



October 29, 2012 as a result of reaching up to grab a form from an upper shelf in the performance of duty.<sup>2</sup> She stated that she heard her neck crack, and then later that day she turned her head and felt her neck lock. Appellant did not stop work.

An OWCP Form CA-16, authorization for examination, was issued by the employing establishment on November 28, 2012. Appellant was authorized to visit Chicago Health and Physical Therapy in Chicago, Illinois. She submitted an undated attending physician's report from Dr. Richard Dietzen, a chiropractor, who asserted that appellant developed severe pain while reaching up to a shelf and hyperextended her neck. Dr. Dietzen diagnosed cervical brachial syndrome and carpal tunnel syndrome and opined that appellant's conditions were commonly associated with office or computer keyboard work.

In a November 27, 2012 report, Dr. Dietzen indicated that appellant continued to have left-side neck and shoulder pain and noted objective joint restriction and tenderness throughout the cervical spine, most notable on the left. Appellant also submitted reports dated November 19, 2012 through January 3, 2013 from a physical therapist.

In a February 13, 2013 letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted an x-ray of the cervical spine dated November 20, 2012 which demonstrated mild malalignment of the cervical vertebrae, more pronounced at C4 over C5 and severe degenerative disc disease, and borderline foraminal stenosis at C4-6. She also submitted reports dated February 26 and March 12, 2013 from Dr. Thomas Albert, an internist, who found tender palpation of the cervical spine at C4-7, right greater than left, and diagnosed cervicgia.

In reports dated January 8 through March 21, 2013, Dr. Dietzen reported that appellant continued to suffer from neck pain. On February 12, 2013 he diagnosed significant degenerative joint disease and found joint restriction and tenderness of the lower cervical spine with trigger points in the mid-thoracic region.

By decision dated April 1, 2013, OWCP denied appellant's claim because she failed to establish a medical condition causally related to the accepted work factors.

On April 25, 2013 appellant's counsel requested an oral hearing before an OWCP hearing representative. Appellant submitted reports dated April 2 and May 11, 2013 from Dr. Albert who reported that appellant continued to suffer neck pain and reiterated his diagnosis. On August 7, 2013 Dr. Albert diagnosed cervical radiculopathy, cervical myofascitis, and cervical spondylosis. He noted that appellant was reaching at work and felt a crack in her neck. Dr. Albert found multiple trigger points and tenderness throughout the cervical spine. He opined that appellant's conditions were causally related to the employment incident.

In reports dated April 13, June 5 and 20, 2013, Dr. Dietzen noted that appellant continued to have neck and low back pain. In an undated report, he found that appellant was nearing

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<sup>2</sup> Appellant's counsel subsequently requested that the claim be adjudicated as a traumatic injury claim.

maximum medical improvement and opined that her injury would resolve conservatively without surgical intervention.

In reports dated May 31 through October 8, 2013, Dr. Sajjad Murtaza, a Board-certified physiatrist, diagnosed cervical radiculopathy, bilateral carpal tunnel syndrome, and facet arthropathy, right greater than left. He noted that appellant had an accident at work on October 29, 2012. Appellant was carrying some work above her head when she felt a sudden crack in her cervical spine and pain that radiated down from her cervical spine into her right trapezius and shoulder area. Physical examination revealed tenderness to palpation of the cervical spine, a positive Spurling's test on the right side, and tenderness to palpation throughout the superior spinals on the right. Dr. Murtaza also found right shoulder abduction weakness compared to the left side and signs of bilateral carpal tunnel syndrome with a positive Tinel's and Phalen's sign upon examination. On June 14, 2013 he released appellant to light-duty work effective June 17, 2013 with the following restrictions: no overhead activity; no lifting over 10 pounds.<sup>3</sup> Appellant also submitted additional physical therapy reports.

A telephonic oral hearing was held on September 4, 2013. During the hearing, appellant testified that she sustained a traumatic injury at work on October 29, 2012 when she reached up to grab a form and heard her neck crack. Counsel argued that the medical evidence of record was sufficient to establish a causal relationship between appellant's conditions and the October 29, 2012 employment incident.

By decision dated November 21, 2013, an OWCP hearing representative affirmed as modified the April 1, 2013 denial of the claim, finding that appellant had not submitted sufficient medical evidence to establish causal relationship between the October 29, 2012 work incident and her diagnosed conditions.

On April 7, 2014 counsel requested reconsideration. Appellant submitted electromyography (EMG) and nerve conduction velocity (NCV) studies dated November 5, 2013 which were positive for cervical spine radiculopathy at C5-6. In a report dated November 19, 2013, an unidentified healthcare provider diagnosed cervicgia and cervical radiculopathy at C5-6 based upon EMG results.

On March 10, 2014 Dr. Albert reiterated the factual history of appellant's claim and opined that reaching up from a seated position contributed to appellant's medical diagnosis of cervical radiculopathy, which was caused by a sudden extension/strain that closed on the neural foramen resulting in nerve injury. He further opined that repetitive neck movements of looking down on a claim file and then up into a computer on a constant basis over eight hours per day for over seven and a half years aggravated and contributed to the acceleration of appellant's degenerative condition. Dr. Albert concluded that these factors were the direct and proximate cause of appellant's cervical radiculopathy at C5-6 which was confirmed by EMG and NCV studies.

