



## **FACTUAL HISTORY**

On June 8, 2016 appellant, then a 38-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 31, 2016, she pinched a nerve in her left arm as a result of working nine and a half hours that day. She stopped work on June 4, 2016.

In an accident interview sheet dated May 31, 2016, appellant noted that she did not know of any specific event that led to her injury. In a root cause analysis worksheet of the same date, she noted that she had worked nine and a half hours that day.

In a diagnostic report dated June 2, 2016, Dr. Grant Petty, a Board-certified radiologist, examined the results of computed radiography of appellant's left shoulder. He stated his impression of a normal examination of the left shoulder.

In a diagnostic report of the same date, Dr. Donald Lewis, a Board-certified radiologist, examined the results of computed radiography of appellant's thoracic spine. He stated his impression of no acute findings with mild scoliosis. In a diagnostic report dated June 3, 2016, Dr. Lewis examined the results of a computerized tomography scan of appellant's cervical spine. He stated impressions of a right paracentral herniated nucleus pulposus (HNP) at C5-6 with probable cord impingement and degenerative disc disease at C6-7.

By emergency department note dated June 3, 2016, Dr. Beth Toppins, a Board-certified family practitioner, noted that appellant presented at urgent care, with shoulder pain complaints, but that she expressed no known injury.

In a report dated June 4, 2016, Dr. Daniel Whitmore, Board-certified in internal medicine and pediatrics, examined appellant and diagnosed a bulging disc at C5-6 and cervicgia. He noted that she stated that her neck pain began at the same time she "started working a lot" at the employing establishment.

In a diagnostic report dated June 11, 2016, Dr. Rodger Blake, a Board-certified radiologist, examined the results of a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He stated impressions of degenerative changes to the cervical spine, more pronounced in the lower cervical spine; congenital spinal canal stenosis of the lower cervical spine; disc protrusion at C5-6 producing high-grade spinal canal stenosis and possible impingement on the right C6-7 nerve roots; disc protrusion at C6-7 producing moderate lateral recess stenosis; and hypertrophy of the posterior longitudinal ligament from C4 to C7.

In a report dated July 12, 2016, Dr. Eric Cooper, a chiropractor, examined appellant and rendered assessments of sprain of the ligaments of the cervical spine and sprain of the ligaments of the thoracic spine.

By letter dated July 15, 2016, a supervisor noted that appellant had worked nine and a half hours on May 31, 2016, after which she worked a few hours in the morning of June 1, 2016. The supervisor noted that appellant did not report any pain or injury on those dates. Appellant called off work June 4, 6, and 7, 2016 due to pain in her neck and back. When interviewed upon her return to work on June 8, 2016, she claimed that she did not know how she was injured or when, and that there was no specific moment when "something happened." Appellant claimed

that, after working on May 31, 2016, she went home sore and woke up the next morning in pain. She worked June 1, 2016 as scheduled.

By letter dated July 27, 2016, OWCP informed appellant of the evidence needed to establish her claim. It noted that she had not provided sufficient medical or factual evidence in support of her claim and requested that she respond to OWCP's inquiries. OWCP afforded appellant 30 days to submit additional evidence and to respond to its inquiries.

In a report dated July 29, 2016, Dr. Cooper noted that appellant stated she began to feel sore after working nine and a half hours on May 31, 2016. Appellant told him that she had pulled a muscle in the left trapezius area. Dr. Cooper stated an assessment of sprain of the ligaments of the cervical and thoracic spine.

On August 12, 2016 Dr. Cooper noted that appellant presented to his office on June 6, 2016 with a chief complaint of left cervicothoracic pain, which she related to duties of her employment. Appellant told him that she was a mail carrier and carried her mail on her left arm. She stated that on May 31, 2016, she worked for nine and a half hours and found herself sore in the left cervicothoracic area that evening. The next day, appellant woke up in severe pain with pain shooting down the left arm with intermittent numbness in her hand. Dr. Cooper wrote, "It is my professional opinion that the nature of [appellant's] job created her problems/symptoms."

In a statement dated August 22, 2016, appellant asserted that on May 31, 2016 her duties as a mail carrier included casing mail, lifting packages of up to 70 pounds, driving, and walking to deliver mail and packages. During her routes, she carried a satchel around her neck and held her flats and mail with her left arm. Appellant noted that she did not know the specific moment that the injury occurred on May 31, 2016, but that she began to feel soreness between the shoulder blades on the left side towards the end of the day. The next morning, she woke up with pain radiating down her left arm. Appellant went into work that day for three hours and the pain worsened after she came home.

