

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

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**M.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Nashville, TN, Employer**

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**Docket No. 14-634  
Issued: July 23, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 27, 2014 appellant filed a timely appeal from an October 9, 2013 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 met her burden of proof to establish a traumatic injury in the performance of duty on September 4, 2012.

**FACTUAL HISTORY**

On September 14, 2012 appellant, then a 45-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging neck, right shoulder, right hip and lower back injuries sustained in the performance of duty on September 4, 2012. She stated that she was injured in an automobile

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

incident on that date when a car hit her vehicle on the left front side after skidding on a wet road. Appellant wore her seat belt, but slammed against the door and center console of her vehicle. A supervisor checked a box indicating that appellant was injured in the performance of duty and challenged continuation of pay on the basis that she had not submitted sufficient medical information. The supervisor also checked a box indicating that appellant's knowledge of the facts of her injury did not agree with her statements, because she had completed her route after the incident and stated that she was not hurt.

Appellant submitted a certificate to return to work dated September 11, 2012, which was signed by a physician's assistant and stated that she could return to work on September 20, 2012.

By letter dated September 28, 2012, OWCP advised appellant that the evidence of record was insufficient to support her claim. It afforded her 30 days to submit additional medical evidence.

On September 10, 2012 a physician's assistant examined appellant and assessed her with shoulder pain, low back pain and an injury from a moving vehicle. Appellant also submitted reports from the same physician's assistant dated September 6 and 20, 2012.

On September 24, 2012 Dr. Michael R. Gallagher, Board-certified in neurological surgery, stated that appellant had seen him in his office on that date for lower back pain status post a work-related injury and that she would be unable to return to work for at least four weeks.

In a report dated September 27, 2012, Dr. Clyde A. Kyle III, a Board-certified radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He diagnosed her with multilevel cervical spondylosis, right moderate-to-severe root foramen encroachment at C6-7 and right mild-to-moderate nerve root foramen encroachment at C5-6. On the same date, Dr. Lynn S. Carlson, a Board-certified radiologist, examined the results of x-rays of appellant's right shoulder. She diagnosed chronic Hills-Sachs lesion of the humeral head, with no evidence of current dislocation. Dr. Eugene Long, a Board-certified radiologist, examined a computerized tomography (CT) scan of appellant's cervical spine on the same date. He diagnosed degenerative disc disease at C5-6 and C6-7, noting that there was no acute fracture of the cervical spine and no epidural hematoma.

In a work capacity evaluation for psychiatric/psychological conditions dated October 4, 2012, Dr. Oliver L. Gregory, a Board-certified psychiatrist, stated that appellant was physically unable to work due to a dislocated shoulder, neck and hip resulting from an automobile incident. He noted that she was mentally competent, but that the pain from her injuries prevented her from working. Dr. Gregory stated that appellant was having nightmares and was unable to sleep.

On October 11, 2012 the employing establishment challenged appellant's entitlement to all benefits under this claim. It explained that she was involved in a vehicular incident on September 4, 2012 while delivering mail on her route and that she did not want medical attention after the incident. On September 5, 2012 appellant called a supervisor and advised that as she did not have a vehicle to deliver her mail, she would be off work that day. On September 6, 2012 she reported to the employing establishment and told a supervisor that after

consulting with a physician, she needed to be off work until September 11, 2012, but did not provide medical documentation at that time. Appellant's supervisor advised that appellant would have to complete a Form CA-1 and submit medical documentation, but she stated that she did not want to file a claim and would use her own leave. On September 10, 2012 her husband advised that appellant would need to see another physician. Appellant's supervisor mailed appellant a Form CA-1, advising her to complete and submit it as soon as possible. Appellant did so, and her supervisor received the Form CA-1 on September 14, 2012. The employing establishment listed the medical evidence received until October 11, 2012.

