United States Department of Labor
Employees' Compensation Appeals Board

T.J., Appellant	)	
and	)	**Docket No. 22-0251**
	)	**Issued: January 2, 2026**
U.S. POSTAL SERVICE, ATLANTA PROCESSING & DISTRIBUTION CENTER, Atlanta, GA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 3, 2021 appellant, through counsel, filed a timely appeal from a November 10, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 November 10, 2021 decision, OWCP received additional evidence. 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 establish that acceptance of her claim should be expanded to include cervical radiculopathy as causally related to, or as a consequence of, her accepted January 4, 2009 employment injury.

FACTUAL HISTORY

This case has previously been before the Board on a different issue.[4] The facts and circumstances of the case as set forth in the Board's prior decisions and prior orders are incorporated herein by reference. The relevant facts are as follows.

On January 4, 2009 appellant, then a 42-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging on that date she injured her right arm near the elbow when sweeping mail into a rack while in the performance of duty.[5] She stopped work on January 5, 2009. OWCP accepted the claim for right lateral epicondylitis. It paid wage-loss compensation on the supplemental rolls commencing May 19, 2009 and on the periodic rolls.

On December 23, 2009 Dr. Kevin F. Smith, a physician Board-certified in occupational medicine, completed an attending physician's report (Form CA-20) diagnosing right epicondylitis, ulnar neuropathy, and cervical strain. He indicated by checking a box marked "Yes" that the diagnosed conditions were caused or aggravated by an employment activity and related that these conditions were directly associated with appellant's current diagnosis.

In reports dated February 3 and 9, 2010, Dr. Smith described appellant's accepted employment injury with radiating pain from the right elbow to the right wrist and from the right elbow to the right neck. He reviewed August 24, 2009 electromyogram/nerve conduction velocity (EMG/NCV) studies which demonstrated a mild left and moderate right medial neuropathy and mild ulnar nerve neuropathy. Dr. Smith advised that if no significant improvement occurred then a cervical magnetic resonance imaging (MRI) scan could delineate the presence of possible pathologies such as a herniated disc, degenerative arthritis, spinal stenosis, or facet hypertrophy. He opined that her neck and elbow injuries were work related and that all of these findings were associated with cervical strain from repetitive job injuries and right lateral epicondylitis.

On July 13, 2010 appellant underwent an MRI scan of her cervical spine which demonstrated a small right paracentral disc protrusions at C3-4, and C4-5, degenerative disc disease at C4-5, C5-6, and C6-7 and a right disc herniation at C6-7.

In October 20, 2010 reports, Dr. Michael R. Swany, an orthopedic surgeon, diagnosed possible cervical radiculopathy, right upper extremity; multi-level cervical spondylosis with multi-level mild stenosis; and chronic lateral right elbow pain with possible lateral epicondylitis. On December 13, 2010 he opined that appellant had mostly recovered from her lateral epicondylitis

[4] *Order Granting Petition for Reconsideration Vacating Prior Board Order and Reinstating Appeal*, Docket No. 22-0251 (issued December 30, 2025); *Order Dismissing Appeal,* Docket No. 22-0251 (issued July 28, 2022); Docket No. 18-1196 (issued January 18, 2019); Docket No. 18-0619 (issued October 22, 2018).

[5] OWCP assigned the present claim OWCP File No. xxxxxx872. Appellant has subsequent occupational disease claims (Form CA-2) which OWCP denied for right elbow lateral epicondylitis under OWCP File No. xxxxxx564 and for cervical strain and cervical radiculopathy under OWCP File No. xxxxxx080.

and that her symptoms were "more likely" consistent with cervical radiculopathy. Dr. Swany examined her on January 3, 2011 and repeated his diagnoses.

On December 23, 2010 appellant underwent EMG/NCV studies which demonstrated no significant evidence of radiculopathy or neuropathy in the right arm.

On January 24, 2011 Dr. Daniel P. Feldman, a physician specializing in pain management, noted the January 4, 2009 employment injury and appellant's ongoing reports of neck pain. On physical examination he found cervical spine tenderness with painful range of motion, weakness, and reduced sensation in the right upper extremity. Dr. Feldman diagnosed left cervical radiculopathy at C7, herniated discs at C5-6 and C6-7, and lateral epicondylitis. He concluded that she had a two-year history of right arm radicular pain along C7 secondary to disc degeneration with protrusions from C3-4 to C6-7.

