

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

P.N., Appellant

and

**U.S. POSTAL SERVICE, HOUMA POST
OFFICE, Houma, LA, Employer**

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**Docket No. 25-0277
Issued: March 6, 2025**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 29, 2025 appellant, through counsel, filed a timely appeal from a January 29, 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.³

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.*

³ The Board notes that, following the January 29, 2025 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 a right shoulder condition as causally related to the accepted December 24, 2014 employment injury.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.⁴ The relevant facts are as follows.

On December 29, 2014, appellant, then a 61-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on December 24, 2014, she injured her left lower leg while in the performance of duty. She noted that she was unloading a dispatch vehicle when a wire cage rolled into her and pushed her against a large container. Appellant stopped work on the date of injury. On January 26, 2015, OWCP accepted her claim for open wound of the left knee, leg, and ankle without complications. It thereafter expanded the acceptance of appellant's claim to include sprains of the left knee and lower leg, tear of the left medial meniscus, and strain of muscle and tendon of the peroneal muscle group of the left lower leg. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective December 24, 2014, and on the periodic rolls, effective April 5, 2015.

On June 25, 2015, appellant underwent OWCP-authorized surgery to repair a tear of the peroneal brevis tendon in the left ankle by Dr. Michael LaSalle, a Board-certified orthopedic surgeon.

In a report dated May 31, 2016, Dr. Lisa Lee-Alevizon, a Board-certified family physician and acupuncturist, noted that appellant related complaints of low back, left leg, and right shoulder pain, which she attributed to the December 24, 2014 employment injury. She performed a physical examination, which revealed pain and spasms throughout the back and right shoulder and pain in the left lateral ankle. Dr. Lee-Alevizon diagnosed low back and left leg pain, bilateral sciatica, muscle spasm, and low back and bilateral shoulder strains.

Appellant underwent physical therapy and acupuncture treatments for right shoulder, low back, and leg pain with Dr. Lee-Alevizon from May 31, 2016 through April 17, 2017.

In reports dated February 15 and May 15, 2017, Dr. LaSalle noted appellant's ongoing complaints of pain in the right shoulder, which she attributed to the December 24, 2014 employment injury.

A magnetic resonance imaging (MRI) scan of the right shoulder dated May 25, 2018, demonstrated a partial thickness interstitial tear at the confluence of the supraspinatus and infraspinatus tendons medial to the footplate, bursitis, and mild acromioclavicular (AC) joint arthropathy.

⁴ Docket No. 22-0794 (issued October 20, 2023).

In a medical report dated May 30, 2018, Dr. Brett E. Casey, a Board-certified orthopedic surgeon, noted that appellant related complaints of stiffness and pain in the neck and right shoulder. He reviewed the May 25, 2018 MRI scan and performed a physical examination, which revealed reduced range of motion in the neck and right shoulder and positive Spurling's, Speed, Neer's, Hawkins, and O'Brien's tests. Dr. Casey diagnosed neck and right shoulder pain, cervical disc displacement, arthrosis of the right AC joint, and impingement syndrome of the right shoulder.

On April 10, 2019, appellant, through counsel, requested that the acceptance of her claim be expanded to include a right shoulder strain.

In a note dated July 10, 2020, Dr. Kyle J. Guidry, Board-certified in family medicine, diagnosed left leg pain, ruptured left ankle tendon, right rotator cuff tear, and neck and back pain. He opined that these conditions were caused by the December 24, 2014⁵ injury.

On September 13, 2021, OWCP referred appellant, along with the medical record, a SOAF and a series of questions, to Dr. Simon Finger, a Board-certified orthopedic surgeon, for a second opinion examination.

In an October 21, 2021 report, Dr. Finger determined that appellant had not sustained a right shoulder injury related to her accepted December 24, 2014 employment injury. He explained that he saw "no evidence in the medical record or on physical exam[ination] that a right shoulder injury was connected to the work injury on [December 24, 2014]."

By decision dated November 19, 2021, OWCP denied expansion of the acceptance of appellant's claim to include a right shoulder condition as causally related to her accepted December 24, 2014 employment injury.

On December 1, 2021, appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 8, 2022.

By decision dated April 11, 2022, OWCP hearing representative affirmed OWCP's November 19, 2021 decision.

On April 27, 2022, appellant, through counsel, appealed to the Board. By decision dated October 20, 2023, the Board affirmed OWCP's April 11, 2022 decision, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed right shoulder condition and the accepted December 24, 2014 employment injury.⁶

On August 20, 2024, OWCP received an undated statement, wherein appellant indicated that on December 24, 2014 she was shoved by a 450-pound cart and landed on her outstretched arms and body. Appellant described symptoms of swelling, pain, and limited range of motion in the right shoulder.

⁵ Dr. Guidry's report indicated a date of injury of December 22, 2014; however, this appears to be a typographical error as the case record establishes that the date of injury was December 24, 2014.

⁶ *Supra* note 4.

