

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

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**R.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Honolulu, HI, Employer**

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**Docket No. 11-1163  
Issued: November 18, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 1, 2011 appellant filed a timely appeal from November 3, 2010 and February 11, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant's cervical and shoulder conditions are causally related to the July 12, 2010 employment incident.

**FACTUAL HISTORY**

On September 16, 2010 appellant, then a 53-year-old mail carrier, filed a traumatic injury claim alleging that on July 12, 2010 he felt a twinge in his shoulders, right arm and right hand

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

when he lifted a package containing a motor from the truck bed.<sup>2</sup> He explained that his left shoulder had never healed from a prior April 2009 injury.

In a letter dated September 24, 2010, OWCP advised appellant that the evidence submitted was insufficient to support his claim because the record did not contain a medical diagnosis or physician's opinion as to how any condition resulted from the employment incident. It requested that he provide a comprehensive medical report which included history of injury, dates of examination and treatment, a firm medical diagnosis and a physician's opinion as to how the work incident caused or aggravated his medical condition.

In a June 24, 2009 cervical spine magnetic resonance imaging (MRI) scan report, Dr. John E. Nimlos, Board-certified in occupational medicine, observed multilevel degenerative disc and facet changes throughout the cervical spine producing mild multilevel spinal canal stenosis, most prominent at C3-4 and moderate bilateral foraminal stenosis from C2-3 through C6-7. He diagnosed industrial trauma, rotator cuff shoulder syndrome, arm weakness and cervical radiculopathy. Dr. Nimlos further stated that spine films showed degenerative disc disease with narrowed foramina.

In a September 22, 2010 report, Dr. Paul J. Smith, Board-certified in occupational medicine, stated that appellant worked for the postal service and complained of right upper extremity and bilateral shoulder problems as a result of a July 15, 2010 injury and repetitive mail handling, which included driving, lifting and repetitive hand motions. Appellant submitted a previous claim for an April 9, 2009 left shoulder injury and a cervical spine MRI scan revealed significant multilevel foraminal stenosis, C2-7. Upon examination, Dr. Smith observed that appellant's cervical spine was nontender to palpation with full range of motion, had no vertebral tenderness to palpation and tested positive bilaterally for Spurling's. Examination of appellant's right and left shoulders revealed normal range of motion. Dr. Smith diagnosed paresthesia of the upper limb, multilevel stenosis of cervical spine, C2-7 and bilateral shoulder region pain. He concluded that based on the history and information available he was unable to determine whether appellant's complaints were caused or aggravated by his employment activities. Dr. Smith excused appellant from work for September 22, 2010 and placed him on modified duty from September 23 to October 13, 2010.

In an October 1, 2010 report, Dr. Smith related that he had previously evaluated appellant for right upper extremity and bilateral shoulder problems resulting from the current date of injury. Appellant complained that his pain was most noticeable during work activities and was precipitated by activities of lifting, flexing movements, repetitive hand motions, gripping and grasping. Upon examination, Dr. Smith observed that his cervical spine had right paraspinal muscle tenderness, pain with movement, range of motion within his normal limits and tested positive for Spurling's. An examination of appellant's thoracic spine revealed detailed pain with movement and mild tenderness to his right trapezius. Dr. Smith diagnosed right upper limb

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<sup>2</sup> In a decision dated September 24, 2010, OWCP denied appellant's entitlement to continuation of pay on the grounds that he did not file a written claim within 30 days of the July 12, 2010 injury. On October 16, 2010 appellant submitted a request for a review of the written record of the September 24, 2010 denial of continuation of pay.

paresthesia, stenosis of the cervical spine region and shoulder pain.<sup>3</sup> He also submitted an October 4, 2010 industrial work status report and duty status report, which noted date of injury of July 15, 2010 and placed appellant on modified duty from October 4 to 22, 2010.

In an October 5, 2010 note, Dr. Lenley B. Jackson, a Board-certified family practitioner, stated that he examined appellant and authorized him to return to work on October 7, 2010. An October 5, 2010 physical therapy report completed by Alan Wong listed a history of appellant's July 15, 2010 injury sustained as he carried a 70-pound package across wet grass and stepped into a hole.

In an October 13, 2010 attending physician's report, Dr. Smith noted a date of injury of July 15, 2010 and checked a box marked "yes" that appellant's condition was caused or aggravated by the stated employment activity.

Appellant submitted an October 1, 2010 physical therapy referral and various physical therapy reports dated October 5 and 13, 2010. He also submitted an illegible October 26, 2010 narrative statement.

In a November 3, 2010 decision, OWCP denied appellant's claim finding that the medical evidence failed to establish that his condition was causally related to the work event. It accepted that the July 12, 2010 employment incident occurred as alleged but found that the medical evidence was insufficient to establish that his diagnosed conditions were causally related to the accepted event.