By decision dated November 5, 2012, OWCP denied appellant's claim. It found that she had not submitted any medical evidence containing a diagnosis in connection with the alleged traumatic event. OWCP explained that the medical evidence must not only contain a diagnosis, but establish that a diagnosed medical condition was causally related to the work incident. It stated that appellant had only submitted medical evidence containing a diagnosis of "pain." OWCP accepted that she was a federal civilian employee who filed a timely claim and that the traumatic event of September 4, 2012 occurred as described.

On July 10, 2013 appellant requested reconsideration of the November 5, 2012 decision. She explained her reasons for requesting reconsideration in a letter of the same date, noting that there was some medical documentation that was never filed with OWCP and included this documentation to demonstrate that her physical and mental health were different before the incident of September 4, 2012. With her request, appellant submitted numerous reports dating from March 23, 2007 to August 22, 2011 which noted treatment for a variety of conditions ranging from skin conditions, vitamin deficiency, migraine, depression, sinusitis, mild demyelinating sensory motor polyneuropathy and bilateral carpal tunnel syndrome. She also submitted documents dating from February 13, 2007 through August 20, 2011 signed by physician's assistants, medical laboratory technicians, certified medical assistants and licensed practical nurses.

Appellant submitted a September 6, 2012, certificate signed by a physician's assistant, which stated that she could return to work on September 11, 2012. She submitted three certificates from the same physician's assistant dated September 11, 2012, one stating that she could return to work on September 16, 2012, one stating that she could return to work on September 20, 2012 and the other stating that she could return to work on September 24, 2012. Appellant also submitted unsigned instructions detailing her partial hospitalization for a psychiatric condition.

On September 10, 2012 Dr. Martin D. Simms, a Board-certified radiologist, examined x-rays of appellant's cervical spine. He diagnosed her with reversal of the usual cervical lordosis, possibly reflecting muscular spasm and moderate degenerative disc disease at C5-6 and C6-7.

In a report dated September 27, 2012, Dr. Carlson examined an x-ray of appellant's right hip, noting no fracture or dislocation and minimal spurring of the femoral head and lateral aspect of the acetabulum. On the same date, Dr. Long examined a CT scan of her lumbar spine, noting mild right-sided facet degenerative changes of the lower lumbar spine.

On October 16, 2012 Dr. Moody examined appellant's lower back, shoulder and neck, assessing her with low back pain, shoulder pain, neck pain, an upper respiratory infection and blood pressure elevation. On November 9, 2012 he noted that she complained of neck pain, stated that she had not returned to work since the motor vehicle incident and wanted to discuss disability. In a report dated November 16, 2012, Dr. Moody diagnosed appellant with moderate pedal edema and right leg pain. On December 23, 2012 he noted that her leg pain had not improved but her edema had improved. In a report dated January 18, 2013, Dr. Moody diagnosed appellant with an edema of the nasal mucosa, dysuria and left acute otitis media. On February 14, 2013 he diagnosed her with edema, lumbar neuropathy, cervical neuropathy and hand pain. On March 11, 2013 Dr. Moody noted that appellant's left knee had begun to swell on the previous day or the day before and that her pattern of joint symptoms had been progressively worsening. He noted no injury to the knee and diagnosed her with left knee pain. In a report dated March 19, 2013, Dr. Moody examined appellant's left knee and assessed her with left knee pain. On May 1, 2013 he noted progressive worsening of her left knee pain.

In a duty status report dated November 12, 2012, Dr. Gregory stated that appellant could not work due to major depressive disorder and anxiety disorder and noted that she would not be able to work while attending programming at a hospital. In a work capacity evaluation for psychiatric/psychological conditions dated November 20, 2012, he stated that she was unable to work while attending programming at a hospital and that she would be able to work on approximately December 26, 2012. Dr. Gregory stated that appellant was unable to focus due to symptoms of major depression and anxiety disorder.

On November 20, 2012 Dr. Moody stated that appellant was unable to work due to neck and back pain from a vehicular incident.

An unsigned aftercare report dated November 26, 2012 stated that appellant had been admitted to partial hospitalization due to increased symptoms of depression and anxiety.

