United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 16-0880**
	)	**Issued: March 6, 2017**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

Appearances:
Bobby Devadoss, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2016 appellant, through counsel, filed a timely appeal from a November 16, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

[1] 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.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the August 13, 2013 employment incident.

FACTUAL HISTORY

On August 25, 2013 appellant, then a 34-year-old revenue officer, filed a traumatic injury claim (Form CA-1) alleging that on August 13, 2013 she brought three heavy briefcases to the office and that the lifting and handling of the briefcases aggravated the herniated disc in her spine. She stopped work on August 15, 2013. No evidence was submitted with the claim.

In an August 29, 2013 letter, OWCP advised appellant of the deficiencies in her claim and provided her the opportunity to submit additional factual and medical evidence. This included a detailed narrative medical report from her treating physician which contained a history of the injury and a medical explanation with objective evidence of how the reported work incident caused or aggravated the claimed condition. Appellant was afforded 30 days to submit such evidence.

In a September 10, 2013 statement, appellant stated that after returning from telework on August 13, 2013 she brought three large briefcases into the office, weighing approximately 9 to 12 pounds each. The boxes contained files for cases that she intended to work on. Appellant alleged that the lifting and handling of the heavy briefcases from her car to the office and onto her desk aggravated her herniated disc. In response to the question as to the immediate effects of the injury, she explained that on August 15, 2013, after sitting at the computer for a long time, she felt a very sharp pain in her neck to the extent that she could no longer sit up. Appellant went to the hospital on August 20, 2013 when the pain became "unbearable." She decided to file a claim when it became apparent that her injury was more serious than she initially thought. Appellant advised that she had similar symptoms on January 29, 2013 when she was in the office sitting at her desk and experienced a very sharp pain in her neck. She indicated that Dr. Rick Edgar, her neurosurgeon, told her on June 24, 2013 that she had a herniated disc above her C6 fusion.

OWCP received evidence which predated the accepted workplace events of August 13, 2013.[3] Those reports note that appellant's preexisting spine conditions date back to 1999.

In an August 20, 2013 emergency department report from Mercy Health Partners, appellant was noted to have a history of a ruptured cervical disc. She denied any trauma, but stated that she lifted some heavy things and since then has had a burning sensation up and down her upper back. An impression of acute muscular neck pain with history of cervical

[3] This included a January 29, 2013 emergency department report; a February 7, 2013 procedure order sheet from Muskegon Family Care; a February 8, 2013 outpatient physical therapy discharge summary; a March 8, 2013 cervical spine x-ray report; March 19, 2013 rehabilitation progress report; and a July 19, 2013 initial evaluation report from Mercy Health Rehabilitation.

radiculopathy was provided. Emergency service discharge instructions for cervical radiculopathy were provided.

In an August 29, 2013 Family and Medical Leave Act (FMLA) paperwork, Dr. Amy Hogue, a Board-certified family practitioner, noted that appellant had herniated disc in her cervical spine at C3-C4 and C4-C5 since 1999. In a Form CA-20(a) attending physician's report, she noted a history of injury as appellant lifting briefcases at work with an acute worsening of chronic neck pain. A diagnosis of cervicalgia was provided by checking a box marked "yes" indicating that the condition was caused or aggravated by the employment activity.

OWCP received a September 10, 2013 letter containing a list of dates from February 2013 to September 10, 2013 for which appellant received physical therapy services, along with physical therapy notes from July 19, 2013; a September 24, 2013 Form CA-20a, attending physician's report, from Traci Jones, a certified nurse practitioner (NP); September 25, 2013 discharge instructions; and an October 7, 2013 off work slip which included a diagnosis of herniated cervical disc.

In a September 11, 2013 report, Dr. Bindo Lewis, an osteopath, noted that appellant was in a car accident in December 1999 and fractured her C6 vertebra and subsequently had a fusion from C6 to T1. Appellant was doing well with her fusion, until her neck pain increased in January 2013. Based on her magnetic resonance imaging (MRI) scans and his clinical examination, Dr. Lewis opined that her symptoms correlated with facet arthropathy and recommended facet injections.

By decision dated October 28, 2013, OWCP denied the claim as the medical evidence was insufficient to establish that a medical condition was diagnosed in connection with the accepted August 13, 2013 incident.