In a November 16, 2010 nerve conduction study (NCS) and electromyogram (EMG) report, Dr. Maria Patten, Board-certified in physical medicine and rehabilitation, noted that appellant complained of right whole arm pain, numbness and tingling to the 5<sup>th</sup> finger. Upon examination, she observed full cervical spine range of motion and negative Spurling's maneuver. Dr. Patten stated that sensory and EMG studies for appellant's right median and ulnar motor were normal. She concluded that there was no evidence for a right median or ulnar neuropathy and for right cervical radiculopathy or brachial plexopathy. Dr. Patten diagnosed arm pain, numbness of skin and tingling sensation. She also provided a report repeating her findings.

In a November 19, 2010 report, Dr. Smith noted appellant's complaints of neck and upper back pain and stated that it was aggravated by activities of standing, walking and twisting or rotational movements. Upon examination, he observed muscle tenderness, normal range of motion limits and positive Spurling's test. Dr. Smith opined that the underlying cause of appellant's condition was multilevel bilateral cervical spinal stenosis and that "were it not for" the repetitive mail casing, reaching and driving performed in the course of employment, appellant's condition would not have become disabling. He further explained that the July 12, 2010 incident represented a "temporary radicular aggravation of the preexisting cervical spinal stenosis." Dr. Smith also provided a November 19, 2010 work status report restricting appellant to modified duty from November 12 to December 10, 2010.

On November 23, 2010 appellant requested a review of the written record.

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<sup>3</sup> In October 4 and 22, 2010 reports, Dr. Smith essentially reiterated the same findings and conclusions.

In December 14, 2010 report, Dr. Veronica Antoine, a pain management physician, diagnosed myofascial pain syndrome, herniation of a cervical intervertebral disc and ulnar neuritis. Upon examination, she observed no erythema or edema, nontender in the midline and no tenderness to palpation over paraspinal bilaterally. Examination of appellant's upper extremities revealed normal bulk and tone, Tinel's and tenderness with pressure over medial epicondyle on right, normal sensation and strength bilaterally. Dr. Antoine recommended trigger point injections.

In December 16, 2010 and January 13, 2011 reports, Dr. Smith noted that appellant complained of increased right upper extremity and bilateral shoulder problems. Appellant described his pain as shooting, sore and tight and precipitated by activities of standing, walking, twisting and rotational movements. Dr. Smith diagnosed right upper elbow ulnar neuritis, cervical radiculitis and stenosis of cervical spine region.

In December 16, 2010 x-ray results, Dr. Stein Rafto, a Board-certified diagnostic radiologist, did not observe a fracture deformity to the osseous structures of appellant's shoulder girdle region and apical ribs visualized by this examination of the elbow. The x-ray did not reveal any subluxation, dislocation or significant degenerative change to the acromioclavicular (AC) joint or glenohumeral joint. Dr. Rafto recommended an evaluation of the cervical spine for degenerative changes and diagnosed cervical radiculitis and right upper elbow ulnar neuritis.

Appellant also submitted additional physical therapy reports and an October 22, 2010 work status report.

By decision dated February 11, 2011, an OWCP hearing representative denied appellant's claim finding insufficient medical evidence to establish that his condition was causally related to the July 12, 2010 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence<sup>5</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>6</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.<sup>7</sup> Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.<sup>8</sup> Rationalized medical

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

<sup>7</sup> *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

<sup>8</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>10</sup>

FECA provides that, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>11</sup> When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.<sup>12</sup>

### ANALYSIS

Appellant alleged that on July 12, 2010 he sustained injuries to his shoulders, right arm and right hand when he lifted a mail package from the truck bed at work. OWCP accepted that the July 12, 2010 incident occurred as alleged but denied the claim on the grounds of insufficient medical evidence to establish that his medical conditions resulted from the accepted event. The Board finds that the medical evidence fails to establish that appellant's shoulder or cervical spine conditions were causally related to the July 12, 2010 employment incident.

The evidence of record documents that appellant suffered from preexisting cervical spine and shoulder conditions. In a June 24, 2009 MRI scan report, Dr. Nimlos observed multilevel degenerative disc and facet changes throughout appellant's cervical spine and diagnosed industrial trauma, rotator cuff shoulder syndrome, arm weakness and cervical radiculopathy. He did not, however, provide any opinion on the cause of appellant's cervical condition.

