

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

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| <b>J.M., Appellant</b>                        | ) |                                  |
|   | ) |                                  |
| <b>and</b>                                    | ) | <b>Docket No. 20-1230</b>        |
|   | ) | <b>Issued: February 16, 2021</b> |
| <b>U.S. POSTAL SERVICE, MAIN POST OFFICE,</b> | ) |                                  |
| <b>Peoria, IL, Employer</b>                   | ) |                                  |
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*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*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 May 29, 2020 appellant, through counsel, filed a timely appeal from an April 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a left rotator cuff tear causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On September 24, 2019 appellant, then a 47-year-old sales and service associate, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2017 she injured her wrist, forearm and shoulder while in the performance of duty.<sup>3</sup> She explained that she was misdiagnosed as having tennis elbow and when her condition did not improve with treatment she underwent a September 4, 2019 left shoulder magnetic resonance imaging (MRI) scan that demonstrated a torn rotator cuff. On the reverse side of the claim form the employing establishment checked a box marked “No” to indicate that appellant was not in the performance of duty when her injury occurred and explained that she was not working the entire week of the date she claimed she sustained her injury. It also noted that she did not provide any cause of injury on her claim form. Appellant stopped work on December 4, 2017 and returned to work on December 13, 2017.

In a September 12, 2019 medical report, Joseph Emmerich, a physician assistant, reviewed the September 4, 2019 MRI scan of appellant’s left shoulder and noted an articular-sided rim rent-type tear with a delaminating component involving the supraspinatus and the leading edge of the infraspinatus tendon. He performed an intra-articular cortisone injection and in an after-visit summary of even date he referred her to physical therapy.

In an undated letter the employing establishment controverted appellant’s claim, asserting that the date of injury was unknown as she did not notify the current management at the North University Station of her alleged December 7, 2017 employment injury. It claimed that she was employed at the employing establishment and not the North University Station. The employing establishment noted that appellant did not work the entire week of December 7, 2017, the claimed date of injury. It also noted that she was issued a notice of removal in August 2019 for falsification of medical documentation/fraud and was involved in an ongoing criminal investigation related to all medical evidence electronically signed by a specific physician beginning January 2019 and continuing.

In a September 27, 2019 attending physician’s report (Form CA-20), Dr. Jeff Lowe, a Board-certified orthopedic surgeon, provided a history of employment injury that included pain in appellant’s wrists, left shoulder, and both arms. He diagnosed carpal tunnel syndrome and pinched ulnar nerve. Dr. Lowe checked a box marked “Yes” to indicate his opinion that her conditions were caused or aggravated by her federal employment and explained that her conditions were continuously aggravated by her repetitive motion.

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<sup>3</sup> On April 26, 2019 appellant filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx594 that it accepted for carpal tunnel syndrome, right upper limb and a lesion of the ulna nerve, left upper limb. She contends that the present claim under OWCP File No. xxxxxx787 is related to her previously accepted injury under xxxxxx594.

In an October 10, 2019 development letter, OWCP informed appellant that it had received no evidence in support of her traumatic injury claim. It informed her of the evidence necessary to establish her claim and provided a questionnaire for her completion regarding her employment activities. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and a diagnosis, explaining how the claimed employment incident caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to respond.

In an August 27, 2019 medical report, Mr. Emmerich evaluated appellant following her August 14, 2019 right carpal tunnel release procedure and noted improvements in her right arm. Appellant informed him that she would like to have her left shoulder reevaluated as she was still experiencing pain. Mr. Emmerich assessed left shoulder pain with internal derangement and recommended that appellant undergo an MRI scan for further evaluation.

In a September 4, 2019 diagnostic report, Dr. George Gentry, a Board-certified radiologist, performed an MRI scan of appellant's left shoulder, which demonstrated a rim rent-type tear partial articular side tear of the supraspinatus and a portion of the infraspinatus tendons of the left shoulder.

