

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

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**K.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Prairie Home, MO, Employer**

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**Docket No. 16-1223  
Issued: November 21, 2016**

*Appearances:*  
*Daniel M. Goodkin, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On May 20, 2016 appellant, through counsel, filed a timely appeal from a March 8, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish total disability for the period September 7, 2013 to August 18, 2014, causally related to her accepted employment injury.

On appeal, counsel contends that the medical opinion of OWCP's district medical adviser (DMA) is not entitled to the weight of the medical evidence and that the DMA failed to consider the entirety of appellant's employment and was not based on an accurate factual history as he ignored her accepted employment injury. Alternatively, he maintains that there is a conflict in medical opinion between the DMA and her attending physician regarding authorization of the surgery.

## **FACTUAL HISTORY**

On April 1, 2014 appellant, then a 62-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she had right upper extremity cervical radiculopathy that worsened as a result of repetitive lifting, reaching, and twisting at work. She first became aware of her condition and its relation to her employment on July 25, 2008. Appellant stopped work on June 21, 2014. In an accompanying letter dated April 8, 2015, she described her repetitive work duties which involved lifting, casing mail, pulling down cases, loading her vehicle, and grasping one to three days a week as a part-time employee and later five to six days a week as a full-time employee.

In a December 17, 2013 letter, Dr. Jeffrey W. Parker, an attending Board-certified orthopedic surgeon, diagnosed cervical spondylosis due to a disc protrusion at C6-7 on the left. He noted appellant's mild left upper extremity radicular complaints. Dr. Parker also noted that a cervical magnetic resonance imaging scan performed prior to her successful cervical fusion on August 15, 2013 revealed significant degeneration at C6-7 with severe bilateral neuroforaminal stenosis at that level. He opined that appellant's rural carrier work caused her significant neck and right arm complaints and caused the diagnosed cervical condition. Dr. Parker related that, while no one injury accounted for her disc degeneration, it certainly exacerbated her preexisting cervical stenosis. He concluded that this radiculopathy prompted appellant's August 15, 2013 surgery.

On July 15, 2014 OWCP accepted appellant's claim for aggravation of spinal stenosis in the cervical region. It noted that her case would be reviewed by its DMA to determine whether her surgery should be authorized.

On August 10, 2014 an DMA reviewed the medical record and advised that OWCP could not accept appellant's claim for cervical spinal stenosis or authorize her August 15, 2013 surgery. He reasoned that her medical records indicated that she had left arm symptoms when she was examined on July 24, 2008 while hospital records dated August 15, 2013 revealed that she had right arm radicular symptoms. The DMA noted that radicular symptoms changing sidedness implied an intervening causation event that had occurred since appellant's July 24, 2008 evaluation. He concluded that it was not medically probable that her so-called right

radicular symptoms leading to her August 15, 2013 neck surgery had anything to do with the fleeting medical interactions that occurred in July 2008.

On August 18, 2014 appellant filed claims (Forms CA-7) for leave without pay taken from September 7, 2013 to August 18, 2014. On the form, the employing establishment noted that she had retired effective April 23, 2014.

By letter dated August 29, 2014, OWCP advised appellant that medical information was required before her wage-loss disability claim could be processed. It requested a medical opinion from her physician to include a history of injury and a thorough explanation with objective findings as to how her condition had worsened such that she was no longer able to perform the duties of her position when she stopped work on September 7, 2013. Appellant was afforded 30 days to submit the requested medical information.

In an October 6, 2014 letter, Dr. Parker noted that appellant had sustained a work-related cervical spine injury for which she underwent a cervical fusion on August 15, 2013. He noted that, unfortunately, she had continued pain in her cervical region. Radiographs revealed pseudoarthrosis at the fused level. Dr. Parker noted that while appellant's pain was not severe enough to consider refusion, she could not resume her previous job or any gainful employment. He advised that any work that involved pushing, pulling, or lifting would cause pain. Dr. Parker noted that even light office work would cause pain.