In a February 23, 2011 report, Dr. Swany diagnosed resolved lateral epicondylitis right elbow, cervical radiculopathy right upper extremity, and multi-level cervical spondylosis with multi-level spinal stenosis. He advised that appellant had reached maximum medical improvement with regard to her right lateral epicondylitis. On February 28, 2011 Dr. Swany provided work restrictions based only on her diagnosed cervical conditions.

In a March 28, 2011 report, Dr. Feldman diagnosed cervical radiculitis and lateral epicondylitis. On April 11, 2011 he performed a trigger point injection to treat appellant's lateral epicondylitis. Dr. Feldman examined her on August 1, 2011 due to right shoulder, arm, and elbow pain. He diagnosed lateral epicondylitis.

On April 25, 2011 OWCP received a copy of Dr. Smith's reports that were previously submitted on February 3 and 9, 2010.

OWCP referred appellant, together with the case record, a statement of accepted facts (SOAF), and a series of questions to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for second opinion evaluation including a medical opinion with objective findings as to whether appellant's accepted right lateral epicondylitis had resolved, and whether the January 4, 2010 employment injury caused, contributed to, aggravated, or exacerbated her diagnosed cervical strain.

In a September 19, 2011 report, Dr. Doman reviewed the SOAF and related his findings on physical examination. He determined that the accepted lateral epicondylitis was resolved. Dr. Doman further determined that appellant did not have a diagnosis of cervical strain and that any neck condition was not caused by the January 4, 2009 traumatic injury. He opined that her cervical spine conditions were the result of the natural history of underlying degenerative disc disease of the cervical spine. Dr. Doman related that the slowing of the ulnar nerve noted on EMG/NCV studies were bilateral in nature and probably represented a cervical radiculopathy secondary to the nonemployment-related herniated disc and degenerative disc disease of the cervical spine.

On September 27, 2011 Dr. Duncan Wells, an orthopedic surgeon, diagnosed right elbow chronic lateral epicondylitis.

On November 15, 2011 OWCP referred appellant, together with a SOAF, medical record, and series of questions, to Dr. Gary M. Lourie, a Board-certified orthopedic surgeon, to resolve

the conflict in medical opinion evidence between Dr. Wells and Dr. Doman regarding whether appellant the accepted lateral epicondylitis had resolved and whether appellant had work restrictions. In a January 17, 2012 report, Dr. Lourie determined that the accepted right lateral epicondylitis had not resolved and agreed that additional medical treatment was appropriate. He did not address whether the claim should be expanded to include a cervical condition.

On March 20, 2012 Dr. Wells performed an OWCP-authorized right lateral epicondyle release surgery.

In a February 18, 2015 report, Dr. Arnold J. Weil, a Board-certified physiatrist, described the January 4, 2009 employment injury and examined appellant due to right elbow pain radiating up and down the right arm, with tingling and numbness into the right upper and lower extremity. On neurological examination he found diminished sensation and strength in the right upper extremity. Dr. Weil performed EMG/NCV studies which demonstrated cervical radiculopathy. He diagnosed cervical root lesions, carpal tunnel syndrome, lesions of the ulnar nerve, neuralgia, and intervertebral disc disorder of the cervical region with myelopathy.

On February 26, 2015 Dr. Wells reviewed the electrodiagnostic studies and diagnosed cervical radiculopathies. He examined appellant's cervical spine and found bilateral trapezial tenderness, tenderness over the superior border of the scapula, negative Spurling maneuver, reversed lordosis, significant paraspinal tenderness, significant weakness and spasticity, and limitation of flexion, extension, and lateral rotation.

On March 24, 2015 Dr. Richard Woodcock, a Board-certified diagnostic radiologist, performed a cervical spine MRI scan which demonstrated a broad disc spur complex at C6-7 and mild degenerative disease at C4-5 and C5-6.

In a report dated July 2, 2014, Dr. Wells reviewed appellant's cervical MRI finding bulging discs at C4-5 and C5-6. He diagnosed right elbow lateral epicondylitis and cervical spine radiculopathy. Dr. Wells opined that some of appellant's right arm pain was arising from her cervical spondylosis, but that she continued to experience lateral elbow pain from chronic lateral epicondylitis despite two surgeries.

In an April 8, 2015 report, Dr. Wells reviewed the electrodiagnostic studies and diagnosed severe canal stenosis, degenerative disease C4-5 and C5-6, and radiculopathies at C6-8. He found that appellant was totally disabled. Dr. Wells provided an April 9, 2015 note including findings on physical examination and opining that some right arm pain was arising from cervical spondylosis. On May 11, 2015 he included her complaints of pain in her cervical spine radiating into her right arm. Dr. Wells diagnosed cervical radiculopathy with MRI scan documentation of spondylosis. He related that in his opinion this condition was work related. In a June 18, 2015 report, Dr. Wells diagnosed cervical spondylosis aggravated by work-related injury and chronic right lateral epicondylitis. On September 10, 2015 he diagnosed probable cervical radiculopathy causing right arm pain. Dr. Wells opined that appellant's right arm pain and radiculopathy were a "direct result of her work at the [employing establishment] several years ago."