By decision dated August 29, 2016, OWCP denied appellant's claim for compensation. It accepted that she worked nine and a half hours on May 31, 2016, however it found that she had not submitted sufficient evidence to establish that she had sustained an injury causally related to the accepted May 31, 2016 work incident. OWCP noted that, while Dr. Whitmore had diagnosed her with bulging disc, impingement, and radiculopathy, he did not offer an opinion as to the cause of her conditions. It further noted that, while appellant had submitted records from Dr. Cooper, he had not diagnosed a spinal subluxation by x-ray, therefore, did not qualify as a physician as defined by FECA.

On September 7, 2016 appellant requested reconsideration of OWCP's August 29, 2016 decision. On reconsideration, she submitted progress notes from Dr. Cooper dated from June 27, 2016 through August 15, 2016. Appellant also submitted physical therapy notes from various dates, which were unsigned by a physician.

In a report dated September 6, 2016, Dr. Whitmore diagnosed appellant with a bulging disc at C5-6. He stated that this diagnosis "occurred while [appellant] was at work" and that her

symptoms “all started when [appellant] was at work.” Dr. Whitmore requested that appellant return to the clinic if her condition worsened or new symptoms arose.

By letter dated September 12, 2016, Dr. Dwight Saulle, a neurosurgeon, stated that appellant had been under his care since August 17, 2016, when she was diagnosed with cervical stenosis at C5-6 and C6-7 with cervical radiculopathy. He wrote, “Although this generally a condition that develops over time, certainly [appellant’s] job as a mail carrier has aggravated this condition due to the repetitive lifting and pulling of the neck, shoulder, and arm muscles with her work requirements.” Dr. Saulle noted that he had performed an anterior cervical discectomy and fusion on September 1, 2016.

By decision dated September 28, 2016, OWCP reviewed the merits of appellant’s claim and denied modification of its prior decision of August 29, 2016. It noted that her physicians had not indicated how working nine and a half hours on May 31, 2016 caused her diagnosed cervical stenosis with cervical radiculopathy and bulging disc. OWCP stated that, because Dr. Saulle had indicated in his September 12, 2016 medical note that duties of her federal employment may have resulted in her diagnosed conditions over time, it was unclear whether appellant was claiming an occupational disease or a traumatic injury.

In a letter from Dr. Whitmore dated October 6, 2016, he stated, “[I]n my medical opinion, [appellant’s] injuries are related to her work that occurred while she was at work.”

On January 9, 2017 appellant, through counsel, requested reconsideration of OWCP’s September 28, 2016 decision. With her request, appellant attached a December 29, 2016 letter from Dr. Whitmore, in which he noted that, while working at the employing establishment, appellant started having neck pain that worsened over time and developed a cervical disc bulge at C5-6. Dr. Whitmore diagnosed appellant with cervical disc disease. He signed a statement that read, “In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described [appellant] and described above.”

By decision dated January 31, 2017, OWCP reviewed the merits of appellant’s claim, but denied modification of its prior decision. It explained that, while Dr. Whitmore’s December 29, 2016 letter did contain a medical opinion, it was insufficiently rationalized because it did not specifically discuss how working a nine-and-a-half-hour shift on May 31, 2016 caused her diagnosed conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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 was sustained in the performance of

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<sup>3</sup> *Id.*

duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether 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>5</sup>

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>6</sup> An award of compensation may not be based on appellant's belief of causal relationship. 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 causal relationship.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and compensable employment factors.<sup>9</sup> 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>10</sup>

### ANALYSIS

Appellant alleged that on May 31, 2016 she sustained injury as a result of working nine and a half hours on that date.

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<sup>4</sup> *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>6</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>7</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

<sup>10</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The Board finds that appellant has not submitted sufficient rationalized medical evidence to establish that the incident of May 31, 2016 caused or aggravated her diagnosed cervical and thoracic conditions.

