

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

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S.S., Appellant)	
)	
and)	
)	Docket No. 26-0144
)	Issued: May 4, 2026
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Bloomington, MN,)	
Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 3, 2025 appellant filed a timely appeal from an August 12, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ 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.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, appellant asserted that oral argument should be granted because she was unilaterally removed from vocational rehabilitation, the case spanned a long period of time and was complex. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include bilateral metacarpophalangeal (MP) ulnar collateral ligament tears of the thumbs as causally related to, or consequential to, the accepted April 1, 2005 employment injury.

FACTUAL HISTORY

On May 10, 2005 appellant, then a 47-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2005 she injured her back, neck and right arm while lifting heavy baggage in the performance of duty. OWCP accepted the claim for cervicalgia; muscular wasting and disuse atrophy of the right upper extremity; thoracic spine pain; and permanent cervical disc degeneration. It paid appellant wage-loss compensation on the supplemental rolls effective April 17, 2006, and on the periodic rolls effective January 18, 2009.

On May 28, 2010 Dr. Sarah Mazig, a Board-certified internist, evaluated appellant for bilateral hand pain, noting that appellant had been experiencing hand symptoms for a few months. She noted the history of the April 2005 incident and that appellant had undergone a carpal tunnel release years prior. Dr. Mazig documented physical examination findings, noting no neurologic abnormalities. She stated appellant likely had arthritis of the right thumb and tendinitis of the hand/wrist. Dr. Mazig opined that it was unlikely that appellant's hand symptoms were related to her cervical issues, which had been present for years.

In a report dated June 29, 2010, Dr. Warren Schubert, a Board-certified hand surgeon, noted that appellant had "some kind of injury" at work in 2005, which resulted in a right cervical fusion in 2008, and that she had some numbness and tingling and other symptoms in her right upper extremity as a result of the employment incident. He described physical examination findings, noting a subluxated thumb with volar displacement of the proximal phalanx and other findings, including no significant degenerative joint disease. Dr. Schubert suggested fusion of the right thumb MP joint as a possible treatment in the future if her symptoms increased. In an April 9, 2014 report, Dr. Schubert explained that appellant had developed pain in both the left and right MP joints while working as a baggage handler between 2002 and 2005. He noted that x-rays revealed significant subluxation of the MP joint. Dr. Schubert concluded that appellant's condition resulted from heavy use of her right hand at work.³

In a December 29, 2018 report, Dr. Emily Bannister, Board-certified in occupational medicine, diagnosed right thumb MP joint degenerative disease with chronic subluxation, status post right thumb MP joint fusion on March 21, 2016 and left thumb ulnar collateral ligament laxity. He opined that appellant's conditions were due to her work as a baggage handler.

On March 29, 2024 OWCP referred appellant, together with a March 8, 2024 statement of accepted facts (SOAF), the medical record, and series of questions, to Dr. Douglas Becker, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of her

³ On March 21, 2016 Dr. Schubert performed a right thumb MP joint fusion surgery. On June 6, 2022 Dr. Schubert performed a repair of appellant's left gamekeeper's thumb, ulnar collateral ligament reconstruction using palmaris longus tendon, and tendon interposition.

accepted employment-related conditions, and to determine whether the claim should be expanded to include any additional diagnoses.

In a report dated April 26, 2024, Dr. Becker noted his review of the SOAF and appellant's medical record. He opined that appellant's bilateral thumb MP joint ulnar collateral ligament deficiency was the result of the April 1, 2005 employment injury, noting that there was no evidence of outside activities which were contributory to the diagnosed thumb diagnoses.

On May 29, 2024 OWCP requested that Dr. Becker provide a supplemental report to clarify his opinion as to whether the April 1, 2005 employment injury had caused or contributed to appellant's bilateral thumb MP joint ulnar collateral ligament deficiency. It noted that in his prior report dated May 10, 2017 he had unequivocally and explicitly stated that appellant's bilateral thumb conditions were not work related.

In a June 3, 2024 report, Dr. Becker related that his April 26, 2024 report incorrectly stated that appellant's bilateral thumb ulnar collateral ligament deficiencies were related to the April 1, 2005 employment injury. He indicated that the only condition related to the April 1, 2005 employment injury was the permanent aggravation of appellant's cervical spine degenerative joint disease, status post C3-C6 fusion. Dr. Becker opined that appellant's bilateral thumb ulnar collateral ligament deficiency, status post right thumb MP fusion; and left thumb MP interposition arthroplasty were unrelated to the April 1, 2005 employment injury. He explained that appellant's records did not support a repetitive or a single traumatic event that would have resulted in her bilateral thumb conditions.

By decision dated August 20, 2024, OWCP denied appellant's claim for a consequential bilateral thumb MP joint ulnar collateral ligament deficiency. It accorded the weight of the medical evidence to the findings of Dr. Becker in his April 26 and June 3, 2024 reports.

