

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

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V.L., Appellant	)	
	)	
and	)	
	)	<b>Docket No. 14-1040</b>
	)	<b>Issued: February 20, 2015</b>
<b>DEPARTMENT OF JUSTICE, U.S.</b>	)	
<b>PROBATION DEPARTMENT,</b>	)	
<b>New York City, NY, Employer</b>	)	
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*Appearances:*  
Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 26, 2014 appellant, through her attorney, filed a timely appeal from the January 15, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 March 27, 2012 work incident caused a neck injury.

**FACTUAL HISTORY**

On March 30, 2012 appellant, a 49-year-old probation officer, filed a traumatic injury claim alleging that she injured her neck in the performance of duty on March 27, 2012. She explained that she was sitting in the passenger seat of a government vehicle when it struck a

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

pothole: “My head was facing down reading email on blackberry, phone flew out of hand, head jerked front and back.” Appellant stated that she felt instant discomfort in her neck with shooting pain up the back of her head and down her left arm. After the pain subsided in approximately 15 minutes, she remained in the field. The next day, appellant awoke with excruciating neck pain. She had pain in her face and neck “on and off.”

Dr. Amir M. Annabi, a Board-certified physiatrist, examined appellant on March 30, 2012. He related a consistent history of injury. Findings included tenderness to palpation in the cervical paraspinal region and decreased cervical extension and lateral gaze. The remainder of the examination was normal. An x-ray showed disc space narrowing at C5-6. The impression was C5-6 degenerative disc disease with likely superimposed herniated nucleus pulposus. Dr. Annabi diagnosed the same. He ordered a magnetic resonance imaging (MRI) scan of the cervical spine.

Dr. Annabi completed an attending physician’s form report. He noted that appellant had neck pain after her head snapped back in a car ride. Dr. Annabi also indicated no history or evidence of concurrent or preexisting injury, disease, or physical impairment. Findings included restricted cervical range of motion. An x-ray showed degenerative disc disease. With an affirmative mark, Dr. Annabi indicated that he believed that the condition found was caused or aggravated by the employment activity described.

In a decision dated May 17, 2012, OWCP denied appellant’s claim for workers’ compensation benefits. It accepted that the March 27, 2012 work incident occurred as alleged, but it found that Dr. Annabi failed to establish clearly whether the incident caused or contributed to her diagnosed C5-6 degenerative disc disease. OWCP instructed that “Your physician must explain how the work event(s) caused or affected your condition, based upon an accurate factual and medical history, citing objective findings in support of the opinion.”

On May 24, 2012 Dr. Annabi noted that he was still awaiting an MRI scan of the cervical spine to assess for a herniated disc following appellant’s jolting neck injury in a car at work:

“There is evidence on x-ray of preexisting C5-6 [d]egenerative [d]isc [d]isease. However, [appellant] was not symptomatic with neck pain until jolting car injury, which snapped her [head] upwards and downwards and likely resulting in a herniated disc at the level of the prior degenerative disc disease. Continue to await MRI [scan] to demonstrate presence of a disc herniation.”

On October 12, 2012 Dr. Annabi related appellant’s history of injury, complaints, and findings as of March 30, 2012. He described x-ray findings and explained:

“Given the restricted [range of motion], pattern of muscle spasm in C5 myotome and sudden onset of pain following jerking motion of the head, it is believed that there is a superimposed cervical disc herniation at the C5-6 level where x-rays demonstrated degenerative disc disease. An MRI [scan] of the cervical spine was ordered on C5-6 to confirm this clinical diagnosis however the MRI [scan] of the cervical spine was denied by [OWCP].”

Dr. Annabi added that appellant's presentation and progression of symptoms was consistent with an acute disc herniation at the level of previously existing degenerative disc disease, as she did not report any pain or restricted range of motion prior to March 27, 2012.

OWCP reviewed the merits of appellant's case on November 16, 2012 and denied her traumatic injury claim on the grounds that the medical evidence failed to establish the element of causal relationship. It noted that Dr. Annabi could not confirm the diagnosis of C5-6 herniated nucleus pulposus.

On January 15, 2014 an OWCP hearing representative affirmed OWCP's November 16, 2012 decision. The hearing representative found that Dr. Annabi speculated that the March 27, 2012 incident caused appellant's preexisting degenerative disc disease to become symptomatic. It was found he based his opinion on the possibility that a disc herniation had resulted from the whiplash effects of the incident, as well as the presence of pain thereafter. In the absence of an MRI scan to confirm such a provisional diagnosis, the medical record was insufficient to establish a disc herniation resulting from the work incident.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Causal relationship is a medical issue,<sup>4</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>5</sup> must be one of reasonable medical certainty,<sup>6</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

### ANALYSIS

OWCP accepts that the government vehicle in which appellant was riding on March 27, 2012 struck a pothole. Appellant has thus met her burden to establish that she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. The question that remains is whether the incident caused an injury.

Dr. Annabi, the attending physiatrist, examined appellant three days later and found tenderness to palpation in the cervical paraspinal region as well as decreased cervical extension and lateral gaze. The remainder of the examination was normal. An x-ray showed C5-6 degenerative disc disease with a likely superimposed herniated nucleus pulposus.

In a form report, Dr. Annabi indicated with an affirmative mark that these findings were caused or aggravated by the March 27, 2012 work incident. While he waited for an MRI scan of the cervical spine to demonstrate the presence of a disc herniation, he explained that appellant was not symptomatic with neck pain until the jolting car incident snapped her head up and down “likely resulting in a herniated disc at the level of the prior degenerative disc disease.” In his October 12, 2012 report, Dr. Annabi further explained why he believed that there was a C5-6 disc herniation superimposed on the degenerative disc, noting restricted range of motion, muscle spasm in the C5 myotome, and the sudden onset of pain following a jerking motion of the head.

As Dr. Annabi has clinically diagnosed a herniated nucleus pulposus at C5-6, and as he has attributed appellant’s cervical condition to the March 27, 2012 work incident with some rationale, the Board finds that further development of the medical evidence is warranted. The Board will, therefore, set aside OWCP’s January 15, 2014 decision denying her traumatic injury claim. The Board will remand the case for a review of Dr. Annabi’s reports by an OWCP medical adviser. After such further development of the evidence as may become necessary, OWCP shall issue a *de novo* decision on appellant’s traumatic injury claim.

### CONCLUSION

The Board finds that this case is not in posture for decision. Further, development of the medical evidence is warranted.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.<sup>8</sup>

Issued: February 20, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> Michael E. Groom, Alternate Judge, participated in the original decision but was no longer a member of the Board effective December 27, 2014.