

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

J.S., Appellant)	
)	
and)	Docket No. 26-0078
)	Issued: February 27, 2026
DEPARTMENT OF THE ARMY, U.S. ARMY)	
INSTALLATION MANAGEMENT)	
COMMAND, U.S. ARMY GARRISON FORT)	
HUNTER LIGGETT,)	
FORT HUNTER LIGGETT, CA, Employer)	
)	

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 November 10, 2025, appellant, through counsel, filed a timely appeal from an October 24, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).

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.

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

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include right shoulder conditions as causally related to, or consequential to, the accepted November 5, 2023 employment injury.

FACTUAL HISTORY

On November 5, 2023 appellant, then a 43-year-old firefighter, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left shoulder when he slipped off a fire engine step and caught himself by grabbing the top of the door with his left arm causing a left shoulder tear while in the performance of duty. He stopped work on that date. OWCP accepted the claim for unspecified sprain of the left shoulder joint. It paid appellant wage-loss compensation on the supplemental rolls commencing December 22, 2023 and on the periodic rolls commencing February 13, 2024.

On April 2, 2024, appellant underwent an OWCP-authorized left shoulder arthroscopy and biceps tenodesis, due to superior labrum tear, posterior labrum tear, and low-grade tear of the articular surface of the supraspinatus tendon.

On December 9, 2024, appellant reported to OWCP that the inability to use his left arm following surgery had resulted in right arm symptoms.

OWCP subsequently received notes dated December 6 and 11, 2024 from Dr. Ramesh Patel, a Board-certified internist, relating that appellant reported right shoulder pain and that he had requested a consultation regarding whether the right shoulder was consequential to his left shoulder injury.

In a January 3, 2025 report, Kelly Cook, a physician assistant, related that appellant believed that he had developed right shoulder pain due to overuse following his left shoulder injury and surgery.

On February 3, 2025, OWCP expanded the acceptance of the claim to include superior glenoid labrum lesion of the left shoulder, left shoulder bursal cyst, and left shoulder tendon disorder.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the October 24, 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.*

In a development letter dated February 3, 2025, OWCP informed appellant of the deficiencies of his claim for a consequential right shoulder injury. It advised him of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to respond.

In a February 12, 2025 report, Dr. Richard Sall, a physician Board-certified in preventative medicine, examined appellant due to his right shoulder condition which appellant attributed to “over compensation.” He related that appellant first noticed right shoulder pain on December 11, 2024 when he was unable to reach with his right arm while showering and later experienced his right shoulder “pop out of place.” Appellant also described pain while lifting and limited range of motion in the right shoulder. Dr. Sall diagnosed sprain of the right shoulder and opined that pain developed in the right shoulder commencing December 11, 2024 for “COMPENSATORY REASONS USING IT WHILE THE LEFT HEALED.” (Emphasis in the original.)

On February 20, 2025, OWCP referred the case record to Dr. Nathan Hammel, a Board-certified orthopedic surgeon, serving as a district medical adviser (DMA) for review and an opinion regarding appellant’s alleged consequential injury.

OWCP subsequently received additional medical evidence. In a February 3, 2025 report, Dr. Patel related that appellant’s right shoulder popped while cooking, and then popped back, resulting in excruciating pain.

In his March 4, 2025 report, Dr. Hammel opined that it was not generally accepted medical practice that a brief period of overuse after surgery could cause pathology in the opposite shoulder. Additionally, he noted that the onset of symptoms was remote from surgery, when the relative overuse would have been the greatest.

By decision dated March 5, 2025, OWCP denied expansion of the acceptance of appellant’s claim to include right shoulder conditions as causally related to, or consequential to, the accepted November 5, 2023 employment injury.

On March 25, 2025, appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. A hearing was held on August 13, 2025.

OWCP subsequently received a March 12, 2025 report, wherein Dr. Sall described appellant’s accepted left shoulder conditions and that OWCP denied his right shoulder claim.

