



## **FACTUAL HISTORY**

On July 13, 2010 appellant, then a 50-year-old housekeeping aid, filed a traumatic injury claim alleging that he injured his left arm pulling a bag of fitted sheets out of a bin on May 24, 2010 at 8:00 a.m.

Appellant submitted narrative notes from the employing establishment health unit. Dr. V.S. Howard, the employing establishment physician, diagnosed left arm pain with numbness and tingling in four fingers. He provisionally diagnosed triceps strain or lateral epicondylitis on June 15, 2010. Appellant underwent a magnetic resonance imaging scan of the cervical spine on July 2, 2010 which revealed cervical spondylosis with degenerative disc disease from C3-4 through C7-T1 as well as bilateral disc herniations at C5-6 and left lateral disc herniation at C7-T1. In a note dated July 2, 2010, Dr. Stephen Ritter, an orthopedic surgeon, diagnosed left cervical pain. On July 12, 2010 he diagnosed neck pain. Dr. Ritter diagnosed cervical pain on August 12, 2010. He diagnosed C6 and C8 foraminal stenosis on August 16, 2010. In a note dated August 13, 2010, Dr. Ritter noted that appellant injured himself at work. He noted that appellant had left arm symptoms consistent with a nerve injury in the C7 and C8 nerve distributions.

Dr. Judith Dunipace, Board-certified in pain medicine, completed a report on July 27, 2010 and stated that appellant reported straining and feeling a pop in his neck in May 2010 which resulted in left neck pain radiating into his upper arm, forearm and hand. She diagnosed degeneration of cervical intervertebral disc and performed a cervical epidural steroid injection.

In a letter dated October 22, 2010, OWCP stated that the merits of appellant's claim had not yet been addressed as it appeared to be a minor injury that resulted in minimal or no time lost from work. It requested additional medical and factual evidence in support of appellant's claim and allowed 30 days for a response.

By decision dated November 23, 2010, OWCP denied appellant's claim finding that he had not submitted the necessary medical evidence to establish that his diagnosed conditions were due to his accepted work incident on May 24, 2010.

Appellant requested reconsideration on December 17, 2010. He submitted a narrative statement stating that his injury occurred on May 24, 2010 at work. Appellant described his medical treatment. He also submitted additional medical evidence.

On June 8, 2010 Dr. Ritter recorded appellant's history of left shoulder pain beginning on May 26, 2010 pushing a shelf out of the way. He diagnosed left upper extremity pain with decreased sensation in the fingers. Appellant submitted a report dated July 2, 2010 from Dr. Ritter, who stated that he had a one-month history of left shoulder and arm pain and noted that he was lifting at work and sustained an injury. On physical examination, Dr. Ritter found reduced range of motion in the neck with reproducible Spurling-type finding to his left only. He stated that appellant had subtle decrease in grip strength on the left with no obvious atrophy. Dr. Ritter reviewed appellant's cervical radiographs and found advanced degenerative disc changes at C6-7 and multilevel spondylotic changes. He diagnosed stable C6-7 degenerative spondylosis and stated that appellant had pain in the C7 distribution. Appellant underwent nerve

conduction and electromyogram testing on June 16, 2010 which demonstrated mild acute or chronic left cervical radiculopathy at C7 and C8 with some evidence of mild ongoing denervation and chronic neuropathic changes. In a note dated July 12, 2010, Dr. Ritter diagnosed possible C8 as well as possible C6 radiculopathy with neck pain and spinal stenosis.

By decision dated February 11, 2011, OWCP denied modification of appellant's prior decision finding that the medical evidence submitted was not sufficient to establish a causal relationship between his diagnosed conditions and his accepted lifting incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</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>5</sup>

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."<sup>6</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

### **ANALYSIS**

OWCP has accepted that appellant lifted in the performance of duty on May 24, 2010. However, it has not accepted that his employment incident resulted in a personal injury.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> 20 C.F.R. § 10.5(ee).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *J.Z.*, 58 ECAB 529 (2007).

Appellant initially submitted a note from Dr. Howard, an employing establishment physician, diagnosing left arm pain, triceps strain or lateral epicondylitis. The Board has held that the mere diagnosis of “pain” does not constitute the basis for payment of compensation.<sup>9</sup> Furthermore, Dr. Howard did not clearly diagnose any condition indicating that appellant’s condition could be either strain or lateral epicondylitis. As this report does not contain a firm diagnosis of an acceptable condition, this report is not sufficient to meet appellant’s burden of proof of establishing a traumatic injury on May 24, 2010.

In support of his claim for a traumatic injury, appellant submitted a series of reports from Dr. Ritter beginning on June 8, 2010 diagnosing a variety of conditions including left arm pain. The Board has held, as already noted, that the mere diagnosis of “pain” does not constitute the basis for payment of compensation.<sup>10</sup> Dr. Ritter also diagnosed cervical pain, C6 and C8 foraminal stenosis, nerve injury, C6 and C8 degenerative spondylosis and radiculopathy C6 and C8. He indicated that appellant was injured at work in several reports. However, the Board finds that Dr. Ritter did not specifically explain how appellant’s lifting at work would result in any of the conditions diagnosed. Dr. Ritter did not provide a clear opinion on the causal relationship between appellant’s diagnosed conditions of stenosis, spondylosis or radiculopathy and the lifting incident. Without an opinion on the causal relationship between appellant’s employment incident and his diagnosed conditions, these reports are not sufficient to meet his burden of proof.

Appellant submitted a note from Dr. Dunipace providing history of injury including lifting at work and diagnosing degeneration of a cervical disc. This report does not provide a statement that his diagnosed condition was caused or aggravated by his accepted employment activity. Furthermore, Dr. Dunipace’s opinion that appellant’s cervical disc had degenerated suggests a preexisting condition rather than a traumatic injury. Due to the lack of a medical opinion establishing a causal relationship, the Board finds that appellant has not met his burden of proof in establishing a traumatic injury.

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.

### **CONCLUSION**

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between lifting in the performance of duty on May 24, 2010 and any of his diagnosed condition. Therefore, the Board finds that he has failed to meet his burden of proof.

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<sup>9</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 11, 2011 decision of Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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