On June 9, 2016 Dr. Randall D. Alexander, a Board-certified hand surgeon, examined appellant due to bilateral hand numbness with a history of cervical radiculopathy. He recommended electrodiagnostic testing.

On October 31, 2017 OWCP expanded acceptance of the claim to include primary osteoarthritis of the right elbow and loose body in the right elbow. On January 11, 2019 it expanded acceptance of the claim to include depressive disorder.

In July 11 and August 9, 2019 reports, Dr. Randall Berinhout, a Board-certified anesthesiologist, related appellant's symptoms of right elbow pain and that she denied radiation of pain to any other location. He diagnosed chronic pain without a psychological basis, pain in the right elbow, neuralgia and neuritis, right elbow, and lateral epicondylitis right elbow.

On August 19, 2019 appellant, through counsel, requested that the acceptance of her claim be expanded to include the additional condition of cervical radiculopathy. In support of this request, she resubmitted Dr. Weil's February 18, 2015 EMG/NCV study and Dr. Woodcock's March 24, 2015 cervical MRI scan.

In a January 27, 2020 report, Dr. Jon Hyman, a Board-certified orthopedic surgeon, related appellant's current right elbow symptoms, her history of injury, and her previous medical treatment. He performed a physical examination and found no hyperreflexia nor definite signs of radiculopathy, myelopathy, neuropathy or myopathy.

On March 4 August 11, and September 25, 2020 counsel again requested that OWCP expand the accepted conditions.

In a September 30, 2020 development letter, OWCP informed appellant of the deficiencies of her request for expansion and allotted her 30 days to submit the necessary evidence.

OWCP subsequently received additional evidence. Appellant underwent an August 12, 2020 EMG/NCV study due to a clinical diagnosis of bilateral cervical radiculopathy. This study was interpreted as normal with no evidence of radiculopathy, plexopathy, myopathy, peripheral neuropathy, or mononeuropathies.

On September 1, 2020 Dr. Wells reviewed the electrodiagnostic studies and found no evidence of radiculopathy or peripheral nerve compression.

In a September 24, 2020 report, Dr. Dominic Seymore, a physiatrist, diagnosed chronic pain, pain in the right elbow, neuralgia, and neuritis, right elbow, and lateral epicondylitis right elbow.

On October 7, 2020 Dr. Wells diagnosed chronic right lateral elbow pain with underlying post-traumatic arthritis.

By decision dated October 30, 2020, OWCP denied appellant's request for expansion of the acceptance of her claim to include the condition of cervical radiculopathy.

On November 12, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a February 18, 2021 report, Dr. Wells diagnosed chronic cervical/neck pain with right arm paresthesias that began with her January 4, 2009 employment injury.

An oral hearing was held before an OWCP hearing representative on February 23, 2021. OWCP subsequently received an August 12, 2020 report from Dr. Anthony R. Grasso, a Board-certified physiatrist, in which he related appellant's symptoms of neck and right arm pain, and provided her history of injury. Dr. Grasso provided physical findings on examination including painful range of motion of the cervical spine, increased tone in the paraspinal muscles, tenderness to palpation of the interspinous ligaments, and a negative Spurling's test. He reviewed an August 12, 2020 EMG/NCV study and found no evidence of radiculopathy or peripheral neuropathy.

By decision dated April 19, 2021, OWCP's hearing representative affirmed the October 30, 2020 OWCP decision. She directed OWCP to administratively combine OWCP File Nos. xxxxxx564, xxxxxx080 and xxxxxx872.

OWCP subsequently received a January 9, 2018 report from Dr. Tedman L. Vance, a Board-certified orthopedic surgeon, addressing appellant's right elbow conditions and resulting disability.

On April 21, 2021 OWCP administratively combined appellant's claims, OWCP File Nos. xxxxxx564, xxxxxx080 and xxxxxx872, with the latter designated as the master file.

