathy and right shoulder osteoarthritis as causally related to the accepted employment injury. It found that these were preexisting conditions that were naturally progressive and not aggravated by the March 13, 2020 workplace incident.

On August 13, 2023, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On November 1, 2023, OWCP's hearing representative conducted a preliminary review and vacated the prior decision, finding that OWCP had not made sufficient findings regarding the weight of the medical evidence, and that OWCP had failed to provide appellant with a copy of the second opinion report.

On November 14, 2023, OWCP requested that appellant's treating physician, Dr. Sami E. Moufawad, Board-certified in physical medicine, rehabilitation, and pain medicine, review the June 12, 2023 report from Dr. Legant, the second opinion physician, and provide comments.

In a December 4, 2023 report, Dr. Moufawad, recounted appellant's history that she had a preexisting right shoulder injury; however, this injury was treated, she had minimal residuals from it, and on March 13, 2020, she was working full duty without restrictions. He related that on March 13, 2020, she picked up a presort tub filled with heavy magazines and other articles and had a significant sharp pain to the front of her right shoulder that was a different type of pain than she had experienced previously as it was burning and deep. Dr. Moufawad opined that this was clearly not a natural progression of events and there was an actual and precisely defined event that occurred at work on March 13, 2020, and led to the aggravation of symptoms which were related to the complete tear of the rotator cuff and to the aggravation of the preexistent right shoulder osteoarthritis, and chronic right shoulder tendinitis. He explained that there was no scientific way to separate the symptoms from the three conditions and therefore the aggravation of right shoulder osteoarthritis along with the aggravation of chronic right shoulder tendinitis (which were

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<sup>6</sup> An accompanying work capacity evaluation (Form OWCP-5c) is illegible.

preexisting to the events of March 13, 2020) should be accepted as a direct result of the work injury on March 13, 2020.

On December 21, 2023, OWCP requested clarification from Dr. Legant regarding appellant's ability to return to her date of injury position.

In a January 17, 2024 addendum, Dr. Legant explained that his opinion regarding appellant's work capacity was based on the causally related right shoulder and right wrist conditions, and was not based on current findings of progressive right shoulder osteoarthritis.

On January 24, 2024, OWCP found a conflict in medical opinion between Dr. Moufawad, the attending physician, and Dr. Legant, the second opinion physician, regarding whether appellant's right shoulder osteoarthritis and tendinitis were caused or aggravated by the March 13, 2020 injury. If the employment injury aggravated a preexisting condition, was the condition temporarily or permanently aggravated by the March 13, 2020 work incident.

On April 12, 2024, OWCP referred appellant, the medical record, SOAF, and a list of questions to Dr. Daniel Romanelli, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the ongoing conflict in the medical opinion evidence.

In a June 29, 2024 report, Dr. Romanelli, serving as the impartial medical examiner (IME), recounted appellant's history of injury and medical treatment. He examined appellant and noted right shoulder partial rotator cuff tear, work related; right shoulder biceps tenosynovitis, work related; right shoulder subacromial impingement and bursitis, work related; continued right shoulder pain with loss of motion in all parameters scapular dyskinesia, work related; right shoulder osteoarthritis, preexisting; and chronic right shoulder rotator cuff tendinopathy, preexisting. Dr. Romanelli explained that the preinjury notes showed that appellant had degenerative osteoarthritis of the right shoulder prior to the work incident of March 13, 2020; she also had chronic tendinopathy and was being treated with conservative measures including corticosteroid injections. Appellant was diagnosed on February 5, 2020 with osteoarthritis of a joint and impingement syndrome of the right shoulder region. He related that on the date of injury she experienced increased right shoulder pain, which was more likely than not related to the further progression of a rotator cuff tear. Dr. Romanelli related that appellant continued to have right shoulder pain with a loss of motion in all parameters and scapular dyskinesia. He opined that her shoulder arthritis and chronic tendinopathy were preexisting and consistent with the progression of ordinary life. Dr. Romanelli opined that the work incident which caused a burning sensation in her shoulder was more likely than not associated with the partial tearing of the supraspinatus tendon and not an aggravation of the shoulder arthritis. He noted that appellant's shoulder magnetic resonance imaging (MRI) scans did not show any structural change. Dr. Romanelli opined that the work incident did cause an acceleration of the chronic tendinitis of the rotator cuff of the right shoulder that eventually became the partial tear of the rotator cuff and that once the tear was repaired, appellant remained with loss of motion and scapular dyskinesia. He concluded that the preexisting osteoarthritis at most may have been temporarily exacerbated, but was not aggravated, and that appellant's x-rays showed natural progression over time.

By decision July 30, 2024, OWCP expanded the acceptance of the claim to include permanent aggravation of right bicep tendinitis.

On July 30, 2024, OWCP requested clarification from Dr. Romanelli regarding the date when appellant's temporary aggravation of right shoulder osteoarthritis ceased. It afforded Dr. Romanelli 30 days to respond. OWCP did not receive a response.

In an August 26, 2024 report, Dr. Moufawad related that appellant's chief complaint was right shoulder pain with limited motion which was affecting her activities of daily living. He diagnosed rotator cuff tear, right side, and right biceps tendinitis. Dr. Moufawad noted that the right shoulder arthritis condition he had requested be approved was not approved. He also related that he believed appellant's right shoulder arthropathy should be approved because it was the result of the rotator cuff tear.

