



On appeal, counsel contends that the evidence of record, including an August 9, 2013 report from Dr. Patrick Collalto, a Board-certified orthopedic surgeon, is sufficient to establish causal relationship.

### **FACTUAL HISTORY**

On August 4, 2011 appellant, then a 55-year-old deputy marshal, filed a traumatic injury claim (Form CA-1) alleging that he injured his neck and left shoulder as a result of doing dip exercises on July 21, 2011 as part of a required fitness program. He stated that it was an overuse injury from weight lifting and his doctor thought it was a muscle impingement of the nerve. Appellant did not stop work.

In an August 11, 2011 report, Dr. Collalto noted that appellant had pain and numbness in his left shoulder and arm that radiated down to his left index finger. Upon examination, he found no tenderness, swelling, deformities, instability, subluxations, weakness or atrophy. Left upper extremity range of motion in all planes was full and painless. Dr. Collalto diagnosed shoulder pain, cervical radiculopathy and probable herniated nucleus pulposus (HNP).

An August 17, 2011 magnetic resonance imaging (MRI) scan of the cervical spine revealed spondylotic changes worst at C5-6 and C6-7 where disc protrusions flattened the cord at these levels causing severe degrees of central canal stenosis.

In an August 23, 2011 report, Dr. Collalto reiterated his diagnoses and findings.

By letter dated September 21, 2011, OWCP advised appellant that when it received his claim, it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on these criteria and the fact that the employing establishment did not challenge the case, payment of a limited amount of medical expenses was administratively approved. OWCP would reopen the claim for consideration because the medical bills had exceeded \$1,500.00. It requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a statement reiterating the facts of his claim. In a September 27, 2011 report, Dr. Collalto advised that appellant was injured on July 21, 2011 and believed that his pain and current diagnosis were causally related to the traumatic injury caused by weight training during a required fitness program. On September 27, 2011 Dr. Collalto reiterated the diagnoses of cervical radiculopathy and shoulder pain and restricted appellant from overhead lifting. Appellant also submitted physical therapy notes dated September 12 and 15, 2011.

An August 17, 2011 MRI scan of the left shoulder showed an abnormal signal at the distal supraspinatus at its insertion, fluid/edema in the subacromial/subdeltoid bursa and degenerative changes.

By decision dated October 24, 2011, OWCP accepted that the July 21, 2011 incident occurred in the performance of duty. It denied the claim on the basis that appellant failed to submit sufficient medical evidence to establish fact of injury.

On October 24, 2011 appellant, through his attorney, requested reconsideration. He submitted physical therapy notes dated September 19 and October 20, 2011.

In a November 14, 2011 report, Dr. Collalto advised that appellant had been his patient since August 11, 2011 for complaints of shoulder and neck pain. He diagnosed cervical radiculopathy, probable HNP and rotator cuff tear. On January 19, 2012 Dr. Collalto noted that appellant had been under his care for left shoulder pain and that his left shoulder and arm pain was consistent with weight training.

By decision dated April 27, 2012, OWCP denied modification of its October 24, 2011 decision.

On October 12, 2012 appellant, through his attorney, requested reconsideration. He submitted an October 11, 2012 report from Dr. Collalto, which indicated that a recent examination showed some tenderness referable to the shoulder and neck with mild limitations to range of motion. Dr. Collalto opined that appellant's neck and shoulder conditions were causally related to the fitness training at work. He stated that MRI scans showed evidence of tendinitis, bursitis and radiculopathy with underlying cervical disc complex at C5-6.

By decision dated November 29, 2012, OWCP denied modification of its April 27, 2012 decision.

On August 5, 2013 appellant, through his attorney, requested reconsideration and submitted a July 23, 2013 report from Dr. Collalto who reiterated the diagnoses and noted that appellant was doing dips training in July 2011. On August 9, 2013 Dr. Collalto opined that appellant's dipping or dip exercises during his fitness training at work caused him to suddenly injure his neck and left shoulder, specifically his left rotator cuff. The injury also exacerbated an underlying degenerative condition as appellant was not experiencing any symptoms prior to the dip exercises.

By decision dated October 9, 2013, OWCP denied modification of the November 29, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> OWCP 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).

<sup>5</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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>6</sup>

Causal relationship is a medical issue 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 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>7</sup>

### ANALYSIS

OWCP accepted that the employment incident of July 21, 2011 occurred at the time, place and in the manner alleged. The primary issue is whether appellant sustained an injury in the performance of duty on July 21, 2011. Dr. Collalto diagnosed cervical radiculopathy and a rotator cuff tear. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between his cervical left shoulder conditions and the employment incident.

Dr. Collalto diagnosed cervical radiculopathy, a probable herniated disc and left shoulder rotator cuff tear. He opined that appellant’s neck and left shoulder conditions were causally related to the traumatic injury caused by weight training during a required fitness program at work. Dr. Collalto’s original treatment records did not address causal relationship. On October 11, 2012 he stated that a recent examination showed some tenderness referable to the shoulder and neck with mild limitations to range of motion. Dr. Collalto stated that MRI scans showed evidence of tendinitis, bursitis and radiculopathy with underlying cervical disc complex at C5-6. On July 23, 2013 he indicated that appellant was doing dips training in July 2011. On August 9, 2013 Dr. Collalto opined that appellant’s dipping or dip exercises during his fitness training at work caused him to suddenly injure his neck and left shoulder, specifically his left rotator cuff. He further opined that the injury exacerbated an underlying degenerative condition as appellant was not experiencing any symptoms prior to the dip exercises. The Board finds that Dr. Collalto failed to provide a fully-rationalized opinion addressing how appellant’s neck and left shoulder conditions were caused or aggravated by weight training and dipping exercises at work on July 21, 2011. He noted generally that appellant’s condition occurred while he was at work, but such generalized statements do not establish causal relationship because they repeat appellant’s allegations. They are unsupported by adequate medical rationale explaining how his physical activity at work caused or aggravated the diagnosed conditions.<sup>8</sup> Lacking thorough

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<sup>6</sup> *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

<sup>8</sup> See K.W., Docket No. 10-98 (issued September 10, 2010).

medical rationale on the issue of causal relationship, the Board finds Dr. Collalto's reports are of limited probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on July 21, 2011.

The physical therapy notes dated September 12 through October 20, 2011 do not constitute medical evidence as they were not prepared by a physician.<sup>9</sup> As such, the Board finds that appellant did not meet his burden of proof with these submissions.

The submitted MRI scans dated August 17, 2011 are diagnostic in nature and therefore do not address causal relationship. As such, the Board finds that they are insufficient to establish appellant's claim.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a July 21, 2011 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal, counsel contends that the evidence of record is sufficient to establish causal relationship. As noted, the Board finds that Dr. Collalto's opinion on causal relationship is of diminished probative value.

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 his burden of proof to establish that his neck and left shoulder conditions are causally related to a July 21, 2011 employment incident, as alleged.

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<sup>9</sup> Physical therapists are not physicians under FECA. *See* 5 U.S.C. § 8101(2).

**ORDER**

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

Issued: June 5, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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