In an October 24, 2019 statement, appellant explained that in November 2018 she sought treatment with Kellie Dewitt, a physician assistant, with complaints of pain in her shoulders. She underwent x-ray scans, cortisone shots and participated in physical therapy to treat her symptoms. In March 2019, appellant was again seen by Ms. Dewitt with complaints of pain in her shoulders and hands. She noted that carpal tunnel syndrome was discussed due to her work. Appellant was referred to have an electromyography (EMG) scan performed for further evaluation. She underwent cortisone injections, x-ray scans and physical therapy to treat her symptoms. Ms. Dewitt diagnosed a pinched ulna nerve in the left arm and carpal tunnel syndrome of the right wrist in April 2019. Appellant noted that she was seen by Dr. Lowe on May 2, 2019 who opined that her conditions were work-related repetitive motion injuries and suggested she receive therapy to treat her conditions. She underwent surgery on August 14, 2019 and claimed that the subsequent therapy sessions afterwards aggravated her left shoulder. A September 4, 2019 MRI scan revealed a torn rotator cuff in her left shoulder with evidence of arthritis and a bone spur. Appellant indicated that she spoke with Dr. Lowe on October 24, 2019 who opined that her shoulder condition was contributed to or aggravated by her pinched ulna nerve and recommended she undergo left shoulder surgery. She contended that he was preparing Form CA-20 reports for her present claim, as well as her previously accepted claim under OWCP File No. xxxxxx594, as he believed her rotator cuff tear was caused by a "heavy package, bag, *etc.* at work" which progressively worsened and caused damage to her right wrist when she tried to overcompensate for her left arm injury.

In a medical report dated October 24, 2019, Dr. Lowe reviewed appellant's history of treatment for her left shoulder injury dating back to 2018. He referenced her past medical history including an August 14, 2019 carpal tunnel release procedure. On evaluation, Dr. Lowe diagnosed a delaminating articular surface rotator cuff tear and recommended she undergo a left shoulder arthroscopy to treat her condition. In a medical note of even date, he recommended that appellant remain out of work until after her left shoulder surgery.

In an October 25, 2019 Form CA-20, Dr. Lowe diagnosed a partial tear of the left rotator cuff and, on review of the history of appellant's injury, noted that her chief complaint was related to her other May 2, 2019 claim under OWCP File No. xxxxxx594. He checked a box marked "Yes" to indicate that her condition was caused or aggravated by her federal employment and explained that she overcompensated for her right carpal tunnel syndrome in her wrist and pinched ulnar in the left arm.

In a November 1, 2019 Form CA-20, Dr. Lowe again noted that appellant was experiencing pain in her left shoulder, including her carpal tunnel syndrome and pinched ulnar nerve. He checked a box marked "Yes" to indicate his opinion that her conditions were caused or aggravated by her federal employment and explained that her conditions were continuously aggravated by her repetitive motion.

In response to OWCP's questionnaire, appellant submitted a November 6, 2019 statement in which she clarified that her injury was an occupational disease claim and not a traumatic injury. She stated that she used December 7, 2017 as the date of injury because this was the date used for her original claim under OWCP File No. xxxxxx594. Appellant asserted that she did not intend to file a new claim and only wanted to add her newly diagnosed injuries to her previous claim. She then detailed her history of medical treatment as it related to pain she experienced in her shoulders and bilateral upper extremities.

In a November 12, 2019 medical note, Dr. Lowe noted that he saw appellant for preoperation testing for a right carpal tunnel release procedure, as well as for complaints of left shoulder pain.

By decision dated November 21, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that her medical condition was "causally related to the accepted work event(s)."

On November 27, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a December 19, 2019 medical note, Dr. Lowe reported that appellant's left shoulder pain was due to her workers' compensation claim that began two years prior and that her left rotator cuff tear was due to overcompensation of her left side, secondary to her 25 years working at the employing establishment. He indicated that she recently underwent surgery on her left shoulder and would continue to utilize physical therapy, bracing and activity modification for her recovery.

In a December 30, 2019 Form CA-20, Dr. Lowe diagnosed carpal tunnel syndrome, a pinched ulnar nerve and a torn rotator cuff. He checked a box marked "Yes" to indicate his belief that appellant's conditions were caused or aggravated by her federal employment and explained that the continuous repetitive motion and overcompensating for her right carpal tunnel syndrome resulted in her left rotator cuff tear.