In a January 26, 2015 decision, OWCP denied appellant's claim for wage-loss compensation for the period September 7, 2013 to August 18, 2014. It found that Dr. Parker's October 6, 2014 report lacked objective findings and rationale to establish that she was totally disabled during the claimed period due to her accepted employment injury. OWCP denied authorization for appellant's August 15, 2013 cervical fusion based on the medical opinion of its DMA.

By letter dated and received on January 13, 2016, appellant, through counsel, requested reconsideration. Counsel contended that her cervical surgery rendered her disabled from her rural carrier position. He asserted that the DMA's opinion was not based on a complete and accurate factual or medical history as he misunderstood that appellant's accepted cervical condition was caused by an injury suffered on July 25, 2008 and not by the work duties she performed until she stopped work in 2012. Counsel also asserted that, since the DMA attempted to establish that she had not sustained a work-related injury, he did not address the issue of whether her cervical surgery was necessary. He maintained that there was a conflict in medical opinion between the DMA and Dr. Parker regarding this matter.

Appellant submitted various reports, diagnostic studies, treatment notes, prescriptions, and progress notes dated May 12, 1980 to August 16, 2013 from her physicians, a nurse, and nurse practitioners. The reports provided examination findings and addressed her kidney, heart, bladder, breast, cervical, upper extremity, gastrointestinal, hernia, back, right elbow, pelvis, cervix, colon, left hand, emotional, pulmonary, thyroid, uterine, varicose vein, and bone conditions.

Appellant also submitted various diagnostic studies, consultation notes, reports, laboratory test results, progress notes, prescriptions and medication lists dated October 14, 2013 to December 28, 2015 from her physicians. The reports provided her history of injury and examination findings and addressed her back, varicose veins, bilateral feet, heart, emotional, urinary, bilateral leg, bone, breast, pulmonary, left arm, neck, right wrist, colon, and sinus conditions.

In reports dated September 6 to October 14, 2013, Dr. Parker addressed appellant's cervical condition, resultant surgery, and work capacity. In an August 15, 2013 history and physical report, he noted her history and provided findings. Dr. Parker reported an impression of severe cervical spondylosis at C6-7 with severe right upper extremity radicular complaints, and bilateral foraminal stenosis at C6-7. He noted that appellant had failed nonoperative care and an epidural, and had participated in therapy, but was quite incapacitated with pain. In an August 15, 2013 operative report, Dr. Parker indicated that she had undergone a C6-7 anterior cervical discectomy with bilateral foraminotomy, C6-7 anterior cervical arthrodesis, right anterior iliac crest bone marrow aspiration, and anterior cervical instrumentation at C6-7 to treat her severe cervical spondylosis at C6-7 with bilateral neural foraminal stenosis. In reports dated August 16, September 6, and October 14, 2013, he noted that appellant was not having issues following her August 15, 2013 cervical surgery with the exception of aches and pain. Dr. Parker reported an essentially normal physical and neurological examination of her neck with the exception of mild limitation of motion. During his October 2013 examination, he advised that appellant could gradually increase her activities as pain allowed and that she could not return to work until her next evaluation in two months. On December 18, 2013 Dr. Parker examined her and provided an impression of possible signs of early pseudoarthrosis at C6-7, which he believed was probably due to nicotine usage.

By decision dated March 8, 2016, OWCP denied modification of the January 26, 2015 decision. It found that the medical evidence submitted was insufficient to establish that appellant's disability from September 7, 2013 to August 18, 2014 was causally related to her accepted employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA bears the burden of proof to establish the essential elements of his or her claim by the weight of the evidence. For each period of disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury.<sup>3</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of reliable, probative, and substantial medical opinion evidence.<sup>4</sup> Findings on examination and a physician's opinion, supported by medical rationale, are needed to show how the injury caused the employee's disability for his or her particular work.<sup>5</sup> For each period of

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *William A. Archer*, 55 ECAB 674 (2004).

<sup>5</sup> *Dean E. Pierce*, 40 ECAB 1249 (1989).

disability claimed, the employee must establish that he or she was disabled for work as a result of the accepted employment injury.

