

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

S.P., Appellant)
and) Docket No. 25-0669
U.S. POSTAL SERVICE, OAKLAND) Issued: November 25, 2025
PROCESSING & DISTRIBUTION CENTER,)
Oakland, CA, Employer)

)

Appearances:
Appellant, *pro se*
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 June 27, 2025 appellant filed a timely appeal from a March 11, 2025 merit decision and an April 8, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to expand the acceptance of her claim to include left shoulder conditions as a consequence of her accepted right shoulder

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the April 8, 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.*

employment conditions; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 9, 2008 appellant, then a 67-year-old modified distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained a right rotator cuff tear due to factors of her federal employment, including repetitive tearing the front page off of magazines that were undeliverable.³ She noted that she first became aware of her condition on July 12, 2008 and realized its relationship to her federal employment on August 12, 2008. Appellant stopped work on April 10, 2008. OWCP accepted the claim for sprain of the right shoulder and upper arm, rotator cuff; and other specified disorder of the right shoulder bursae and tendons. It authorized right rotator cuff repair, which was performed on March 3, 2009, and right total shoulder arthroplasty, which was performed on August 17, 2010. OWCP paid appellant wage-loss compensation on the supplemental rolls commencing October 18, 2008, and on the periodic rolls commencing April 12, 2009.⁴

In a report dated October 5, 2011, Dr. Michael Hebrard, a Board-certified physiatrist recounted appellant's history of injury and medical treatment. He provided examination findings including positive bilateral Adson's test, positive left shoulder Speed's test, and positive left shoulder impingement and apprehension tests. Dr. Hebrard diagnosed compensable left shoulder rotator bursitis syndrome, left shoulder impingement tendinitis, and status post right total shoulder replacement. He opined that appellant sustained a consequential left shoulder condition because she relied more on her left shoulder during her right shoulder recovery process. According to Dr. Hebrard, this reliance on her left shoulder accelerated the cumulative trauma and damage to her left shoulder. He concluded that appellant more likely than not would not have had an accelerated left shoulder aggravation but for her right shoulder injury.

In a development letter dated October 18, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim for a consequential left shoulder condition. It advised her of the type of medical evidence needed to establish her consequential injury claim and afforded her 30 days to provide the necessary evidence.

In a report dated December 3, 2012, Dr. Kirk L. Jensen, a Board-certified orthopedic surgeon, noted appellant complained of increasing left shoulder symptoms over the past two years and multiple right shoulder surgeries. He diagnosed left shoulder impingement, left shoulder supraspinatus tendon tearing, and status post right total shoulder arthroplasty. Dr. Jensen recommended evaluation of her left shoulder condition as a consequential injury. He explained that it was clear she had significant left shoulder injury given the long-standing right shoulder issues.

³ OWCP assigned the present claim OWCP File No. xxxxxx001. Appellant previously filed an occupational disease claim (Form CA-2) on May 19, 2001, which OWCP accepted for bilateral de Quervain's tenosynovitis under OWCP File No. xxxxxx144. She also filed a Form CA-2 for an occupational disease on March 24, 2005, which OWCP accepted for right de Quervain's syndrome and resolved right elbow extensor tendinitis under OWCP File No. xxxxxx645.

⁴ Appellant retired from the employing establishment, effective January 31, 2013.

In progress notes dated February 16, June 25, and October 16, 2015, and February 11, 2016, Dr. Hebrard recounted appellant's history of injury noted appellant's subjective complaints and provided bilateral shoulder physical examination findings. He related that appellant had developed bilateral thoracic syndromes. In notes dated February 16 and 25, 2015, and February 11, 2016, he explained that appellant developed a consequential left shoulder injury, noting that the right shoulder condition caused her to favor the left shoulder over the long term.

In a report dated March 21, 2016, Dr. Scott Taylor, an orthopedic surgeon, provided examination findings, recounted the history of injury, and diagnosed status post right rotator cuff capsule, other right shoulder lesions, status post right shoulder reverse arthroplasty, and probable compensatory left shoulder rotator cuff arthropathy.

In a May 12, 2016 visit note, Dr. Hebrard noted that his opinion remained unchanged from prior reports.

In a report dated August 15, 2016, Dr. Warren J. Strudwick, Jr., a Board-certified orthopedic surgeon, recounted appellant's medical history and noted her present complaints including significant left shoulder pain and decreased bilateral shoulder range of motion. On physical examination, he observed markedly positive left shoulder impingement sign, bilateral shoulder weakness, negative right shoulder impingement sign, bilateral upper trapezial region tenderness, and no evidence of gross atrophy of either shoulder girdle musculature. He diagnosed right shoulder degenerative joint disease with massive rotator cuff tear, status post reverse prosthesis and left shoulder severe degenerative change and massive rotator cuff tear with proximal migration and rotator cuff arthropathy. Dr. Strudwick opined that the left shoulder symptoms were caused and exacerbated by the right shoulder surgery. He explained that her symptomology began in 2011 and continued through 2016. Dr. Strudwick concluded that, within medical probability, appellant's diagnosed left shoulder rotator cuff tear and osteoarthritis were caused and perpetuated by the July 12, 2008 right shoulder injury.