Appellant also submitted reports from Dr. Smith. On September 22, 2010 Dr. Smith noted that appellant complained of right upper extremity and bilateral shoulder problems resulting from repetitive mail handling duties and a July 15, 2010 injury. He explained that based on the history and information available he was unable to determine whether appellant's complaints were caused or aggravated by his employment activities. This report lacks probative value in that it is vague and equivocal and failed to explain the causal relationship, if any, between appellant's condition and the accepted work event.<sup>13</sup> The need for a well-rationalized physician's opinion is particularly important as Dr. Smith attributed appellant's conditions to both repetitive employment duties and a specific work incident. Dr. Smith provided an inaccurate history of injury because he noted a date of injury of July 15, not July 12, 2010. It is

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<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>11</sup> *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

<sup>12</sup> *Id.*

<sup>13</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Michael E. Smith*, 50 ECAB 313 (1999).

well established that medical opinions based on an incomplete or inaccurate factual history are of diminished probative value to establish causal relationship.<sup>14</sup>

In a November 19, 2010 report, Dr. Smith stated that the “underlying cause” of appellant’s condition was multilevel bilateral cervical spinal stenosis and that “were it[’s] not for” his repetitive mail handling duties, his condition would not have become disabling. He further explained that the July 12, 2010 incident was a “temporary radicular aggravation” of appellant’s preexisting cervical spinal stenosis. Although Dr. Smith provided an accurate date of injury, he failed to describe the July 12, 2010 incident or fully address how lifting a package that day was sufficient to cause or aggravate appellant’s condition. Medical reports not containing adequate rationale supporting a conclusion on causal relationship are of diminished probative value and are insufficient to meet appellant’s burden of proof.<sup>15</sup> Dr. Smith did not provide adequate medical rationale, explaining why lifting a package on July 12, 2010 would cause or aggravate appellant’s cervical condition. Thus, his report is insufficient to establish appellant’s claim.

In addition, in an October 13, 2010 attending physician’s report, Dr. Smith checked a box marked “yes” that appellant’s condition was caused or aggravated by the stated employment injury. The Board has held, however, that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>16</sup>

Similarly, Dr. Jackson’s October 5, 2010 progress note and Dr. Antoine’s December 14, 2010 report do not provide an opinion on the cause of appellant’s cervical condition. As medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value to establish causal relationship, this opinion is insufficient to support appellant’s claim.<sup>17</sup>

The other medical evidence of record consists of various physical therapy and diagnostic reports. The physical therapy reports, however, are of no probative value because nurses, physician’s assistants, physical and occupational therapists are not “physicians” as defined by FECA.<sup>18</sup> Thus, their medical opinions regarding diagnosis and causal relationship are of no probative medical value and are insufficient to establish appellant’s claim.<sup>19</sup>

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<sup>14</sup> See *M.W.*, 57 ECAB 710 (2006); *John W. Montoya*, 54 ECAB 306 (2003); *B.H.*, Docket No. 10-907 (issued November 9, 2010).

<sup>15</sup> *William C. Thomas*, 45 ECAB 591 (1994); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>16</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>17</sup> *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

<sup>18</sup> Section 8102(2) of FECA provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

<sup>19</sup> *E.H.*, Docket No. 08-1862 (issued July 8, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

The diagnostic reports likewise fail to meet appellant's burden of proof. According to the November 16, 2010 NCS and EMG report, Dr. Patten stated that his sensory nerve and EMG studies were normal. She concluded that there was no evidence for a right median or ulnar neuropathy and for right cervical radiculopathy or brachial plexopathy and diagnosed arm pain, numbness of skin and tingling sensation. Pain, however, is a symptom, not a compensable medical diagnosis.<sup>20</sup> Dr. Patten, therefore, did not provide a firm diagnosis of appellant's condition. Likewise, in Dr. Rafto's December 16, 2010 x-ray report, he did not observe any subluxation, dislocation or significant degenerative change to appellant's AC joint. While the physicians noted appellant's complaints of back and shoulder pain, their reports are of limited probative value as none of them provided any firm diagnosis of these conditions.<sup>21</sup>

As previously noted, causal relationship is a medical issue that can only be established by the submission of rationalized medical opinion evidence.<sup>22</sup> The record in this case, however, does not contain any rationalized medical opinion evidence establishing that appellant's cervical and shoulder conditions were causally related to or aggravated by the July 12, 2010 employment incident. As appellant has not submitted such rationalized medical opinion evidence in this case, he did not meet his burden of proof to establish his claim.<sup>23</sup>

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 607.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that his cervical and shoulder conditions were causally related to the July 12, 2010 employment incident.

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<sup>20</sup> *Robert Broome*, 55 ECAB 339, 342, (2004).

<sup>21</sup> *See J.C.*, Docket No. 10-1195 (issued March 23, 2011); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

<sup>22</sup> *Mary J. Summers*, *supra* note 7.

<sup>23</sup> OWCP regulations at 20 C.F.R. § 10.205(a) provide, in pertinent part, that to be eligible for continuation of pay, an employee must: (1) have a 'traumatic' injury which is job related and the cause of disability and (2) file Form CA-1 within 30 days of the date of the injury. As appellant has not established that he sustained a work-related traumatic injury he is also not entitled to continuation of pay.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 11, 2011 and November 3, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 18, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board