



pain radiating into his left shoulder and upper extremity, when he attempted to lift a case of paper. He stopped work on July 30, 2013.

Dr. Neal Smith, an attending Board-certified orthopedic surgeon, provided July 30 and August 5, 2013 work absence slips diagnosing left cervical radiculitis with a possible cervical disc herniation. He prescribed medication.<sup>2</sup> Dr. Smith held appellant off work from July 30 to September 2, 2013.

In an August 22, 2013 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including a description of the work factors believed to have caused the claimed injury, and a narrative report from his attending physician explaining how and why the work factors would cause the diagnosed injury.

In response, appellant provided his September 3, 2013 statement explaining that on July 29, 2013 the case of paper he was lifting fell forward, causing a “pull and pain” in his neck. The pain worsened overnight, radiating into the left shoulder and arm.

Appellant also provided new treatment notes.<sup>3</sup> In a July 30, 2013 report, Dr. Smith related appellant’s account of left-sided neck pain after lifting a case of paper at work. On examination he found limited, painful cervical motion. Dr. Smith obtained x-rays demonstrating a normal cervical alignment. He diagnosed acute left-sided cervical radiculitis with a possible herniated disc. On August 5, 2013 Dr. Smith diagnosed persistent left-sided cervical radiculitis. He prescribed physical therapy.<sup>4</sup> As appellant’s symptoms improved as of September 6, 2013, Dr. Smith released him to light duty. He diagnosed persistent left-sided cervical radiculitis, a small central disc herniation at C4-5, and a left-sided disc herniation at C5-6.<sup>5</sup>

By decision dated October 4, 2013, OWCP denied the claim, finding that appellant did not establish causal relationship. It accepted that the July 29, 2013 lifting incident occurred at the time, place, and in the manner alleged. OWCP found, however, that appellant did not provide medical evidence supporting that the incident caused the diagnosed cervical radiculitis or herniated cervical discs.

Appellant disagreed and, in a November 3, 2013 letter, requested a telephonic hearing before an OWCP hearing representative. He provided a September 10, 2013 light-duty job offer from the employing establishment, which appellant accepted on September 12, 2013. Appellant also submitted copies of Dr. Smith’s reports previously of record.

By decision dated April 15, 2014, an OWCP hearing representative set aside the October 4, 2013 decision, and remanded the case to obtain a supplemental report from Dr. Smith

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<sup>2</sup> OWCP assigned a medical management nurse to appellant’s case on August 20, 2013. In an August 22, 2013 closure report, the nurse reported that Dr. Smith referred appellant to a pain management specialist for an epidural injection.

<sup>3</sup> Appellant also submitted an August 27, 2013 treatment note lacking a legible signature.

<sup>4</sup> Appellant submitted physical therapy notes dated from August 8 to 29, 2013.

<sup>5</sup> An August 12, 2013 magnetic resonance imaging scan showed a mild central disc protrusion at C4-5 and a left-sided C5-6 paracentral and foraminal disc protrusion mildly compressing the spinal cord and left lateral recess.

addressing any causal relationship between the accepted July 29, 2013 lifting incident and the claimed cervical spine injury.

In an April 28, 2014 letter, OWCP requested that Dr. Smith provide a “supplemental report with a detailed well-rationalized opinion regarding any causal relationship” between the July 29, 2013 lifting incident and the claimed injury. In response, Dr. Smith submitted a May 13, 2014 report diagnosing a herniated intervertebral disc. He opined that the July 29, 2013 lifting incident was “the competent cause of the injury. [Appellant’s] complaints [were] consistent with the injury. [His] history of the injury is consistent with [the doctor’s] objective findings.”

By decision dated May 27, 2014, OWCP denied the claim as causal relationship was not established. It found that the medical evidence did not include “medical rationale which explains how lifting a case of paper caused or aggravated the diagnosed condition of herniated cervical intervertebral disc.”

Appellant disagreed and, in a June 3, 2014 letter, requested a review of the written record. He also submitted a duplicate copy of Dr. Smith’s May 13, 2014 report.

By decision dated January 5, 2015, an OWCP hearing representative affirmed the May 27, 2014 decision, finding that causal relationship was not established. He found that Dr. Smith failed to explain “how and why lifting a case of paper caused or contributed to the diagnosed cervical condition.”

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>6</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>7</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>8</sup> An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>9</sup>

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<sup>6</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

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>10</sup>

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which 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 factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>11</sup>

### ANALYSIS

Appellant claimed that he sustained a cervical spine injury with left upper extremity symptoms when he tried to lift a case of paper on July 29, 2013. OWCP accepted that the July 29, 2013 incident occurred as alleged, but denied the claim as the medical evidence did not establish a causal relationship between those factors and the claimed neck injury.

In support of his claim, appellant submitted reports from Dr. Smith, an attending Board-certified orthopedic surgeon. In reports from July 30 to August 5, 2013, Dr. Smith diagnosed left-sided cervical radiculitis. On September 6, 2013 he also diagnosed a left-sided disc herniation at C5-6. Dr. Smith provided a May 13, 2014 supplemental report noting that the July 29, 2013 incident caused the claimed injury, that appellant's presentation was consistent with the injury, and that the history of injury was consistent with clinical findings. While Dr. Smith consistently opined that the accepted July 29, 2013 employment incident caused cervical radiculitis or a herniated cervical disc, he did not provide his medical reasoning supporting his opinion. Dr. Smith did not set forth the medical mechanics whereby attempting to lift a case of paper would cause a herniated cervical disc or cervical radiculitis. Because he did not provide such rationale, Dr. Smith's opinion is insufficient to establish causal relationship in this case.<sup>12</sup>

OWCP advised appellant by August 22, 2013 letter of the necessity of providing a narrative report from his attending physician with medical rationale supporting causal relationship. It also requested a supplemental report from Dr. Smith addressing causal relationship. As appellant did not provide such evidence, OWCP's January 5, 2015 decision denying the claim is proper under the law and facts of the case.

On appeal appellant contends that he had supplied the requested documentation to the best of his ability. He asserts that Dr. Smith's May 13, 2014 report contained sufficient medical rationale to establish causal relationship. Appellant notes that Dr. Smith's staff advised him that a more detailed report would cost more than \$1,000.00. He claimed, and OWCP accepted, that

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<sup>10</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>11</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>12</sup> *Supra* note 10.

he attempted to lift a case of paper at work on July 29, 2013. However, it remains appellant's burden to provide medical evidence establishing that this incident caused the claimed cervical spine injury. In his multiple reports, Dr. Smith generally supported causal relationship, but did not set forth his medical reasoning as to why lifting a case of paper would cause the diagnosed herniated intervertebral disc. Therefore, appellant did not provide sufficient medical evidence to establish his claim.<sup>13</sup>

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 did not meet his burden of proof to establish that he sustained a cervical spine injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 5, 2015 is affirmed.

Issued: October 9, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> Appellant also submitted an August 27, 2013 treatment note lacking a legible signature. As this form lacks an identifiable physician's signature, it does not constitute medical evidence. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).