On August 27, 2024, OWCP expanded the acceptance of the claim to include temporary aggravation of osteoarthritis of right shoulder, resolved as of June 29, 2024.

In a letter dated August 27, 2024 addressed to Dr. Romanelli, OWCP authorized him to order a Functional Capacity Evaluation to determine appellant's work restrictions. It requested that Dr. Romanelli submit a supplemental report within 30 days. No response was received.

In a September 2, 2024 report, Dr. Moufawad noted that appellant had undergone a right shoulder MRI scan on June 3, 2023, that revealed tendinitis with partial rotator cuff tendon tearing. He related that she also had tear of the glenoid labrum with osteophyte formation and arthritis of the right shoulder joint which he opined were induced by the rotator cuff arthropathy. Dr. Moufawad noted that the tears of the rotator cuff and the biceps tendinitis were approved and caused the degenerative changes in the shoulder which were not approved.

On November 11, 2024, appellant, through counsel, requested reconsideration.

By decision dated November 15, 2024, OWCP denied modification of its prior decision. It accorded the special weight of the medical evidence to the opinion of Dr. Romanelli, the IME.

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

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.<sup>7</sup> It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment injury. OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary

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<sup>7</sup> *C.F.*, Docket No. (issued January 21, 2022); *J.T.*, Docket No. 19-1723 (issued August 24, 2020); *S.P.*, Docket No. 19-0196 (issued June 24, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>8</sup> *C.F.*, *id.*; *S.P.*, *id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Ryker*, 40 ECAB 284 (1988).

shall appoint a third physician who shall make an examination.<sup>9</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to an IME, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.<sup>10</sup> Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>11</sup>

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

The Board finds that OWCP failed to meet its burden of proof to establish that appellant's temporary aggravation of right shoulder osteoarthritis had resolved as of June 29, 2024.

OWCP properly determined that a conflict in medical opinion arose between appellant's attending physician, Dr. Moufawad, and Dr. Legant, OWCP's second opinion physician, as to whether appellant's right shoulder osteoarthritis was caused or aggravated by the accepted March 13, 2020 employment injury. It therefore properly referred appellant to the IME, Dr. Romanelli, to resolve the conflict in medical opinion.

When a case is referred to an IME for the purpose of resolving a medical conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>12</sup>

Dr. Romanelli explained that appellant had degenerative osteoarthritis of the right shoulder prior to the work incident on March 13, 2020 and that she was being treated with conservative measures including corticosteroid injections. He opined that her shoulder arthritis was preexisting and consistent with the progression of ordinary life. Dr. Romanelli opined that the work incident which caused a burning sensation in her shoulder was more likely than not associated with the partial tearing of the supraspinatus tendon and not an aggravation of the shoulder arthritis. He noted that appellant's shoulder MRI scans did not show any structural change. Dr. Romanelli concluded that appellant's preexisting osteoarthritis may have been temporarily exacerbated but was not permanently aggravated by the March 13, 2020 employment incident.

On July 30, 2024, OWCP requested clarification from the IME regarding the date appellant's temporary aggravation of right shoulder osteoarthritis ceased. Dr. Romanelli, however, did not respond. OWCP thereafter expanded the acceptance of the claim to include

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<sup>9</sup> 5 U.S.C. § 8123(a). See *J.J.*, Docket No. 23-0440 (issued December 21, 2023); *M.E.*, Docket No. 21-0281 (issued June 10, 2022); *R.C.*, Docket No. 18-0463 (issued February 7, 2020); see also *G.B.*, Docket No. 16-0996 (issued September 14, 2016).

<sup>10</sup> See *M.E.*, *id.*; *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>11</sup> *M.E.*, *id.*; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, *id.*

<sup>12</sup> *S.P.*, Docket No. 25-0134 (issued December 17, 2024); *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).

temporary aggravation of right shoulder osteoarthritis, resolved as of June 29, 2024, the date of Dr. Romanelli's report. On August 27, 2024, OWCP again requested clarification from the IME regarding appellant's work restrictions. Again, Dr. Romanelli did not respond.

Proceedings under FECA are not adversarial in nature, and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>14</sup>

As Dr. Romanelli did not respond to OWCP's requests for clarification, the Board finds that his medical opinion was insufficient to carry the special weight of the medical evidence.<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 or elaboration, it 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> OWCP failed to obtain the necessary medical evidence to resolve the relevant issue in this case. The Board therefore finds that it failed to meet its burden of proof to establish that appellant's temporary aggravation of right shoulder osteoarthritis had resolved as of June 29, 2024.

### **CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to establish that appellant's temporary aggravation of right shoulder osteoarthritis had resolved as of June 29, 2024.

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<sup>13</sup> See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>14</sup> *L.N.*, Docket No. 22-0497 (issued September 14, 2023); *G.M.*, Docket No. 19-1931 (issued May 28, 2020); *W.W.*, Docket No. 18-0093 (issued October 9, 2018).

<sup>15</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

<sup>16</sup> *S.R.*, Docket No. 17-1118 (issued April 5, 2018); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232, 238 (1988); *Harold Travis*, 30 ECAB 1071, 1078 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 15, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 14, 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