



## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

## **FACTUAL HISTORY**

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

On June 9, 2017 appellant, then a 50-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she developed left shoulder acromioclavicular (AC) arthritis, biceps tendinitis, impingement syndrome, partial rotator cuff tear, and adhesive capsulitis from years of repetitive strain due to factors of her federal employment, including manual patient handling. She noted that she first became aware of her condition on July 15, 2016 and realized its relationship to her federal employment on July 22, 2016. Appellant stopped work on November 22, 2016 and returned to work on January 23, 2017.

In a medical report dated July 22, 2016, Dr. Sophia Rostovtseva, Board-certified in family medicine, noted that appellant related complaints of left shoulder pain for one week, which she attributed to lifting at work. She documented physical examination findings and diagnosed left shoulder bicipital tendinitis.

In a medical report dated October 7, 2016, Dr. Paul Scherer, a Board-certified orthopedic surgeon, noted that appellant related complaints of left shoulder pain which "started spontaneously in [July 2016]." He also noted that "her job is sometimes heavy with respect to lifting patients rapidly to scoop them up off the curbside where they are oftentimes dropped off in overdose situations." Dr. Scherer documented physical examination findings, obtained x-rays, and diagnosed clinical adhesive capsulitis.

In medical reports dated October 14 and 28, 2016, Dr. Aaron P. Omotola, a Board-certified orthopedic surgeon, evaluated appellant for left shoulder pain and noted that she was an emergency room nurse and avid golfer.

A magnetic resonance imaging (MRI) scan of the left shoulder dated October 20, 2016 demonstrated moderate AC joint osteoarthritis with mild impingement upon the supraspinatus muscle, intermediate signal intensity in the distal anterior aspect of the supraspinatus tendon suggestive of tendinopathy/tendinitis without a clearly defined rotator cuff tear seen, and mild joint effusion.

On November 22, 2016 Dr. Omotola performed an unauthorized left shoulder arthroscopic biceps tenodesis, subacromial decompression, distal clavicle excision, and debridement of rotator cuff partial tear. He diagnosed left shoulder AC arthritis, biceps tendinitis, impingement syndrome, and partial rotator cuff tear.

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<sup>3</sup> Docket No. 24-0572 (issued June 17, 2024); Docket No. 21-0147 (issued January 21, 2022).

By decision dated August 24, 2017, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her left shoulder condition and the accepted factors of her federal employment.

On July 19, 2018 appellant, through counsel, requested reconsideration. In support thereof, she submitted progress notes dated November 30 and December 1, 2017 by Dr. Omotola, who indicated that she developed adhesive capsulitis of the left shoulder postoperatively and was receiving aggressive physical therapy.

By decision dated March 6, 2019, OWCP denied modification of the August 24, 2017 decision.

On December 9, 2019 appellant, through counsel, requested reconsideration. In support thereof, she submitted a December 2, 2019 report by Dr. Arthur C. Sippo, a Board-certified physiatrist, who performed a records review. Dr. Sippo opined that she suffered an acute rotator cuff tear in her left shoulder while applying compression hose to a patient.

By decision dated December 12, 2019, OWCP denied modification of the March 6, 2019 decision.

On March 4, 2020 appellant, through counsel, requested reconsideration. In support thereof, she submitted a March 2, 2020 narrative report by Dr. Sippo, who indicated that he performed a physical examination of appellant on February 22, 2020 and documented his findings. Dr. Sippo diagnosed a left rotator cuff tear and biceps tendinitis and opined that the conditions were caused by fitting compression hose onto the swollen leg of a patient on October 16, 2016. He explained that the shoulder is prone to overuse injuries leading to inflammation in the soft tissues and cumulative trauma to the joint structures stemming from excessive demands. Dr. Sippo indicated that repetitive lifting, pushing, and pulling of the shoulder led to severe stress in the muscular, bony, ligamentous, and cartilaginous structures in the shoulder joint and were responsible for damage to the anatomic structures therein. He opined that the trauma and appellant's work activities resulted in repetitive chronic and acute injuries to her left rotator cuff, which led to the documented tear.

By decision dated May 28, 2020, OWCP denied modification of its December 12, 2019 decision.

Appellant appealed to the Board. By decision dated January 21, 2022, the Board set aside the May 28, 2020 decision.<sup>4</sup> The Board found that the report of Dr. Sippo was sufficient to require further development of the medical evidence. The Board instructed OWCP, on remand, to refer appellant, along with the medical record and a statement of accepted facts (SOAF), to a specialist in the appropriate field of medicine for a second opinion evaluation to be followed by a *de novo* decision.