Appellant initially submitted a June 3, 2016 report from Dr. Toppins, who noted that appellant had been evaluated in the emergency department with shoulder pain complaints, but that appellant had expressed no known injury. The Board notes that pain is a symptom and not a compensable medical diagnosis.<sup>11</sup> As this report from Dr. Toppins offered no description of the May 31, 2016 incident, no diagnosis, and no opinion regarding causal relationship, this report was not based upon a complete factual and medical background, and is of limited probative value.<sup>12</sup>

OWCP also received a number of diagnostic reports dated from June 2 to 11, 2016, from Drs. Petty, Lewis, and Blake. Diagnostic test reports are however of limited probative value as they do not specifically address whether appellant's diagnosed conditions are causally related to the May 31, 2016 work incident.<sup>13</sup>

OWCP also received reports from Dr. Cooper, a chiropractor. Chiropractors are not considered physicians under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.<sup>14</sup> Dr. Cooper did not diagnose subluxation based on the results of an x-ray.<sup>15</sup> Therefore, his reports have no probative value.<sup>16</sup>

In a report dated September 6, 2016, Dr. Whitmore diagnosed appellant with a bulging disc at C5-6. He stated that this diagnosis "occurred while [appellant] was at work" and that her symptoms "all started when [appellant] was at work." In a letter dated October 6, 2016, Dr. Whitmore stated, "[I]n my medical opinion, [appellant's] injuries are related to her work that occurred while she was at work." In a December 29, 2016 letter, he noted that, while working at the employing establishment, appellant started having neck pain that worsened over time and developed a cervical disc bulge at C5-6. Dr. Whitmore diagnosed her with cervical disc disease. He signed a statement that read, "In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis that I cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described [appellant] and described above." As such, Dr. Whitmore's

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<sup>11</sup> See *G.C.*, Docket No. 17-0537 (issued July 20, 2017).

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

<sup>13</sup> See *L.A.*, Docket No. 16-1352 (issued August 28, 2017).

<sup>14</sup> See *Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>15</sup> 5 U.S.C. § 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 regulation by the secretary. See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>16</sup> *D.A.*, Docket No. 17-0816 (issued July 24, 2017).

opinion is merely conclusory in nature. The Board has explained that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>17</sup>

Medical evidence submitted to support a claim for compensation should reflect a correct history and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.<sup>18</sup>

Dr. Whitmore rendered an opinion that appellant's diagnosed conditions were related to her work, but he did not support his opinion with a medically sound explanation of how the incident of May 31, 2016 caused or aggravated her conditions. 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>19</sup> Without a sufficient explanation of how the accepted May 31, 2016 work incident physiologically caused or aggravated appellant's conditions, Dr. Whitmore's opinion on causal relationship is insufficiently rationalized to establish her claim.<sup>20</sup>

By letter dated September 12, 2016, Dr. Saulle stated that appellant had been under his care since August 17, 2016, when she was diagnosed with cervical stenosis at C5-6 and C6-7 with cervical radiculopathy. He wrote, "Although this generally a condition that develops over time, certainly [appellant's] job as a mail carrier has aggravated this condition due to the repetitive lifting and pulling of the neck, shoulder, and arm muscles with her work requirements."

Dr. Saulle's opinion of September 12, 2016 similarly failed to address the accepted work incident of May 31, 2016. His explanation of appellant's diagnoses would more appropriately be analyzed as medical evidence for a claim for occupational disease rather than traumatic injury.<sup>21</sup> The Board finds that Dr. Saulle's opinion on the cause of appellant's diagnoses is of diminished probative value, as it does not address the alleged traumatic injury.<sup>22</sup>

Finally, the Board notes that OWCP also received physical therapy reports. The Board has held that notes signed by physical therapists are not considered medical evidence as they are

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<sup>17</sup> See *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>18</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

<sup>19</sup> *Supra* note 8.

<sup>20</sup> See *D.B.*, Docket No. 14-0295 (issued April 25, 2014).

<sup>21</sup> OWCP's 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>22</sup> *Supra* note 7.

not considered physicians under FECA.<sup>23</sup> Thus, these treatment records are also of no probative medical value in establishing appellant's claim.

As appellant has not submitted any sufficiently rationalized medical evidence to support her allegation that she sustained an injury causally related to working nine and a half hours on May 31, 2016, she has not met her burden of proof.

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 a traumatic injury causally related to the accepted May 31, 2016 employment incident.

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<sup>23</sup> See *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician 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). See also *J.L.*, Docket No. 17-1006 (issued August 14, 2017) a physical therapist is not a physician under FECA.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 27, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy 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