

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

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<b>R.R., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 12-578</b>
	)	<b>Issued: August 1, 2012</b>
<b>DEPARTMENT OF HEALTH &amp; HUMAN</b>	)	
<b>SERVICES, FOOD &amp; DRUG</b>	)	
<b>ADMINISTRATION, Puerto Rico, Employer</b>	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On January 23, 2012 appellant, through her attorney, filed a timely appeal from a September 8, 2011 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish a cervical condition as a result of factors of her federal employment.

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

<sup>2</sup> The Board notes that appellant submitted additional evidence following the September 8, 2011 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.

## **FACTUAL HISTORY**

On June 28, 2011 appellant, then a 51-year-old Food & Drug Administration (FDA) investigator, filed an occupational disease claim alleging muscle spasms, pain and inflammation in her neck, shoulders and arms as a result of her federal employment. She stated that the stress of hectic official foreign travel and work schedule and handling heavy luggage resulted in her current conditions. Appellant did not stop work.<sup>3</sup>

In an attached statement, appellant related that she first experienced muscle spasms during the third week of an official trip to Ireland and Denmark. On May 21, 2011 she traveled for 10 hours from Ireland to Denmark after working for a week. On the morning of May 23, 2011 appellant woke up with pain in her arm. The next day she experienced stiffness and pain in her neck and shoulders, which increased throughout the week, but she continued to work full days until May 27, 2011. Appellant then traveled back home, which totaled 18 hours, including layovers. During travel she handled her luggage while switching flights and going through customs, which included pushing a cart containing her luggage up a hill to take a train between terminals in New York. Appellant also lifted her carry-on luggage, which weighed approximately 20 pounds, to place in the overhead compartments in her flights. She stated that on June 3, 2011 her physician examined her and diagnosed spasms and inflammation of the trapezius. Appellant explained that she had never suffered spasms of the trapezius, but she had experienced lower back pain.

In a handwritten June 20, 2011 prescription note, Dr. Minette Colon Jimenez, who specializes in physical medicine and rehabilitation, treated appellant since June 3, 2011 and prescribed physical therapy. She diagnosed myofascial pain syndrome and muscle spasm presented secondary to carrying luggage and indicated that it was job related.

In a handwritten July 11, 2011 prescription note, Dr. Jimenez stated that appellant worked until May 23, 2011 after a long travel when she started to experience severe cervical pain, stiffness in her neck and severe shoulder pain. She prescribed oral medication and physical therapy for appellant's muscle spasm and cervical myofascial pain syndrome. On July 11, 2011 Dr. Jimenez reevaluated appellant and found partial impingement. She opined that appellant's muscle spasms were triggered by a job-related situation due to a combination of stress, long travel hours and handling luggage.

On July 27, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish her claim and requested additional evidence. It informed her that pain was not a valid diagnosis and requested a comprehensive medical report with a diagnosis, results of examinations and tests and a physician's opinion with medical reasons on the cause of her condition.

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<sup>3</sup> Appellant's supervisor related that appellant's injury occurred or worsened in May 2011 when she conducted an international inspection in Denmark as part of her official duties. Appellant informed her supervisor that she experienced muscle pains and spasms in her right shoulder and arm. She sought medical treatment when she returned to the United States and underwent physical therapy. Appellant's supervisor reported that her duties were scaled back and she had not conducted an inspection since then.

In an August 25, 2011 report, Dr. Joyce M. Castro, Board-certified in physical medicine and rehabilitation, stated that she examined appellant on June 3 and August 4, 2011. She noted appellant's complaints of severe pain at the neck and upper back region and stiffness and pain with rotation and flexion of the neck that started during a work-related trip to several European countries. Appellant related that she lifted and carried heavy luggage during the trip and experienced stress related to unplanned changes to the schedule and logistics of the trip. Examination of her upper back did not reveal any edema of extremities or atrophy of muscles. Dr. Castro observed mild swelling and severe tenderness to palpation to both upper trapezius muscles. Appellant had full strength and intact sensation in all extremities and full range of motion of the neck although it was painful. Dr. Castro noted that August 8, 2011 cervical x-rays revealed very minimal degenerative changes. She diagnosed cervicodorsal myofascial pain, cervical myositis and cervicgia. Dr. Castro opined that carrying heavy luggage and stress related to the changes and logistics of the trip could be the cause of the myofascial pain at the neck of appellant.

