

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include additional right shoulder conditions as causally related to the accepted October 24, 2017 employment injury.

FACTUAL HISTORY

On October 26, 2017 appellant, then a 48-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that, on October 24, 2017, she sustained an injury when she stood up from stocking supplies underneath a condiment stand and felt a pulling sensation in her right shoulder/right upper back area and tingling in her right arm while in the performance of duty. She stopped work on the date of injury. OWCP initially accepted appellant's claim for sprain of ligaments of the thoracic spine and paid her appropriate compensation for disability from work.

On May 23, 2018 appellant filed claims for compensation (Form CA-7) claiming disability from work commencing December 11, 2017.

By decision dated July 26, 2018, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted October 24, 2017 employment injury.

On October 23, 2018 Dr. Carolyn M. Hyde, a Board-certified orthopedic surgeon performed OWCP-authorized right shoulder surgery, including arthroscopic repair of deep partial-thickness rotator cuff tear, arthroscopic repair of type 2 glenoid superior labrum, anterior to posterior (SLAP) tear; rotator interval capsulorrhaphy; long head biceps tenodesis, subpectoral; arthroscopic distal clavicle excision, Mumford procedure; and arthroscopic sub-acromial decompression/acromioplasty. In her October 23, 2018 operative report, she advised that appellant's preoperative right shoulder diagnoses were partial thickness rotator cuff tear involving the supraspinatus tendon; possible SLAP tear; acromioclavicular (AC) arthrosis/arthritis); and subacromial and sub-clavicular spur impingement syndrome. Dr. Hyde indicated that appellant's postoperative right shoulder diagnoses were partial thickness rotator cuff tear involving the supraspinatus tendon; type 4 SLAP tear with partial tearing of the long head biceps tendon; unstable type 2 SLAP tear component with unexpected anterior inferior glenohumeral laxity; unexpected rotator interval capsular laxity/instability; AC arthrosis; and subacromial and sub-clavicular spur impingement syndrome. On May 28, 2019 she performed additional OWCP-authorized right shoulder surgery, including revision rotator cuff tear repair of in-substance tear of the supraspinatus (small side-to-side repair); closed manipulation under anesthesia; arthroscopic lysis of intra-articular adhesions; and arthroscopic lysis of dense extra-articular adhesions.

On May 2, 2024 appellant, through counsel, requested that, based on Dr. Hyde's surgery reports, the acceptance of appellant's claim be expanded to include partial thickness tear of the rotator cuff of the right shoulder, type 4 labral tear of the right shoulder, partial tear of the biceps tendon of the right shoulder, impingement syndrome of the right shoulder, and AC arthritis of the right shoulder.

On May 9, 2024 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the medical record, and a series of questions, to Dr. Charles W. Kennedy, Jr., a Board-certified orthopedic surgeon, for a second opinion examination and evaluation regarding injury-related disability/residuals and additional conditions causally related to the accepted October 24, 2017 employment injury.

In a June 27, 2024 report, Dr. Kennedy discussed appellant's factual and medical history, including the diagnostic testing results and history of surgery, and reported the findings of his physical examination. He reported range of motion findings for the shoulders and indicated that the deep tendon reflexes of the upper extremities were +1. Dr. Kennedy opined that, based on the mechanism of injury, the medical records, and his physical examination, the acceptance of appellant's claim should be expanded to include impingement syndrome of the right shoulder, other articular cartilage disorders of the right shoulder, and primary osteoarthritis of the right shoulder. He further opined that appellant's right shoulder arthroscopy and decompression procedures were not necessitated by the accepted October 24, 2017 employment injury, noting that the magnetic resonance imaging (MRI) scan finding of "a minor partial thickness tear is a normal degenerative finding for a person of [appellant's] age, and it is not a surgical disease." In a June 27, 2024 work capacity evaluation (Form OWCP-5c), Dr. Kennedy recommended work restrictions, including working no more than four hours per day and lifting no more than 20 pounds for up to one hour per day.

On August 2, 2024 OWCP later expanded the acceptance of appellant's claim to include other specific joint derangements of the right shoulder, strain of muscle(s) and tendon(s) of the rotator cuff of the right shoulder, and strain of muscle and tendon of the front wall of the thorax include impingement syndrome of the right shoulder, other articular cartilage disorders of the right shoulder, and primary osteoarthritis of the right shoulder.

On August 18, 2024 OWCP requested that Dr. Kennedy produce a supplemental report clarifying whether the following conditions should be accepted as casually related to the accepted October 24, 2017 employment injury: partial thickness tear of the rotator cuff of the right shoulder, type 4 labral tear of the right shoulder, and partial tear of the biceps tendon of the right shoulder.

In a November 3, 2024 supplemental report, Dr. Kennedy indicated that a partial tear of appellant's right rotator cuff was present, but advised that this was a normal finding for a person of appellant's age. He opined that, therefore, the tear was neither caused by nor aggravated by the work injury. Dr. Kennedy advised that a type 4 labral tear of the right shoulder was also present, but noted this also constituted a normal finding for a person of appellant's age and opined that it was neither caused by nor aggravated by the work injury. With respect to a partial tear of the biceps tendon of the right shoulder, he noted that he had reviewed a right shoulder MRI scan from 2018 and compared it with a right shoulder MRI scan from 2017 which did not show any pathology of the right biceps tendon. Dr. Kennedy stated, "Therefore, the biceps tenodesis that she had was not indicated and was not appropriate. This is probably the reason why she is still symptomatic and has significant limitation of motion."