On August 27, 2024 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 November 12, 2024, OWCP's hearing representative set aside the August 20, 2024 decision, finding that there was a conflict in medical opinion between appellant's treating physicians, Drs. Mazig, Schubert, and Bannister, and OWCP's second opinion physician, Dr. Becker on the issue of expansion to include a diagnosed bilateral thumb condition and resultant surgery. The hearing representative instructed OWCP to update the SOAF and refer appellant, along with the medical record and the updated SOAF, to an appropriate medical specialist to resolve the conflict.

On January 13, 2025 OWCP referred appellant, the medical record, an updated SOAF dated November 21, 2024, and a series of questions to Dr. Jeffrey Nipper, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

In a March 14, 2025 report, Dr. Nipper, serving as the impartial medical examiner (IME), related appellant's history of injury and noted his review of the SOAF. He reviewed the medical record in extensive detail and provided physical examination findings. Dr. Nipper opined that appellant had not sustained any upper extremity condition as a result of the April 1, 2005 traumatic injury. He related that appellant's providers' opinions which suggested that she had sustained

injury to either the left or right upper extremity during or as a result of the April 1, 2005 employment injury were unfounded and not supported by the evidence of record. Dr. Nipper also indicated that appellant had osteoarthritic changes in both hands, particularly the basilar joints of both thumbs, and that she had sustained a gamekeeper's injury to the left thumb over the course of her lifetime. He opined that appellant's upper extremity degenerative changes and her gamekeeper's thumb were degenerative in nature, required months to develop and were the result of a chronic degenerative process. Dr. Nipper stated that the April 1, 2005 employment injury did not aggravate an underlying or preexisting bilateral thumb condition as there were no contemporaneous records or objective evidence of any bilateral thumb condition(s) attributable to the April 1, 2005 employment injury. He noted that the basilar joint of the thumb was the most frequent initial presentation for arthritis in the hand and wrist.

Dr. Nipper further noted that he had not been provided with an operative note, but apparently appellant had undergone a right thumb MP fusion on March 21, 2016. He also noted appellant's surgery on June 6, 2022 for gamekeeper's thumb, with repair of the thumb, and ulnar collateral ligament reconstruction. Dr. Nipper opined that the bilateral thumb surgeries were not performed as a result of or needed because of the April 1, 2005 injury. He explained that the work activity of luggage handling was not a sufficient mechanism of injury to directly injure any of those structures and the degenerative phenomenon in those structures required years to develop. Dr. Nipper further indicated that appellant's bilateral thumb surgeries were successful and her bilateral thumb conditions had stabilized with no further treatment required.

By decision dated May 7, 2025, OWCP denied appellant's claim for a consequential bilateral thumb MP joint ulnar collateral ligament deficiency. It accorded the special weight of the medical evidence to the March 14, 2025 opinion of Dr. Nipper, the IME.

On May 20, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 12, 2025, OWCP's hearing representative affirmed OWCP's May 7, 2025 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

⁴ See *J.S.*, Docket No. 26-0078 (issued February 27, 2026); *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

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 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 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,

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).

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).

if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹⁴

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include bilateral MP ulnar collateral ligament tears of the thumbs as causally related to, or consequential to, the accepted April 1, 2005 employment injury.

OWCP properly determined that a conflict in medical opinion evidence arose between appellant's treating physicians, Drs. Schubert and Bannister, and Dr. Becker, OWCP's second opinion physician on the issue of expansion. It referred appellant to Dr. Nipper for an impartial medical evaluation pursuant to 5 U.S.C. § 8123(a) to resolve the conflict.¹⁵

In a March 14, 2025 report, Dr. Nipper, serving as the IME, related an extensive review of the medical record. Based on his review and appellant's physical examination findings, Dr. Nipper opined that appellant had not sustained any upper extremity condition as a result of the April 1, 2005 traumatic injury. He explained that the April 1, 2005 employment injury did not aggravate an underlying or preexisting bilateral thumb condition, as there were no contemporaneous records or objective evidence of any bilateral thumb condition(s) attributable to the April 1, 2005 employment injury. Dr. Nipper further explained that the work activity of luggage handling was not a sufficient mechanism of injury to directly injure any of the involved structures. He also noted that the basilar joint of the thumb was the most frequent initial presentation for arthritis in the hand and wrists. Thus, Dr. Nipper concluded that the April 1, 2005 employment incident did not aggravate an underlying or preexisting bilateral thumb condition.

Dr. Nipper provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He further provided sufficient medical rationale explaining his opinion. Accordingly, the Board finds that Dr. Nipper's opinion constitutes the special weight of the medical evidence.¹⁶

As the medical evidence of record is insufficient to establish expansion of the acceptance of the claim to include bilateral MP ulnar collateral ligament tears of the thumbs as causally related to, or consequential to, the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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.

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).

¹⁵ See *J.R.*, Docket No. 26-0874 (issued February 18, 2026).

¹⁶ *Supra* note 14.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include bilateral MP ulnar collateral ligament tears of the thumbs as causally related to, or consequential to, the accepted April 1, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2026
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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