In attending physician's reports (Form CA-20) dated September 10, 2020 and August 28, 2024, Dr. Guidry diagnosed right rotator cuff tear and arthropathy. He checked a box marked "Yes" to indicate that the injuries were caused or aggravated by an employment activity on December 24, 2014.

In a work capacity evaluation (Form OWCP-5c) dated June 21, 2024, Dr. Guidry indicated that appellant was capable of performing sedentary to light-duty work with no more than one hour of reaching, lifting, pushing, pulling, or climbing.

In a Form CA-20 dated September 17, 2024, Dr. Patrick Ellender, a Board-certified orthopedic surgeon and sports medicine specialist, diagnosed a rotator cuff tear. He opined that the injury was caused by the December 24, 2014 employment injury, which he described as "patient was pinned against a container."

On September 30, 2024, appellant, through counsel, requested reconsideration.⁷ In support of the request, she submitted an undated narrative wherein Dr. Guidry related a history that a cage fell on her at work. Dr. Guidry also noted that an MRI scan revealed a right rotator cuff tear and indicated that appellant "sustained injuries to the right shoulder and left ankle as a result of this accident."

By decision dated October 2, 2024, OWCP denied modification.

OWCP thereafter received a September 17, 2024 medical report wherein Dr. Ellender indicated that appellant related complaints of pain in the right shoulder. Dr. Ellender noted that she was last seen on April 23, 2024 for review of an x-ray and MRI scan. He performed a physical examination, which revealed normal passive range of motion with pain, tenderness to palpation of the subacromial space, reduced strength, and a positive empty can test. Dr. Ellender diagnosed complete rotator cuff tear or rupture of right shoulder, not specified as traumatic, and shoulder impingement.

On December 10, 2024, appellant, through counsel, requested reconsideration of OWCP's October 2, 2024 decision. In support of the request, he submitted a November 21, 2024 narrative by Dr. Guidry, who opined that appellant injured her right shoulder at work when a cage fell on her in December 2014. Dr. Guidry indicated that she had experienced pain, swelling, and limitation of range of motion of the shoulder since the accident and had been unable to work.

By decision dated December 13, 2024, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

OWCP thereafter received a September 17, 2024 Form CA-20 by Dr. Guidry, who diagnosed right rotator cuff arthropathy and chronic leg pain. He opined that "a cage fell on [appellant] causing shoulder and leg injury" and indicated that she could return to full-duty work on August 1, 2024.

⁷ Appellant, through counsel, specifically requested reconsideration of the Board's October 20, 2023 decision. However, OWCP has no jurisdiction to review a Board decision. 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). The proper subject of review was OWCP's April 11, 2022 merit decision.

On January 8, 2025, appellant again requested reconsideration.

By decision dated January 29, 2025, OWCP denied modification of the October 2, 2024 merit decision.

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.⁸ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.⁹ 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 appellant's employment injury.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include a right shoulder condition as causally related to the accepted December 24, 2014 employment injury.

Preliminarily, the Board notes that it is unnecessary to consider the evidence appellant submitted prior to the issuance of the April 11, 2022 OWCP decision, because the Board considered that evidence in its October 20, 2023 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹¹

In his September 10, 2020 and August 28 and September 17, 2024 CA-20 forms, undated narrative, and November 21, 2024 narrative, Dr. Guidry diagnosed a right rotator cuff tear and arthropathy. He opined that the conditions were caused by the December 24, 2014 employment injury. Similarly, in a Form CA-20 dated September 17, 2024, Dr. Ellender diagnosed a right rotator cuff tear caused by "being pinned against a container" on December 24, 2014. While Dr. Guidry and Dr. Ellender attributed appellant's right shoulder condition to her accepted employment injury, they did not offer medical rationale explaining how the accepted employment injury caused the diagnosed right shoulder condition. The Board has held that medical evidence that states a conclusion but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² This evidence is, therefore, insufficient to establish expansion of the claim.

⁸ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁹ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹¹ *G.W.*, Docket No. 22-0301 (issued July 25, 2022); *M.D.*, Docket No. 19-0510 (issued August 6, 2019); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1988).

¹² *See S.D.*, Docket No. 21-0085 (issued August 9, 2021); *see also M.B.*, Docket No. 19-1655 (issued April 7, 2020).

In a Form OWCP-5c dated June 21, 2024, Dr. Guidry provided work restrictions. Dr. Ellender, in a medical report dated September 17, 2024, diagnosed right rotator cuff tear with associated shoulder impingement. However, neither of these reports contain an opinion as to whether appellant's diagnosed right shoulder condition was causally related to her accepted employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹³ As such, these additional reports of Dr. Guidry and Dr. Ellender are insufficient to establish expansion of the claim.

As the medical evidence of record is insufficient to establish that the acceptance of the claim should be expanded to include a right shoulder condition causally related to the accepted December 24, 2014 employment injury, 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the acceptance of her claim should be expanded to include a right shoulder condition as causally related to the accepted December 24, 2014 employment injury.

¹³ *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *see D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2025
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board