By decision dated December 18, 2024, OWCP denied expansion of the acceptance of appellant's claim, finding that she had not met her burden of proof to establish additional right

shoulder conditions as causally related to the accepted October 24, 2017 employment injury. It found that the weight of the medical opinion evidence regarding additional work-related conditions rested with the well-rationalized opinion of Dr. Kennedy, the OWCP referral physician.

On December 30, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted a September 8, 2025 report wherein Dr. Don Thompson, a Board-certified emergency medicine physician, reported physical examination findings and diagnosed right shoulder joint derangement, thoracic spine sprain, right rotator cuff strain, thoracic chest wall strain, right shoulder impingement syndrome, right shoulder arthritis, and right shoulder articular cartilage tear. Dr. Thompson opined that appellant could not work.

By decision dated October 20, 2025, OWCP's hearing representative affirmed the December 18, 2024 decision.⁴

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.⁵ The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. 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 accepted employment injury.⁶

ANALYSIS

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

In a June 27, 2024 report, Dr. Kennedy, OWCP's referral physician, reported physical examination findings and opined that, based on the mechanism of injury, the medical records, and his physical examination, the acceptance of appellant's claim should be expanded to include impingement syndrome of the right shoulder, other articular cartilage disorders of the right shoulder, and primary osteoarthritis of the right shoulder.⁷ He further opined that appellant's

⁴ The hearing representative also referenced appellant's entitlement to wage-loss compensation but specifically indicated that appellant's disability and/or entitlement to wage-loss compensation was not the subject of the present claim.

⁵ *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁶ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

⁷ The Board notes that, on August 2, 2024, OWCP expanded the acceptance of appellant's claim to include impingement syndrome of the right shoulder, other articular cartilage disorders of the right shoulder, and primary osteoarthritis of the right shoulder.

right shoulder arthroscopy and decompression procedures were not necessitated by the accepted October 24, 2017 employment injury, noting that the MRI scan finding of “a minor partial thickness tear is a normal degenerative finding for a person of [appellant’s] age, and it is not a surgical disease.”

In his November 18, 2024 supplemental report, Dr. Kennedy indicated that a partial tear of appellant’s right rotator cuff was present, but advised that this was a normal finding for a person of appellant’s age. He opined that, therefore, the tear was neither caused by nor aggravated by the accepted October 24, 2017 employment injury. Dr. Kennedy advised that a type 4 labral tear of the right shoulder was also present, but noted this also constituted a normal finding for a person of appellant’s age and opined that it was neither caused by nor aggravated by the work injury. With respect to a partial tear of the biceps tendon of the right shoulder, he noted that he had reviewed a right shoulder MRI scan from 2018 and compared it with a right shoulder MRI scan from 2017 which did not show any pathology of the right biceps tendon. Dr. Kennedy stated, “Therefore, the biceps tenodesis that she had was not indicated and was not appropriate. This is probably the reason why she is still symptomatic and has significant limitation of motion.”

The Board finds that Dr. Kennedy did not provide adequate medical rationale for his opinion that the conditions of partial thickness tear of the rotator cuff of the right shoulder, type 4 labral tear of the right shoulder, and partial tear of the biceps tendon of the right shoulder were not casually related to the accepted October 24, 2017 employment injury. In explaining his opinion, Dr. Kennedy merely made brief, vague references to diagnostic testing and stated, without further explanation, that the conditions claimed as work related by appellant were normal findings for a person of appellant’s age. He has not provided a fully-rationalized opinion regarding appellant’s claim for additional conditions causally related to accepted October 24, 2017 employment injury.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.⁸ Once OWCP undertakes development of the medical evidence, it must resolve the relevant issues in the case.⁹

The case must therefore be remanded for further development.¹⁰ On remand, OWCP shall obtain a supplemental report from Dr. Kennedy which clarifies his opinion regarding whether appellant sustained additional right shoulder conditions causally related to the accepted October 24, 2017 employment injury. If Dr. Kennedy is unable to provide a supplemental report, OWCP shall refer appellant, along with medical record and a SOAF to a new second

⁸ See *M.S.*, Docket No. 23-1125 (issued June 10, 2024); *E.B.*, Docket No. 22-1384 (issued January 24, 2024); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

⁹ See *K.A.*, Docket No. 23-0773 (issued November 1, 2024); *S.A.*, Docket No. 18-1024 (issued March 12, 2020); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹⁰ See *S.R.*, Docket No. 24-0880 (issued October 31, 2024); *D.G.*, Docket No. 25-0654 (issued July 22, 2025).

opinion physician for the purpose of obtaining a rationalized medical opinion on this issue.¹¹ After 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 20, 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: March 23, 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

¹¹ *J.H.*, Docket No. 19-1476 (issued March 23, 2021); *R.O.*, Docket No. 19-0885 (issued November 4, 2019); *Talmadge Miller*, 47 ECAB 673 (1996).