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

| | | |
|---|---|---|
| **D.M., Appellant** | ) | |
| **and** | ) | **Docket No. 26-0197** |
| | ) | **Issued: June 10, 2026** |
| **DEPARTMENT OF VETERANS AFFAIRS, NEW YORK HARBOR HEALTHCARE SYSTEM, Jamaica, NY, Employer** | ) | |

*Appearances:*
*Thomas S. Harkins, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

## ***JURISDICTION***

On December 29, 2025 appellant, through counsel, filed a timely appeal from a July 31, 2025 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 July 31, 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 establish that the acceptance of her claim should be expanded to include chronic regional pain syndrome (CRPS), as causally related to, or consequential to, her accepted December 28, 2020 employment injury.

## ***FACTUAL HISTORY***

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

On December 31, 2020 appellant, then a 42-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed left deltoid, shoulder, and neck conditions due to factors of her federal employment, specifically related to an adverse reaction to her COVID-19 vaccine. She noted that she first became aware of her condition and realized its relation to factors of her federal employment on December 28, 2020.

By decision dated August 2, 2021, OWCP accepted the claim for adverse effect of other viral vaccines.

In a neurology progress note dated May 12, 2022, Dr. Michael Guido, a physician Board-certified in clinical neurophysiology, neurology, and vascular neurology, noted a history of injury, provided examination findings, and diagnosed complex regional pain syndrome (CRPS) type II.

OWCP received additional progress notes dated November 16, 2022, and March 29, 2023 wherein Dr. Guido repeated his prior findings.

Dr. Guido, in an October 5, 2023 report, diagnosed CRPS type II. He noted that appellant developed left upper extremity CRPS following her first COVID-19 vaccination in her left arm. Dr. Guido opined that her COVID-19 injection triggered her CRPS. He explained that injections can function as a trigger for CRPS, which he believed occurred in the current case.

In pain management reports dated January 18 and February 16, 2024, Dr. Amit Kaushal, a Board-certified internist, reviewed diagnostic studies and related physical examination findings. He recounted that appellant's pain began on December 28, 2020 after her first COVID-19 vaccination. Appellant's pain began at the site of the injection and then started to radiate into the left shoulder, she was unable to rotate her neck 24 hours after the injection. On physical examination, Dr. Kaushal observed positive left upper trapezius, positive supraspinatus tenderness, and left shoulder hypersensitivity touch/allodynia, limited cervical rotation due to pain. He related that he believed the vaccine needle tip might have irritated the axillary nerve causing CRPS. Dr. Kaushal explained that appellant's allodynia, decreased ROM, and skin color changes meet the diagnosis criteria for CRPS.

Dr. Guido, in a March 11, 2024 progress note, related that appellant had no known past medical history prior to receiving a COVID-19 vaccination into her left deltoid muscle. Appellant thereafter developed persistent pain and cramping and met the criteria for CRPS. He opined that

[4] Docket No. 25-0317 (issued April 15, 2025).

appellant's vaccine injection on December 28, 2020 damaged her axillary nerve, which triggered her CRPS. Thus, Dr. Guido opined that her chronic pain was causally related to the injection.

On March 19, 2024 appellant, through counsel, requested reconsideration.

On April 12, 2024 OWCP referred appellant, together with a statement of accepted facts (SOAF), medical record, and list of questions, for a second opinion evaluation with Dr. Paul Lerner, a Board-certified neurologist. He was to determine whether appellant sustained additional conditions causally related to her accepted employment injury.

In a report dated May 15, 2024, Dr. Lerner diagnosed adverse reaction to COVID-19 vaccination in the left arm. He related that appellant's neurological examination was within normal limits. Dr. Lerner observed a mild cervical spine ROM mild abnormality, which he stated was subjective and may be due to pain. He found no evidence of CRPS, small fiber neuropathy, axillary injury, or left shoulder joint abnormality. Dr. Lerner explained there were no objective physical findings such as skin, temperature, or hair changes or abnormal bone scan to support a diagnosis of CRPS. He noted appellant's current symptoms appeared to be caused by an adverse COVID-19 vaccine reaction. Dr. Lerner explained that the underlying pathophysiological mechanism of COVID-19 adverse reactions was unclear as was the many reported side effects to the vaccine.

On July 16, 2024 OWCP referred appellant, together with a SOAF, medical record, and series of questions, for a second opinion evaluation with Dr. Leon Sultan, a Board-certified orthopedic surgeon, to determine whether she sustained additional conditions causally related to her accepted December 28, 2020 employment injury.