OWCP continued to receive medical evidence. In a series of reports dated December 2, 2020 through September 15, 2021, Dr. Paul White, a Board-certified physiatrist, diagnosed chronic right elbow pain and right lateral epicondylitis. Dr. David Aycock, a licensed clinical psychologist, provided a series of treatment notes addressing appellant's accepted depressive disorder dated April 15, 2021 through September 30, 2021. LaTanja Hood, a nurse practitioner, treated appellant commencing April 14, 2021. In reports dated May 10 and 25, 2021 report, Dr. Diane Payne, a Board-certified orthopedic surgeon, performed a neurological examination and found normal sensation bilaterally at C5, C6, C7, C8, T1 and T2. She diagnosed right elbow pain. On May 19, 2021 appellant underwent a right elbow computerized tomography scan.

On October 21, 2021 appellant, through counsel, requested reconsideration. In support thereof, she provided an August 16, 2021 report from Dr. Wells diagnosing chronic cervical radiculopathy with numbness and tingling in the right arm and chronic cervical pain. Dr. Wells opined with a reasonable degree of medical certainty that appellant's work duties included several hours of day of repetitive movement of her neck, "especially looking up" more than likely created a situation where she aggravated a mild preexisting cervical spondylosis.

By decision dated November 10, 2021, OWCP denied modification.

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.[6] Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether

[6] *See T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

there is a causal relationship between the diagnosed condition and the accepted employment injury must be based on a complete factual and medical background.[8] Additionally, the physician's opinion 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 specific employment factor(s).[9]

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 a claimant's own intentional misconduct.[10] 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 consequence of a compensable primary injury.[11]

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.[12]

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.[13] 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 (5 U.S.C. § 8123(a)), to resolve the conflict in the medical evidence.[14] 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.[15]

ANALYSIS

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

OWCP properly determined that a conflict in medical opinion evidence arose between Dr. Wells, appellant's treating physician, and OWCP's second opinion physician Dr. Doman, as

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[9] *Id.*

[10] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019); *Mary Poller*, 55 ECAB 483, 487 (2004).

[11] *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139 (2001).

[12] 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).

[13] 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).

[14] *See D.C.*, Docket Nos. 22-0020 & 22-0297 (issued April 24, 2023); *M.R.*, Docket No. 19-0526 (issued July 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

[15] *K.A.,* Docket No. 23-0773 (issued November 1, 2024); *V.H.*, Docket No. 20-0012 (issued November 5, 2020); *James P. Roberts*, 31 ECAB 1010 (1980).

to whether appellant continued to experience disability and residuals due to her accepted right lateral epicondylitis and referred appellant to Dr. Lourie to resolve the conflict in medical opinion. The Board finds that the record at that time further supported a conflict of medical opinion regarding whether she sustained a cervical condition causally related to her accepted employment injury of January 4, 2009.

In his report of January 17, 2012 report, Dr. Lourie determined that the accepted right lateral epicondylitis had not been resolved and found that additional medical treatment was necessary. OWCP continued to provide medical treatment and to pay wage-loss compensation for the accepted January 4, 2009 employment injury. The Board finds that at the time OWCP referred appellant to Dr. Lourie, it did not request that he also address whether the claim should be expanded as addressed by Drs. Wells and Doman to include cervical radiculopathy. As such, OWCP should have referred appellant to Dr. Lourie for an addendum report and a rationalized medical opinion on the issue of whether the claim should be expanded.[16]

Once OWCP undertakes development of the medical evidence, it must produce medical evidence that will resolve the relevant issues in the case.[17] When OWCP obtains an opinion from an IME for the purpose of resolving a conflict in the medical evidence and the IME's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in the original report.[18]

On remand, OWCP shall refer appellant, an updated SOAF, and the medical evidence of record to Dr. Lourie for a supplemental opinion as to whether appellant sustained a cervical condition on February 4, 2009. If Dr. Lourie is unable or unwilling to provide a supplemental report, OWCP must refer the case to a new IME for the purpose of obtaining a rationalized medical opinion on this issue.[19] Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's expansion claim.

CONCLUSION

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

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.M.,* Docket No. 24-0553 (issued July 30, 2025); *T.C.*, Docket No. 23-1036 (issued April 18, 2024).

[17] *L.F.,* Docket No. 20-1021 (issued July 30, 2021); *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

[18] *L.F., id*.; *see also K.C.,* Docket No. 25-0723 (issued September 18, 2025); *B.J.*, Docket No. 18-1186 (issued July 9, 2019); *Harold Travis,* 30 ECAB 1071, 1078 (1979); *Charles Feldman,* 28 ECAB 314 (1977).

[19] *See R.W.*, Docket No. 24-0746 (issued September 30, 2024); *M.C.*, Docket No. 22-1160 (issued May 9, 2023); *Talmadge Miller*, 47 ECAB 673 (1996); *Harold Travis, id*.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2021 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: January 2, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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