At the hearing held on March 12, 2020, counsel reasoned that appellant's left rotator cuff injury should have been included in her previous claim under OWCP File No. xxxxxx594 and that her injury should have been treated as an occupational disease claim. He emphasized medical evidence from Dr. Lowe where he opined that her right carpal tunnel syndrome was so severe that

she was overcompensating with her left arm to perform her employment duties, which ultimately led to her left rotator cuff injury. Counsel requested that the current claim be administratively combined with appellant's previous claim. The hearing representative held the case record open for 30 days to allow the submission of additional evidence.

Appellant submitted a December 14, 2018 medical report in which Dr. Brent Johnson, a Board-certified orthopedic surgeon, evaluated her for left shoulder pain she had experienced for the last year and a half. Dr. Johnson noted that, while performing her employment duties, which required her to throw packages and sort mail, her shoulder would catch and that her pain was exacerbated by reaching and lifting. He diagnosed left rotator cuff syndrome. Dr. Johnson administered a cortisone injection and referred appellant to physical therapy.

Appellant also submitted physical therapy reports dated from December 19, 2018 to January 17, 2019 in which she underwent therapy treatment for her left rotator cuff.

In a March 18, 2019 after visit summary, Ms. Dewitt evaluated appellant for paresthesia of both hands.

In a November 20, 2019 medical note, Ms. Dewitt noted that appellant was seen on November 19, 2018 for left shoulder pain and popping, as well as right hand pain, numbness and tingling.

A December 1, 2019 medical note with no signature indicated that appellant underwent an EMG/nerve conduction (NCV) study on April 3, 2019 which revealed paresthesia in both hands.

In a December 4, 2019 operative report, Dr. Lowe performed a left shoulder arthroscopy in order to treat appellant's partial articular supraspinatus tendon avulsion lesion.

By decision dated April 24, 2020, OWCP's hearing representative explained that, based on appellant's description, her case would be treated as an occupational disease claim as opposed to a traumatic injury and affirmed the November 21, 2019 decision. She also directed OWCP to administratively combine OWCP File No. xxxxxx594 with the present claim.<sup>4</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>6</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

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<sup>4</sup> Following the April 24, 2020 decision, OWCP administratively combined OWCP File Nos. xxxxxx787 and xxxxxx594 with OWCP File No. xxxxxx594 serving as the master file.

<sup>5</sup> *Supra* note 2.

<sup>6</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>9</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>11</sup> 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).<sup>12</sup>

### ANALYSIS

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

In support of her claim, appellant submitted Form CA-20 reports dated October 25 and December 30, 2019 from Dr. Lowe in which he detailed his treatment in relation to her left shoulder pain. Dr. Lowe acknowledged her previously accepted right carpal tunnel syndrome and pinched ulnar nerve in her left arm. He explained that the continuous repetitive motion and appellant's overcompensating for her right carpal tunnel syndrome and left pinched ulnar nerve resulted in the left rotator cuff tear. In a separate December 19, 2019 medical note, Dr. Lowe noted that appellant's left shoulder condition was related to her previous workers' compensation claim and opined that her left rotator cuff tear was the result of overcompensation on her left side secondary to her work at the employing establishment.

The Board finds that, while the reports from Dr. Lowe are not completely rationalized, they are consistent in indicating that appellant's repetitive motion and overcompensating for her right

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<sup>7</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>12</sup> *Id.*; *Victor J. Woodhams*, *supra* note 9.

CTS and pinched ulnar nerve resulted in her rotator cuff tear and are not contradicted by any substantial medical or factual evidence of record.<sup>13</sup> While these reports do not provide medical rationale to establish a consequential injury by which her accepted factors of federal employment caused or aggravated her diagnosed left rotator cuff tear, they raise an uncontroverted inference between appellant's accepted right CTS and rotator cuff tear, and thus, they are sufficient to require OWCP to further develop the medical evidence.<sup>14</sup>

On remand OWCP shall prepare a statement of accepted facts (SOAF) based on the present claim setting forth the employment factors which have been established and refer appellant to a second opinion physician in the appropriate field of medicine for an examination and a rationalized medical opinion as to whether her accepted employment factors either caused or aggravated her left rotator cuff tear.<sup>15</sup> If the second opinion disagrees with the explanations provided by Dr. Lowe, he or she must provide a fully-rationalized explanation explaining why his opinion is unsupported. After this and such further development as is deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>13</sup> See *D.G.*, Docket No. 18-0043 (issued May 7, 2019).

<sup>14</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 24, 2020 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 16, 2021  
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