On June 20, 2022 OWCP referred appellant, the medical record, a SOAF, and a series of questions, to Dr. Michael H. Ralph, a Board-certified orthopedic surgeon, for a second opinion

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<sup>4</sup> Docket No. 21-0147 (issued January 21, 2022).

evaluation to determine whether she sustained a medical condition causally related to the accepted factors of her federal employment.

In a July 12, 2022 report, Dr. Ralph related appellant's factual and medical history, noted his review of the SOAF and medical record, and documented physical examination findings. He disagreed with Dr. Sippo's diagnosis and course of treatment, and opined that appellant's left shoulder condition was not caused by the accepted employment factors.

On August 11, 2022 OWCP requested clarification from Dr. Ralph. In an August 30, 2022 supplemental report, he reiterated his opinion that appellant did not develop a work-related condition.

By *de novo* decision dated September 13, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of her federal employment.

On September 19, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated December 8, 2022, OWCP's hearing representative vacated the September 13, 2022 decision and remanded the case for further development of the evidence.

On March 16, 2023 OWCP referred appellant, the medical record, an updated SOAF, and a series of questions to Dr. William Kostman, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether she sustained a medical condition causally related to the accepted factors of her federal employment.

In an April 5, 2023 report, Dr. Kostman discussed appellant's factual and medical history and reviewed the SOAF and medical record. On examination, he observed equal and symmetric trapezius and shoulder musculature, healed portal sites involving the left shoulder, no biceps deformity, variable rotator cuff strength on testing, variable range of motion (ROM) testing with supination on the left, no shoulder instability to anterior-posterior translation, no scapular winging, tenderness to palpation of the left AC joint, and variable testing on strength distally. Dr. Kostman noted that appellant's physical examination findings were inconsistent and that her subjective complaints did not correspond with objective findings. He diagnosed impingement syndrome of the left shoulder, which was related to an anatomic configuration of her acromion and was not caused, aggravated, accelerated, or precipitated by her work activities as described in the SOAF.

By *de novo* decision dated November 13, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her left shoulder condition and the accepted factors of her federal employment.

On November 21, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 7, 2024.

OWCP thereafter received physical therapy reports, medical reports for unrelated conditions, and a statement by appellant, which outlined a timeline of her left shoulder complaints.

By decision dated April 23, 2024, OWCP's hearing representative affirmed the November 13, 2023 decision.

On May 7, 2024 appellant, through counsel, appealed to the Board. By decision dated June 17, 2024,<sup>5</sup> the Board set aside the April 23, 2024 decision, finding that the case was not in posture for decision as there was a conflict in medical opinion evidence between Dr. Sippo, appellant's treating physician, and Dr. Kostman, the second opinion physician, as to whether the accepted employment factors caused or contributed to the diagnosed conditions. The Board remanded the case to OWCP for referral for an impartial medical examination for resolution of the conflict of medical opinion, to be followed by issuance of a *de novo* decision.

On August 1, 2024 OWCP referred appellant, together with a SOAF and the medical record, to Dr. Frank Petkovich, a Board-certified orthopedic surgeon serving as the impartial medical examiner (IME), to resolve the conflict in the medical opinion evidence.

In a September 10, 2024 report, Dr. Petkovich noted that appellant related that she began working for the employing establishment in its emergency department in 2000, had recently retired, and for the last 10 years of her employment had worked outside of the emergency department performing utilization reviews and other activities. He indicated that she developed pain in her left shoulder around July 2016, which she attributed to patient care activities. Dr. Petkovich performed a physical examination of the left shoulder and observed well-healed arthroscopic portals, no inflammation, mildly limited ROM, mild tenderness to palpation along the anterior and lateral aspects of the acromion process, and normal strength, sensation, and reflexes. He reviewed the medical record and SOAF and diagnosed nonspecific tendinitis, unrelated to appellant's work duties. Dr. Petkovich explained that the MRI scan demonstrated tendinitis at the insertion of the supraspinatus tendon on the bursal side, which did not represent a true rotator cuff tear. He also indicated that Dr. Omotola did not repair a rotator cuff tear during the surgery on November 22, 2016 and that the distal clavicle excision and tenodesis procedures addressed chronic conditions unrelated to any acute activity.

By *de novo* decision dated October 2, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that the diagnosed left shoulder conditions were causally related to the accepted employment factors. It accorded the special weight of the medical evidence to the September 10, 2024 opinion of Dr. Petkovich, as the IME.

On October 8, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 8, 2025.