In a duty status report dated December 10, 2012, Dr. Moody stated that appellant was unable to work due to neck and low back pain and depression.

In a report dated January 3, 2013, Dr. Eletr noted that appellant complained of cervicalgia and back pain after a motor vehicle incident on September 4, 2012. He diagnosed her with a cervical root lesion, a lumbar root injury and migraines. On January 21, 2013 Dr. Eletr diagnosed appellant with a cervical root lesion, carpal tunnel syndrome, a lumbar root injury and idiopathic peripheral neuropathy. He noted that her pain increased after a motor vehicle incident on September 4, 2012.

On January 21 and February 18, 2013, Dr. Eletr examined the results of electromyographical and neuroconductive testing. He diagnosed appellant with mild-to-moderate left carpal tunnel syndrome; mild-to-moderate left ulnar compression at the left elbow; moderate-to-severe right carpal tunnel syndrome; possible right C6 cervical radiculopathy and possible L2, L3 and L4 lumbar radiculopathy.

On January 28, 2013 Dr. Lawrence Samuels, a Board-certified radiologist, examined the results of an MRI scan of appellant's lumbar spine. He noted mild lumbar degenerative disc changes, with no significant spinal stenosis or visible nerve root impingement.

In a report dated March 13, 2013, Dr. Eletr noted that appellant had applied for disability based on depression only, but that it had been denied, so that she was now attempting to get it based on pain in her neck and back. He noted that her symptoms of neck and back pain worsened after a motor vehicle incident on September 4, 2012, when she impacted her right shoulder against the side window, dislocating it. Dr. Eletr diagnosed appellant with cervical root lesion, lumbar disc displacement, chronic migraine, vitamin B12 deficiency and major depressive disorder.

In a report dated May 6, 2013, Dr. John O. Nunes, a Board-certified radiologist, examined the results of an MRI scan of appellant's left knee. He noted mucoid degeneration of the posterior horn of the lateral meniscus; partial extrusion of the medial meniscus; degenerative patellofemoral changes; and medial tibiofemoral compartmental marginal osteophytes and cartilage loss.

By letter dated June 3, 2013, Dr. Gregory stated that on appellant's visit of September 18, 2012, she told him that she had been in a motor vehicle incident. He noted that since that visit, her health, both mental and physical, had not improved and that it was unknown when or if she would return to work.

On June 13, 2013 Dr. Eletr noted that appellant had arrived complaining of left hand numbness. He assessed her with migraine, cervical root lesion, cervicgia and major depressive disorder.

By decision dated October 9, 2013, an OWCP hearing representative reviewed the merits of appellant's case and affirmed its decision of November 5, 2012. It noted that she had not submitted evidence providing an explanation as to how her diagnosed conditions resulted from the vehicular incident of September 4, 2012.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing 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, that an injury<sup>3</sup> was sustained in the performance of duty as alleged

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<sup>2</sup> *Supra* at note 1.

<sup>3</sup> OWCP's regulations define 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. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>6</sup> An award of compensation may not be based on appellant’s belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical 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 compensable employment factors.<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>

### ANALYSIS

Appellant alleged that on September 4, 2012, she sustained injuries to her neck, right shoulder, right hip and lower back in the performance of duty. The Board finds that she has

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<sup>4</sup> *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>6</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>7</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D’Wayne Avila*, 57 ECAB 642, 649 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

<sup>10</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

submitted sufficient medical evidence of medical diagnoses, but that she has not submitted sufficient rationalized medical evidence to establish a causal relationship between the incident and her diagnoses.