In an August 30, 2016 visit note, Dr. Hebrard related appellant's physical examination findings, and diagnosed right rotator cuff capsule sprain and right shoulder other lesions. He explained that based on the progression and natural history of disease pathology, appellant favored her left shoulder, which in turn accelerated left shoulder damage. A review of a 2011 left shoulder magnetic resonance imaging (MRI) scan demonstrated severe degenerative change consistent with a rotator cuff tear.

A September 19, 2016 MRI scan of appellant's left shoulder demonstrated moderate left proximal biceps tendon long head tendinosis; moderate-to-severe left glenohumeral joint osteoarthritis; moderate left glenohumeral joint effusion with synovitis in the axillary pouch, chronic massive full-thickness left rotator cuff tear; mild left acromioclavicular joint osteoarthritis; and chronic capsulitis.

Dr. Strudwick, in a December 19, 2016 report, diagnosed right shoulder degenerative joint disease with massive rotator cuff tear, status post reverse prosthesis and left shoulder severe degenerative change and massive rotator cuff tear with proximal migration and rotator cuff arthropathy.

In a January 26, 2017 visit note, Dr. Hebrard reiterated findings diagnoses from his prior report. He opined that appellant suffered a consequential left shoulder injury. In support of this opinion, Dr. Hebrard explained that due to appellant's restricted functional range of motion and weakness of her right shoulder she overused and favored her left shoulder. Additionally, Dr. Hebrard reported left shoulder adhesive capsulitis.

OWCP continued to receive visit notes from Dr. Hebrard wherein he repeated his findings and conclusions regarding appellant's bilateral shoulder conditions.

Dr. Hebrard, in a May 18, 2020 visit note, provided examination findings and explained that her right shoulder condition led to progressive left upper extremity overuse deterioration.

In a September 14, 2023 note, Dr. Hebrard opined that appellant sustained a consequential left shoulder condition due to overuse from decreased functional use of her right shoulder.

A September 16, 2016 left shoulder MRI scan demonstrated a full thickness rotator cuff seven years ago. Dr. Hebrard explained on a more probably basis that appellant's cumulative overuse of her left shoulder permanently aggravated her preexisting left shoulder conditions. Thus, he opined that her left shoulder rotator cuff tear and adhesive capsulitis are a compensable consequence of her accepted employment injury.

On January 24, 2024 OWCP referred appellant, along with a statement of accepted facts (SOAF), medical record, and series of questions, to Dr. John H. Wellborn, a Board-certified orthopedic surgeon, for a second opinion evaluation on whether appellant sustained a consequential left shoulder condition.

In a report dated February 15, 2024, Dr. Wellborn, recounted an injury history and reviewed the SOAF and medical record. On physical examination of the left shoulder he reported anterior tenderness, pain with all range of motion and 4/5 rotator cuff weakness. Dr. Wellborn diagnosed status post right shoulder replacement due to rotator cuff tear and arthritis, which were accepted conditions, and nonwork related left shoulder cuff tear and arthritis. He opined that appellant's left shoulder rotator cuff arthropathy was age related and not due to her work injury because she had not worked since 2008 and her right shoulder surgeries were in 2009 and 2010.

In a report dated June 4, 2024, Dr. Hebrard repeated his prior findings and conclusions.

By decision dated June 14, 2024, OWCP denied appellant's request to expand the acceptance of her claim to include a consequential left shoulder condition. It found the weight of the medical evidence rested with the February 15, 2024 report by Dr. Wellborn.

On July 12, 2024 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive medical evidence. In reports dated July 16, September 26, and November 21, 2024, Dr. Hebrard repeated his prior findings and conclusions.

By decision dated November 12, 2024, an OWCP hearing representative set aside the June 14, 2024 decision and remanded the case for further development of the evidence. The hearing representative found Dr. Wellborn's opinion was insufficiently rationalized as it was not

based on a complete medical history, including medical documents from appellant's claims in OWCP File Nos. xxxxxx144 and xxxxxx645. On remand, OWCP was instructed to administratively combine OWCP File Nos. xxxxxx144 and xxxxxx645 with the present claim and request Dr. Wellborn to provide a supplemental report.

On August 23, 2024 OWCP administratively combined OWCP File Nos. xxxxxx645, xxxxxx144, and xxxxxx001, with the latter designated as the master file.

On November 26, 2024 OWCP updated the SOAF and requested a supplemental report from Dr. Wellborn.

In a supplemental report dated December 4, 2024, Dr. Wellborn noted his review of the updated SOAF and additional medical records. He diagnosed left shoulder arthritis and left shoulder rotator cuff tear. Dr. Wellborn reiterated that the diagnosed left shoulder rotator cuff arthropathy was age related and not causally related to right shoulder surgeries in 2009 and 2010.

Dr. Hebrard, in a January 30, 2025 report, reiterated his prior findings and conclusions.

By decision dated March 11, 2025, OWCP denied appellant's request for expansion of the acceptance of the claim to include a consequential left shoulder condition.

On April 1, 2025 appellant requested reconsideration.