In a decision dated September 8, 2011, OWCP denied appellant's occupational disease claim finding insufficient medical evidence to establish that she sustained a cervical condition as a result of her work duties.

### **LEGAL PRECEDENT**

Under FECA, an employee on travel status, temporary-duty status or special mission for her employer is in the performance of duty and therefore under the protection of FECA 24 hours a day with respect to any injury that results from activities essential or incidental to her special duties. It remains the employee's burden of proof to establish injury incidental to the employment duties.<sup>4</sup>

In an occupational disease claim, appellant's burden requires submission of 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 employment factors identified by the employee.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</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 the

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<sup>4</sup> See *Ann P. Drennan*, 47 ECAB 750 (1996); *Janet Kidd (James Kidd)*, 47 ECAB 670 (1996); *William K. O'Connor*, 4 ECAB 21 (1950).

<sup>5</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

specified employment factors or incident.<sup>7</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>8</sup>

### ANALYSIS

Appellant alleged that she sustained muscle spasms and inflammation in her neck and shoulders while on travel status as a result of her duties as a FDA investigator. OWCP accepted that she underwent stress and handled heavy luggage during a work-related trip, but denied her claim finding insufficient medical evidence to establish that she sustained a diagnosed medical condition causally related to those duties. The Board finds that appellant has failed to provide sufficient medical evidence to establish that she sustained any medical condition due to factors of her employment.

In June 20 and July 11, 2011 handwritten prescription notes, Dr. Jimenez noted appellant's complaints of severe neck and shoulder pain on May 23, 2011 after a long travel. She diagnosed myofascial pain syndrome and muscle spasms presented secondary to carrying luggage. The Board finds that Dr. Jimenez' reports did not relate an accurate history of injury as appellant related that she traveled on May 21, 2011 and first felt arm pain when awaking on May 23, 2011 and then developed neck and shoulder pain on May 24, 2011. Dr. Jimenez opined that appellant's muscle spasms were triggered by a job-related situation of stress, long travel hours and handling luggage, but she offered no explanation why such spasms would present days after appellant's travel, first as arm pain and then on another day as neck and shoulder spasms. While Dr. Jimenez provided an opinion supporting causal relationship, the Board finds that she did not provide any medical rationale explaining how those employment duties caused or contributed to appellant's symptoms. Medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> Thus, these reports are insufficient to establish appellant's claim.

In an August 25, 2011 report, Dr. Castro related appellant's complaints of severe upper back and neck pain and stiffness that started during a work-related trip to Europe. She observed mild swelling and severe tenderness to palpation to both upper trapezius muscles and diagnosed cervical myositis and cervicalgia, based upon x-ray findings. Dr. Castro stated that carrying heavy luggage and stress related to the changes and logistics of the trip could be the cause of the myofascial pain at the neck of appellant. The Board notes that she did not opine that appellant's diagnosed conditions based upon her x-ray findings were causally related to her employment, but merely that her myofascial pain could be related. The Board has generally held that opinions

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<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>9</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

such as the condition is “probably” related, “most likely” related or “could be” related are speculative and diminish the probative value of the medical opinion.<sup>10</sup> Furthermore the Board has consistently held, that pain is a symptom, not a compensable medical diagnosis.<sup>11</sup> This report therefore also fails to establish causal relationship.

On appeal, appellant alleged that the medical evidence demonstrates that her alleged condition resulted from her duties as a FDA investigator. The Board has held, however, that the mere fact that a condition manifests itself during a period of employment does not raise an inference of a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>12</sup> Causal relationship is a medical question that must be established by reasoned medical opinion evidence.<sup>13</sup> Because appellant has not provided such rationalized medical opinion in this case, she has failed to meet her burden of proof.

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 she sustained an occupational disease causally related to factors of her employment.

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<sup>10</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>11</sup> *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>12</sup> *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *Joe T. Williams*, 44 ECAB 518,521 (1993).

<sup>13</sup> *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board