In a report dated August 13, 2024, Dr. Leon Sultan, a Board-certified orthopedic surgeon acting as a district medical adviser (DMA), provided physical examination findings. On physical examination of the left shoulder, he observed decreased ROM, negative impingement test, negative Hawkin's test, and negative drop arm. Dr. Sultan also reported normal left upper extremity sensation. He advised that appellant's subjective complaints did correspond with his objective examination findings. A review of an August 2, 2022 cervical MRI scan, more likely than not, represented age-related degenerative changes. Next, Dr. Sultan opined that appellant did not develop consequential cervical radiculopathy due to the COVID-19 vaccination. He explained that the vaccine caused an inflammatory condition in her left shoulder, which resulted in partial left shoulder adhesive capsulitis, residual left shoulder pain, and restricted left shoulder ROM.

In a supplemental report dated September 4, 2024, Dr. Sultan explained that appellant's lack of use of her left arm due to post-injection inflammatory changes caused chronic pain and disuse. He opined that her left shoulder partial adhesive capsulitis was caused by the left shoulder inflammatory changes which had persisted since the COVID-19 vaccination on December 28, 2020. However, Dr. Sultan explained the evidence did not support consequential left shoulder post-traumatic osteoarthritis because the response to the injection did not persist, however, the post inflammatory change in partial left shoulder adhesive capsulitis was permanent.

By decision dated September 18, 2024, OWCP vacated the March 29, 2023 decision in part, finding that the medical evidence of record was sufficient to establish the condition of partial left shoulder adhesive capsulitis as consequential to the December 28, 2020 employment injury. It, however, further affirmed the March 29, 2023 decision in part, finding that the medical evidence

of record was insufficient to establish that appellant developed conditions of muscle spasm, CRPS, cervical radiculopathy, and post-traumatic osteoarthritis, causally related to the accepted employment injury.

By separate decision also dated September 18, 2024, OWCP formally expanded the acceptance of the claim to include left shoulder adhesive capsulitis.

On February 18, 2025 appellant, through counsel, filed an appeal with the Board.[5] By decision dated April 15, 2025, the Board affirmed the September 18, 2024 OWCP decision in part, and set aside the decision in part. The Board found that appellant had not met her burden of proof to expand the acceptance of the claim to include cervical radiculopathy, muscle spasm, and post-traumatic osteoarthritis as casually related to, or consequential to, the accepted December 28, 2020 employment injury. The Board further found a conflict in the medical opinion evidence between Dr. Kaushal and Dr. Guido, for appellant, and Dr. Lerner, an OWCP second opinion physician, as to whether she developed CRPS due to her accepted December 28, 2020 employment injury. Thus, the Board found the case was not in posture for decision with regard to whether appellant had met her burden of proof to expand the acceptance of the claim to include CRPS as causally related to, or consequential to, the accepted December 28, 2020 employment injury. The Board remanded the case to OWCP for referral to an impartial medical examiner (IME) to resolve the conflict in the medical opinion evidence.

During the pendency of the Board appeal, OWCP continued to receive medical evidence. In a December 30, 2024 report, Dr. Guido repeated his prior findings. In reports dated April 10 and May 22, 2025, Dr. Kaushal provided physical examination findings and diagnosed CRPS, which he attributed to the accepted employment injury.[6]

On June 2, 2025 OWCP referred appellant to Dr. James Charles, a Board-certified neurologist and psychiatrist, to resolve the conflict in the medical opinion evidence between Dr. Kaushal and Dr. Guido, for appellant, and Dr. Lerner, an OWCP referral physician, as to whether she developed CRPS causally related to her accepted December 28, 2020 employment injury.

By decision dated July 31, 2025, OWCP denied expansion of the acceptance of the claim finding that the weight of the medical opinion evidence rested with Dr. Izeogu, who it identified as an IME.