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.<sup>6</sup>

When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist to resolve the conflict of medical evidence.<sup>7</sup>

### ANALYSIS

OWCP accepted appellant's claim for an aggravation of spinal stenosis in the cervical region. It denied her claim for wage-loss compensation for the period September 7, 2013 to August 18, 2014. Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed disability for that period and the accepted conditions.<sup>8</sup> The Board finds that she has failed to submit sufficient medical evidence to establish employment-related disability for the period claimed due to her accepted injury.<sup>9</sup>

Appellant submitted reports from Dr. Parker regarding treatment of her accepted cervical condition following surgery and her work capacity. In an October 14, 2013 report, Dr. Parker found that, while she could gradually increase her activities as pain allowed, she could not return to work until her next evaluation in two months. Although he opined that appellant was totally disabled from work, his opinion is conclusory in nature, and fails to explain in detail how the accepted medical condition was responsible for her disability.<sup>10</sup> Dr. Parker's December 18, 2013 report provided an impression of possible signs of early pseudoarthrosis at C6-7, which he believed was probably due to nicotine usage. He did not attribute appellant's cervical condition to the accepted condition. Dr. Parker's remaining reports addressed her cervical conditions, August 15, 2013 cervical surgery, and restrictions, but failed to offer a medical opinion addressing whether the diagnosed conditions and any resultant total disability during the claimed period were causally related to the accepted employment injury. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup> Although the record indicates that appellant had disability due to her August 15, 2013 cervical surgery, the Board notes that OWCP did not authorize or accept

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<sup>6</sup> *Amelia S. Jefferson, supra* note 4.

<sup>7</sup> *William C. Bush*, 40 ECAB 1064, 1075 (1989).

<sup>8</sup> *Amelia S. Jefferson, supra* note 4.

<sup>9</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>10</sup> *See J.J.*, Docket No. 15-1329 (issued December 18, 2015).

<sup>11</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

the surgery as causally related to appellant's employment<sup>12</sup> and Dr. Parker has not provided a reasoned medical explanation sufficient to show that the surgery was necessitated by the accepted condition.<sup>13</sup>

The various diagnostic studies, consultation notes, reports, laboratory test results, progress notes, prescriptions, and medication lists dated October 14, 2013 to December 28, 2015 are of limited probative value as they do not provide a medical opinion addressing whether appellant's diagnosed medical conditions and any resultant total disability were causally related to the accepted work injury.<sup>14</sup>

The remainder of the medical evidence, consisting of diagnostic studies, treatment notes, prescriptions, and progress notes from May 12, 1980 to August 16, 2013, is of limited probative value as it predates the claimed period of total disability and does not relate any condition or disability to the established employment injury.

For these reasons, the medical evidence of record does not establish appellant's claim for total disability from September 7, 2013 to August 18, 2014.

On appeal, counsel contends that the medical opinion of OWCP's DMA that appellant's August 15, 2015 cervical surgery and resultant disability were not causally related to her federal employment should not be entitled to the weight of the medical evidence. He asserts that the DMA failed to consider the entirety of her employment and was not based on an accurate factual history. Counsel contends that the DMA ignored appellant's accepted employment condition. Alternatively, he maintains that there is a conflict in medical opinion between the DMA and appellant's attending physician regarding authorization of the surgery. As noted above, appellant has failed to submit rationalized medical evidence sufficient to support her allegation that her cervical surgery and resultant total disability from September 7, 2013 to August 18, 2014 were due to her accepted employment condition, and thus failed to meet her burden of proof and failed to create a conflict in medical evidence.<sup>15</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.

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<sup>12</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

<sup>13</sup> *Amelia S. Jefferson*, *supra* note 4. See also *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>14</sup> *Supra* note 11.

<sup>15</sup> *Amelia S. Jefferson*, *supra* note 4.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish wage-loss compensation for the period September 7, 2013 to August 18, 2014 causally related to her accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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