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<sup>3</sup> A June 10, 2013 magnetic resonance imaging (MRI) scan of the cervical spine revealed moderate spondylotic change and disc desiccation at C4-6, mild reversal of the normal cervical spine lordosis with trace retrolisthesis of C4 over C5, abnormal appearance of the right facet joint at C3-4, and multilevel mild-to-moderate foraminal narrowing in the mid-cervical spine.

By decision dated September 17, 2015, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish 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>5</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>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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that 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 her condition relates to the employment incident.<sup>7</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>8</sup>

### **ANALYSIS**

OWCP has accepted that the employment incident of October 29, 2012 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s cervical or hand conditions resulted from the October 29, 2012 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between the claimed conditions and the October 29, 2012 employment incident.

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<sup>4</sup> *Id.*

<sup>5</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>6</sup> *See T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

In his reports, Dr. Albert diagnosed cervicalgia, cervical radiculopathy, cervical myofascitis, and cervical spondylosis. He noted that appellant was reaching at work and felt a crack in her neck and concluded that her conditions were causally related to the employment incident. On March 10, 2014 Dr. Albert opined that reaching up from a seated position contributed to appellant's medical diagnosis of cervical radiculopathy, which was caused by a sudden extension/strain that closed on the neural foramen resulting in nerve injury. He further opined that repetitive neck movements of looking down on a claim file and then up into a computer on a constant basis over eight hours per day for over seven and a half years aggravated and contributed to the acceleration of appellant's degenerative condition. Dr. Albert concluded that these factors were the direct and proximate cause of appellant's cervical radiculopathy at C5-6 which was confirmed by EMG and NCV studies. However, he did not provide sufficient medical rationale explaining the mechanism of how appellant's cervical conditions were caused or aggravated by repetitive neck movements or reaching at work on October 29, 2012. Dr. Albert's opinion was based, in part, on temporal correlation. The Board has held that 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>9</sup> Dr. Albert did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the October 29, 2012 work incident caused or contributed to the diagnosed conditions. Medical opinion evidence submitted to support the claim should offer a sound medical explanation by the physician of how the specific employment duties physiologically caused or aggravated her claimed conditions.<sup>10</sup> Thus, the Board finds that the reports of Dr. Albert are insufficient to establish that appellant sustained an employment-related injury.

Dr. Murtaza diagnosed cervical radiculopathy, bilateral carpal tunnel syndrome, and facet arthropathy, right greater than left. He asserted that appellant had an accident at work on October 29, 2012 while she was carrying some work above her head and above her shoulder when she felt a sudden crack in her cervical spine and pain that radiated down from her cervical spine into her right trapezius and shoulder area. The Board finds that Dr. Murtaza failed to provide a rationalized opinion explaining how the October 29, 2012 work incident, such as carrying work above her head and shoulder, caused or aggravated her claimed conditions. Dr. Murtaza noted that appellant's conditions occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.<sup>11</sup> He failed to provide an opinion adequately addressing how the October 29, 2012 employment incident contributed to appellant's conditions. Thus, the Board finds that the reports from Dr. Murtaza are insufficient to establish that appellant sustained an employment-related injury.

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<sup>9</sup> *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>10</sup> *See D.B.*, Docket No. 15-1506 (issued October 26, 2015).

<sup>11</sup> *See K.W.*, Docket No. 10-98 (issued September 10, 2010).

The reports from appellant's chiropractor, Dr. Dietzen, are of no probative medical value as he failed to diagnose spinal subluxation or document whether x-rays were taken.<sup>12</sup> As such, the Board finds that appellant did not meet her burden of proof with the submission of this evidence. Appellant also submitted a November 19, 2013 report from a healthcare provider whose identity cannot be discerned from the record. Because it cannot be determined whether this record is from a physician as defined in 5 U.S.C. § 8101(2), it does not constitute competent medical evidence.<sup>13</sup> Likewise, physical therapy reports submitted by appellant do not constitute competent medical evidence because physical therapists are not considered "physicians" as defined under FECA.<sup>14</sup> This evidence is therefore of no probative medical value.

The other medical evidence of record, including diagnostic test reports, is of limited probative value and insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to the October 29, 2012 work incident.<sup>15</sup>

On appeal, counsel contends that OWCP's decision is contrary to fact and law. As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the October 29, 2012 employment incident, the Board finds that she failed to meet her burden of proof to establish a claim for compensation.

The Board also notes that the employing establishment issued appellant a Form CA-16 on November 28, 2012 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.<sup>16</sup> Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.

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<sup>12</sup> Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the secretary. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>13</sup> *R.M.*, 59 ECAB 690, 693 (2008). *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence).

<sup>14</sup> 5 U.S.C. § 8101(2). *See Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

<sup>15</sup> *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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>16</sup> *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. § 10.300.

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 cervical conditions are causally related to an October 29, 2012 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 17, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2016  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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