On January 3, 2013 Dr. Eletr noted that appellant complained of cervicgia and back pain after a motor vehicle incident on September 4, 2012. He diagnosed her with a cervical root lesion, a lumbar root injury and migraines.<sup>11</sup> However, Dr. Eletr's references in his reports following the motor vehicle incident of September 4, 2012 through January 3, 2013 which were substantially identical in each report are not sufficient to establish that the September 4, 2012 incident caused or aggravated appellant's diagnosed conditions. He noted that her pain increased after the September 4, 2012 incident. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.<sup>12</sup> Dr. Eletr noted in his March 13, 2013 report that her symptoms of neck and back pain worsened after a motor vehicle incident on September 4, 2012, when she impacted her right shoulder against the side window, dislocating it, but did not provide a diagnosis regarding her right shoulder. Lacking thorough medical rationale on the issue of causal relationship, his reports from January 3 through June 13, 2013 are of limited probative value on this issue and insufficient to establish that appellant sustained an employment-related injury on September 4, 2012.

Similarly, on June 3, 2013, Dr. Gregory stated that on appellant's visit of September 18, 2012, she told him that she had been in a motor vehicle incident. He noted that since that visit, her health, both mental and physical, had not improved and that it was unknown when or if she would return to work. The case record also contains several diagnostic reports which provide only findings on examination of MRI scans, x-rays or CT scans, none of which contain an opinion on causal relationship.

Dr. Gregory failed to provide a clear statement of opinion as to the causation of appellant's condition, merely noting a correlation between her condition's lack of improvement and the incident of September 4, 2012. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>13</sup> For the same reason, the diagnostic reports of record are of limited probative value on the issue of causal relationship and are insufficient to establish this claim.

Appellant submitted other reports containing a history of injury but no opinion on causal relationship. On September 24, 2012 Dr. Gallagher stated that she had seen him in his office on that date for lower back pain status post a work-related injury and that she would be unable to

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<sup>11</sup> The Board has held that pain is generally a description of a symptom and is not, in itself, considered a firm medical diagnosis. *See B.P.*, Docket No. 12-1345 (issued November 13, 2012). Thus, Dr. Eletr's diagnosis of back pain and diagnoses of pain from other physicians of record are not sufficient to establish that appellant had been diagnosed with a condition related to the September 4, 2012 incident.

<sup>12</sup> *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

<sup>13</sup> *See C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

return to work for at least four weeks. In a work capacity evaluation for psychiatric/psychological conditions dated October 4, 2012, he stated that appellant was physically unable to work due to a dislocated shoulder, neck and hip resulting from an automobile incident. On November 20, 2012 Dr. Moody stated that she was unable to work due to neck and back pain from a vehicular incident. On November 9, 2012 he noted that appellant complained of neck pain, stated that she had not returned to work since the motor vehicle incident and wanted to discuss disability. By letter dated June 3, 2013, Dr. Gregory stated that on her visit of September 18, 2012, she told him that she had been in a motor vehicle incident. He noted that since that visit, appellants mental and physical condition had not improved and that it was unknown when or if she would return to work. Drs. Gallagher, Gregory and Moody did not provide sufficient medical rationale explaining how her conditions were physiologically caused or aggravated by the incident of September 4, 2013. Their statements of history of injury merely repeated appellant's allegations, without providing a clear rationalized opinion and explanation as to the provenance of her conditions within a reasonable degree of medical certainty.

The record also contains a number of radiology reports from Drs. Kyle, Carlson, Long Simms, Samuels and Nune. None of the reports however address the cause of appellant's diagnosed conditions.

Appellant submitted several reports signed by physician's assistants, nurses and related nonphysician personnel. Physicians' assistants and nurses do not qualify as physicians under FECA and, therefore, their medical reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such medical reports are countersigned by a physician.<sup>14</sup> As none of the medical reports signed by nonphysicians were countersigned by a physician, they do not qualify as probative medical evidence supportive of appellant's claim for compensation.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a September 4, 2012 employment incident, she has not met her burden of proof to establish a claim.

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 met her burden of proof to establish that her back and neck conditions were causally related to a September 4, 2012 employment incident.

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<sup>14</sup> See 5 U.S.C. § 8101(2); *M.B.*, Docket No. 12-1695 (issued January 29, 2013) (regarding nurse practitioners); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physicians' assistants).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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