[5] *Id.*

[6] An April 17, 2025 letter advised appellant that OWCP was in the process of scheduling appellant for a second opinion evaluation. On May 14, 2025 OWCP referred appellant, together with a SOAF, medical record, and series of questions, for a second opinion evaluation with Dr. Chinweike Izeogu, a Board-certified anesthesiologist, to determine whether appellant sustained additional conditions due to her accepted December 28, 2020 employment injury. In a report dated June 6, 2025, Dr. Izeogu reviewed appellant's medical record, history of injury, SOAF, and series of questions, and provided examination findings. On physical examination, he reported full cervical and lumbar range of motion, negative facet load, no spasms, and no radiculopathy. Dr. Izeogu diagnosed resolved cervical strain, CRPS unrelated to COVID-19 vaccine, and left shoulder strain unrelated to her work. He explained that the development of CRPS was not aggravated or caused by the COVID-19 vaccine. Moreover, based on appellant's normal cervical, lumbar, and bilateral extremities examination, she had no CRPS symptoms.

## ***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.[7]

To establish causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence.[8] 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 by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[10]

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.[11]

Section 8123(a) of FECA provides that, if there is disagreement between an OWCP-designated physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.[12]

## ***ANALYSIS***

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

In its April 15, 2025 decision, the Board found that a conflict existed in the medical opinion evidence as to whether acceptance of the claim should be expanded to include CRPS as causally related to, or consequential to, the accepted December 28, 2020 employment injury. The Board remanded the case to OWCP for referral to an IME for resolution of the conflict of medical evidence.

---

[7] *D.M.*, Docket No. 24-0512 (issued December 9, 2024); *L.F.,* Docket No. 20-0359 (issued January 27, 2021); *S.H.,* Docket No. 19-1128 (issued December 2, 2019); *M.M.,* Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo,* 55 ECAB 200, 204 (2004).

[8] *D.M.*, *id.*; *L.F., id.*; *T.K.,* Docket No. 18-1239 (issued May 29, 2019); *M.W.,* 57 ECAB 710 (2006); *John D. Jackson,* 55 ECAB 465 (2004).

[9] *D.T.,* Docket No. 20-0234 (issued January 8, 2021); *D.S.,* Docket No. 18-0353 (issued February 18, 2020); *T.K., id.*; *I.J.,* 59 ECAB 408 (2008); *Victor J. Woodhams,* 41 ECAB 345 (1989).

[10] *See D.T., id.*; *P.M.,* Docket No. 18-0287 (issued October 11, 2018).

[11] *F.R.,* Docket No. 24-0075 (issued March 4, 2024); *V.K.,* Docket No. 19-0422 (issued June 10, 2020); *K.S.,* Docket No. 17-1583 (issued May 10, 2018).

[12] 5 U.S.C. § 8123(a); *see also* 20 C.F.R. § 10.321.

On June 2, 2025 OWCP referred appellant to Dr. Charles to resolve the conflict in the medical opinion evidence between Dr. Kaushal and Dr. Guido, for appellant, and Dr. Lerner, an OWCP referral physician, as to whether she developed CRPS causally related to her accepted December 28, 2020 employment injury. However, it denied the expansion of the claim to include CRPS prior to receiving his IME report.[13]

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[14] Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.[15]

As there remains an unresolved conflict in medical opinion regarding whether the acceptance of appellant's claim should be expanded to include CRPS as causally related to, or consequential to, her accepted December 28, 2020 employment injury, the case must be remanded for further development.[16] On remand, OWCP shall obtain an IME report from Dr. Charles. 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.

[13] The designation of a second opinion or IME evaluation is significant. Unlike the selection of second opinion examining physicians, the selection of an IME is made on a strict rotational basis. Once a conflict is found OWCP uses a Medical Management Application (MMA) with a strict rotational feature to select an IME. The MMA contains the names of physicians who are Board-certified in certain specialties. The services of all available and qualified Board-certified specialists are used as far as possible to eliminate any inference of bias or partiality. This is accomplished by selecting physicians (in the designated specialty in the appropriate geographic area) in alphabetical order as listed in the roster and repeating the process until the list is exhausted. *See H.W.,* Docket No. 14-1319 (issued February 3, 2015); Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.5 (May 2013); *W.B.,* Docket No. 17-1698 (issued May 16, 2018).

[14] *See T.C.,* Docket No. 19-0771 (issued March 17, 2021); *E.W.,* Docket No. 17-0707 (issued September 18, 2017).

[15] *See T.K.,* Docket No. 20-0150 (issued July 9, 2020); *T.C.,* Docket No. 17-1906 (issued January 10, 2018).

[16] *See F.A.,* Docket No. 22-0167 (issued December 16, 2022); *X.Y.,* Docket No. 19-1290 (issued January 24, 2020); *K.G.,* Docket No. 17-0821 (issued May 9, 2018).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 31, 2025 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 10, 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