By decision dated February 19, 2025, an OWCP hearing representative vacated the October 2, 2024 decision and remanded the claim for OWCP to request an addendum report from Dr. Petkovich acknowledging appellant's work duties prior to 2016 and containing a rationalized medical opinion as to whether any pathology in her left shoulder was directly caused or contributed to by the work factors.

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<sup>5</sup> Docket No. 24-0572 (issued June 17, 2024).

In an April 5, 2025 addendum report, Dr. Petkovich reviewed the SOAF, including a description of appellant's job duties as an emergency room nurse. He diagnosed tendinitis at the insertion site of the supraspinatus tendon of the left shoulder, which he opined was idiopathic and not caused, aggravated, or accelerated by her work duties. Dr. Petkovich noted that the MRI scan was consistent with a degenerative condition, unrelated to any acute episode.

By *de novo* decision dated June 3, 2025, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a left shoulder condition causally related to the accepted employment factors. It again accorded the special weight of the medical evidence to the opinion of Dr. Petkovich, as the IME.

On June 5, 2025 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a July 2, 2025 narrative medical report, Dr. Sippo indicated that he examined appellant again on June 24, 2025. He reiterated that she had a "documented work-related left shoulder injury on [October 16, 2016] while fitting compression hose on the edematous lower extremity of a debilitated patient" which "caused a full-thickness tear in her left shoulder rotator cuff."

By decision dated July 29, 2025, OWCP's hearing representative affirmed the June 3, 2025 decision.

On September 9, 2025 appellant, through counsel, requested reconsideration of OWCP's July 29, 2025 decision.

By decision dated October 15, 2025, OWCP denied modification.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> *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).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is casually related to the identified employment factors.<sup>10</sup>

The medical evidence required to establish causal relationship between a diagnosed condition and the accepted employment factors is rationalized medical opinion evidence.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.<sup>12</sup>

In any case where 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.<sup>13</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 shall appoint a third physician who shall make an examination.<sup>14</sup> 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 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>

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<sup>10</sup> *S.R.*, Docket No. 24-0839 (issued October 30, 2024); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019).

<sup>11</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>12</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>14</sup> 5 U.S.C. § 8123(a). *See R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

<sup>15</sup> 20 C.F.R. § 10.321. *See also 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).

## ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

In September 10, 2024 and April 5, 2025 reports, Dr. Petkovich, serving as the IME, indicated that he reviewed the medical record, SOAF, and examined appellant. He noted appellant's subjective complaints and documented physical examination findings in the left shoulder. Dr. Petkovich diagnosed nonspecific tendinitis, unrelated to the accepted employment factors. He explained that the MRI scan revealed tendinitis at the insertion of the supraspinatus tendon on the bursal side, which did not represent a true rotator cuff tear. Dr. Petkovich also noted that Dr. Omotola did not repair the rotator cuff tear during the surgery on November 22, 2016 and that the distal clavicle excision and tenodesis addressed chronic conditions unrelated to any acute activity. In his April 5, 2025 supplemental report, he reviewed a detailed description of appellant's job duties as an emergency room nurse and again diagnosed tendinitis at the insertion site of the supraspinatus tendon of the left shoulder. Dr. Petkovich opined that the condition was idiopathic and not caused, aggravated, or accelerated by her work duties. He also noted that the MRI scan was consistent with a degenerative condition, unrelated to any acute episode.

The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>16</sup> Dr. Petkovich based his opinion on a proper factual and medical history and physical examination findings. He explained that appellant's diagnosed conditions were not caused, aggravated, or accelerated by her work duties. Accordingly, the Board finds that Dr. Petkovich's opinion constitutes the special weight of the medical opinion evidence.<sup>17</sup>

Appellant submitted a July 2, 2025 narrative medical report by Dr. Sippo. However, Dr. Sippo was on one side of the conflict in medical evidence which was resolved by Dr. Petkovich as the IME. The Board has long held that reports from a physician who was on one side of a medical conflict that a medical impartial specialist resolved, are generally insufficient to overcome the special weight accorded to the report of the IME, or to create a new conflict.<sup>18</sup> The July 2, 2025 report from Dr. Sippo, therefore, is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment factors, the Board finds that appellant has not met her burden of proof.

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<sup>16</sup> See *L.K.*, Docket No. 20-0443 (issued August 8, 2023).

<sup>17</sup> See *A.L.*, Docket No. 25-0492 (issued May 27, 2025).

<sup>18</sup> See *S.V.*, Docket No. 25-0688 (issued September 5, 2025); *E.B.*, Docket No. 24-0780 (issued June 5, 2025); *E.H.*, Docket No. 19-1352 (issued December 18, 2019).

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 a medical condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 15, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2026  
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