Thomas Savarese, a physical therapist, provided treatment notes dated April 14 through May 19, 2025.

On May 9, 2025, appellant underwent a right shoulder magnetic resonance imaging (MRI) scan which demonstrated rotator cuff tendinosis without rotator cuff tear, moderate AC joint arthrosis, and labral tearing and fraying.

In a May 14, 2025, attending physician’s report (Form CA-20), Dr. Sall diagnosed a labral tear in the right shoulder. He opined that the right shoulder condition was due to overcompensation of the right shoulder while being treated for the left shoulder injury of November 5, 2023. Dr. Sall related that appellant was partially disabled with no lifting over 10 pounds. He repeated these

findings in his reports dated April 16 through July 30, 2025. On August 15, 2025, Dr. Sall repeated that the right shoulder condition was attributed to overcompensation by use during treatment for the November 5, 2023 left shoulder injury. He again noted that the right shoulder MRI scan demonstrated a labral tear and requested permission to treat appellant for this condition.

By decision dated October 24, 2025, OWCP's hearing representative affirmed the March 5, 2025 OWCP 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.⁴ When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.⁵ Thus, a subsequent injury, be it 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.⁶

The claimant bears the burden of proof to establish a claim for a consequential injury.⁷ 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.⁸ 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.⁹

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported

⁴ *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁵ *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

⁶ *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁷ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁸ *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).

⁹ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁰ *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

Section 8123(a) of FECA provides, in pertinent part: “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 (known as a referee physician or an impartial medical examiner (IME) who shall make an examination.”¹² This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.¹³ When 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.¹⁴

ANALYSIS

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

In support of his consequential injury claim, appellant submitted a series of reports dated February 12 through August 15, 2025 from Dr. Sall diagnosing right shoulder labrum tear and sprain which he opined was causally related to “over compensation” as a result of the accepted November 5, 2023 left shoulder conditions of sprain, superior glenoid labrum lesion of the left shoulder, bursal cyst, left shoulder, and left shoulder tendon disorder with resulting OWCP-authorized surgery. He found that appellant’s right shoulder conditions commenced December 11, 2024 for “COMPENSATORY REASONS USING IT WHILE THE LEFT HEALED.” (Emphasis in the original.)

OWCP requested that the DMA, Dr. Hammel, address whether appellant’s accepted November 5, 2023 left shoulder injuries resulted in a right shoulder consequential injury. In his March 4, 2025 report, he opined that a brief period of overuse after surgery would not cause pathology in the opposite shoulder. Additionally, Dr. Hammel noted that the onset of symptoms was remote from surgery, when the relative overuse would have been the greatest.

As explained above, if there is a disagreement between an employee’s physician and an OWCP referral physician, OWCP will appoint an IME who shall make an examination. The Board finds that a conflict in medical opinion exists between Dr. Sall and Dr. Hammel regarding whether

¹¹ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

¹² 5 U.S.C. § 8123(a).

¹³ 20 C.F.R. § 10.321; *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *R.C.*, 58 ECAB 238 (2006).

¹⁴ See *W.N.*, Docket No. 21-0123 (issued December 29, 2021); *A.G.*, Docket No. 21-0315 (issued December 29, 2021); *R.R.*, Docket No. 19-0086 (issued February 10, 2021); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

the acceptance of appellant's claim should be expanded to include right shoulder conditions as causally related to, or consequential to, the accepted November 5, 2023 employment injury.¹⁵

As there is an unresolved conflict in medical opinion 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 decision.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 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: February 27, 2026
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

¹⁵ *S.M.*, Docket No. 26-0010 (issued January 28, 2026); *H.A.*, Docket No. 25-0887 (issued January 20, 2026); *S.P.*, Docket No. 25-0669 (issued November 25, 2025); *K.G.*, Docket No. 25-0792 (issued September 26, 2025); *V.C.*, Docket No. 25-0714 (issued September 19, 2025); *see N.O.*, Docket No. 20-0478 (issued August 22, 2025).