OWCP subsequently received a March 27, 2025 x-ray report regarding appellant's right shoulder, as well as a progress report dated March 27, 2025 from Dr. Hebrard regarding appellant's right shoulder.

By decision dated April 8, 2025, OWCP denied appellant's request for reconsideration of the merits of her claim.

LEGAL PRECEDENT -- ISSUE 1

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.⁵

To establish causal relationship between a condition and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ The opinion of the physician must be one of reasonable certainty, and must explain the nature of the relationship between the diagnosed condition and the accepted employment injury.⁷

⁵ *S.L.*, Docket No. 24-0220 (issued May 15, 2024); *N.U.*, Docket No. 22-1329 (issued April 18, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁶ *S.L.*; *B.W.*, Docket No. 21-0536 (issued March 6, 2023); *D.E.*, Docket No. 20-0936 (issued June 24, 2021); *S.L.*, Docket No. 19-0603 (issued January 28, 2020).

⁷ *Id.*

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that a subsequent injury, whether 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.⁸

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 shall appoint a third physician who shall make an examination.⁹ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (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.¹⁰

ANALYSIS -- ISSUE 1

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

In support of her claim, appellant submitted multiple reports from Dr. Hebrard covering the period October 5, 2011 through January 30, 2025 wherein he provided examination findings and noted her bilateral shoulder medical history. Dr. Hebrard opined that appellant developed a consequential left shoulder condition due to overuse from decreased functional use of her right shoulder. Specifically, he found that her preexisting left shoulder rotator-cuff tear and adhesive capsulitis had been aggravated by overuse of her left shoulder due to her accepted right shoulder conditions and her accepted surgical procedures in 2009 and 2010. In a report dated October 5, 2011, Dr. Hebrard diagnosed compensable left shoulder rotator bursitis syndrome, left shoulder impingement tendinitis, and status post right total shoulder replacement. He opined that appellant sustained a consequential left shoulder condition because she relied more on her left shoulder during her right shoulder recovery process. According to Dr. Hebrard, this reliance on her left shoulder accelerated the cumulative trauma and damage to her left shoulder. In his January 26, 2017 visit note, Dr. Hebrard explained that, due to appellant's restricted functional range of motion and weakness of her right shoulder, she overused and favored her left shoulder.

OWCP referred appellant to Dr. Wellborn for a second opinion regarding whether she sustained a consequential left shoulder injury. In a February 2024 report, Dr. Wellborn noted his review of the SOAF and the medical record. He noted appellant's accepted diagnosis of status post right shoulder replacement due to rotator cuff tear and arthritis. Dr. Wellborn explained that appellant stopped work in 2008 and that her left shoulder conditions were age related. He also

⁸ See *L.M.*, Docket No. 23-0605 (issued December 5, 2023); *D.L.*, Docket No. 21-0047 (issued February 22, 2023); *D.H.*, Docket Nos. 20-0041 & 20-0261 (issued February 5, 2021).

⁹ 5 U.S.C. § 8123(a). See *D.M.*, Docket No. 25-0317 (issued April 15, 2025); *R.C.*, Docket No. 18-0463 (issued February 7, 2020); see also *G.B.*, Docket No. 16-0996 (issued September 14, 2016).

¹⁰ 20 C.F.R. § 10.321. See also *D.M.*, *id.*; *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

opined that appellant's left shoulder rotator cuff tear and arthritis developed well after she stopped work in 2008 and that the condition was instead attributable to her age. In a supplemental report dated December 4, 2024, Dr. Wellborn reviewed additional records and updated SOAF and stated that his opinion remained unchanged that the left shoulder conditions were due to appellant's age and unrelated to her accepted right shoulder condition or surgeries.

The Board finds that a conflict exists in the medical evidence as to whether appellant developed a consequential left shoulder injury due to her accepted right shoulder conditions. While Dr. Wellborn opined that appellant's left shoulder condition was age related because she had stopped work in 2008, Dr. Hebrard explained that appellant's right shoulder conditions necessitated right shoulder surgical procedures in 2009 and 2010, which led to restricted functional range of motion and weakness of her right shoulder and caused her to favor her left shoulder, which led to aggravation of her left shoulder conditions.

As explained above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or IME who shall make an examination.¹¹ The Board finds that a conflict exists between Dr. Hebrard, for appellant, and Dr. Wellborn, an OWCP referral physician, regarding whether the acceptance of appellant's claim should be expanded to include aggravation of left shoulder rotator cuff tear and adhesive arthritis as a consequence of the accepted right shoulder employment injury.

As there is an unresolved conflict in medical opinion regarding whether the acceptance of appellant's claim should be expanded to include additional conditions as consequential to her accepted July 12, 2008 employment injury, the case must be remanded for OWCP to refer appellant, along with the case record, an updated SOAF, and a series of questions to an IME for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a). Following 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 a decision.¹²

¹¹ See *R.C.*, *supra* note 9; S.S., Docket No. 19-1658 (issued November 12, 2020); C.S., Docket No. 19-0731 (issued August 22, 2019).

¹² In view of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 11 and April 8, 2025 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceeding consistent with the above opinion.

Issued: November 25, 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