



August 12, 2011. He indicated that he injured his neck and back. In a letter dated August 18, 2011, OWCP requested additional factual and medical evidence in support of his claim.

In a treatment note dated August 12, 2011, Dr. Charles J. Peterson, Board-certified in emergency medicine, listed a history that appellant was involved in a motor vehicle accident when rear ended by another vehicle while stopped.<sup>2</sup> The note was also signed by a nurse practitioner. Appellant reported pain to his left shoulder, right shoulder and neck. Dr. Peterson diagnosed cervicalgia and myalgia. Appellant also submitted a note from Elizabeth W. McMahon, a registered nurse, dated August 12, 2011.

Appellant described the motor vehicle accident and stated that he felt his spinal cord cracking, stiffness over the back of his neck and pain in his low back. The employing establishment provided a safety investigation form describing the motor vehicle accident.

By decision dated September 29, 2011, OWCP denied appellant's claim on the grounds that he did not submit any medical evidence containing a medical diagnosis in connection with the injury. It stated that the medical evidence was from a nurse or nurse practitioner and was not cosigned by a physician. OWCP further noted that appellant had not established a causal relationship between the accepted employment incident and any medical condition.

### **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

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<sup>2</sup> Appellant denied hitting his head or loss of consciousness, no vision changes or nausea. No focal neurologic deficit was found, no point tenderness of the cervical or thoracic spine and x-rays were not indicated.

<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).

submit sufficient evidence to establish that he or 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 of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>9</sup> Medical rationale includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.<sup>10</sup>

### ANALYSIS

Appellant was involved in a motor vehicle accident in the performance of duty on August 12, 2011 as substantiated by the employing establishment. Appellant has alleged that he sustained neck, shoulder and back injuries as a result of this incident. In support of his claim, he submitted a hospital treatment note dated August 12, 2011 signed by Dr. Peterson and cosigned by a nurse practitioner. As the report was signed by Dr. Peterson, the Board finds that it is medical evidence from a physician within the definition of FECA.<sup>11</sup> Dr. Peterson described appellant's motor vehicle accident and diagnosed cervicalgia, myalgia, neck and muscle pain. The Board has held that "pain" is generally a symptom, not a firm medical diagnosis.<sup>12</sup> There was no opinion by Dr. Peterson on the issue of causal relation. This evidence is not sufficient to establish a neck or shoulder condition as a result of appellant's August 12, 2011 motor vehicle accident.

The August 12, 2011 note signed by Nurse McMahon is of no probative value as a nurse is not a "physician" within the meaning of FECA.<sup>13</sup>

Appellant has not submitted sufficient medical evidence providing a diagnosed condition as a result of his traumatic incident on August 12, 2011 and offering an opinion that this

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

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

<sup>9</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>10</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>11</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>12</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>13</sup> *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

condition is causally related to the motor vehicle accident. For this reason he has failed to meet his burden of proof and the Board finds that OWCP properly denied his 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 submitted the necessary medical evidence to establish a compensable injury resulting from his August 12, 2011 employment-related motor vehicle accident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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