On November 11, 2013 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 7, 2014. During the hearing, she testified about the events of August 13, 2013. Appellant stated that she did not experience an immediate onset of symptoms, but rather her symptoms began to worsen beginning August 15, 2013. She indicated that she was sitting for long periods of time, staring at one spot while working from home. Appellant also stated that she went to the emergency room on August 20, 2013. She confirmed that she had an accident in 1999 and injured her neck, which led to a cervical spine fusion surgery. Appellant stated that she had been experiencing a newer onset of symptoms since January 2013.

In an August 23, 2013 medical report, Dr. Hogue reported that appellant was seen at the emergency room on August 20, 2013, but no diagnostic tests or evaluations were performed. She indicated that appellant had a known herniated disc in her neck and was a patient of Dr. Edgar, who was treating her with physical therapy and conservative therapy. Dr. Hogue noted that last week appellant was lifting some briefcases and had an acute worsening of her pain in her neck and mid back. She has been out of work since August 15, 2013. Dr. Hogue provided an assessment of cervicalgia.

In a September 24, 2013 report, NP Jones indicated that appellant presented with neck pain following a specific injury. She reported that approximately one month ago, on August 13, 2013, appellant was lifting three heavy briefcases and it caused a sharp pain in her neck, which had gotten progressively worse. After reviewing appellant's past medical history, diagnostic studies, and examination findings, NP Jones diagnosed herniation of cervical intervertebral disc with radiculopathy and cervicalgia.

In a November 10, 2013 report, Dr. Rick Edgar, a neurosurgeon, reported that appellant had a history of a C6 corpectomy secondary to a motor vehicle accident in December 1999 with a resultant C5-C7 fusion. He noted that she had progressive neck and left shoulder and arm difficulties over the last couple of years and that he saw her on June 24 and October 7, 2013 related to these difficulties. Dr. Edgar indicated that the March 8, 2013 MRI scan of the cervical spine showed evidence of her previous fusion from C5-C7 with good decompression of her cervical canal in that area. However, appellant has loss of lordosis of her neck as well as degenerative disc with herniations above the level of her previous surgery, with the worse at C3-C4 and C4-C5 levels. She also had a leftward displaced disc at C4-C5 which was pushing on the spinal cord and evidence of facet arthropathy. Dr. Edgar diagnosed colon cervicalgia, cervical degenerative disc disease, herniated nucleus pulposus at C3-C4 and C4-C5, cervical radiculopathy, loss of lordosis of cervical spine. He indicated that appellant was restricted in her activities due to those conditions. In a December 30, 2013 addendum, Dr. Edgar opined that appellant's degenerative disc and progressive neck pain, as well as facet joint mediated pain, was at least as likely as not related to her work in the service where she served overseas frequently lifting heavy objects. Appellant noted that she frequently had neck pain that was treated with pain medicine while doing that and that this had progressively worsened since she left the active military service.

In a May 13, 2014 report, Dr. Yousif Hamati, a Board-certified orthopedic surgeon, provided examination findings and reviewed MRI scans from March 8 and April 25. He noted a solid fusion from C5 to C7 and previous corpectomy at C6. Dr. Hamati indicated that the S1 level had a plate which was getting over the disc space and that there was some bulging disc at four to five towards the left with probable disc bulge or disc herniation. The April 25 MRI scan showed hypertrophy osteophytes, mild central canal stenosis, and mild right neural foraminal narrowing secondary to degenerative disc disease. Appellant also had a small central disc osteophyte complex at C3-C4. Dr. Hamati recommended that she continue physical therapy and work with the pain clinic, take inflammatory medication, and avoid any major activity such as lifting, bending, or twisting. He concluded "I cannot find any objective findings other than what this lady is complaining. Rationale that she has a bulging disc above her fusion, it is my opinion that lifting of the briefcases may have aggravated it, but she already had a documented degenerative disc disease at those levels before and after."

In a May 28, 2013 addendum report, Dr. Edgar noted that he previously addressed that at least some of the issues with appellant's neck were likely caused by her previous fusion to the neck as well as her military service. He indicated that she also had an incident on August 13, 2013, when she was carrying three large briefcases for her job which severely aggravated her neck symptoms. Dr. Edgar opined that an incident of carrying heavy objects such as the briefcases could very well have exacerbated or aggravated her condition.

By decision dated July 25, 2014, an OWCP hearing representative found that appellant had established fact of injury, but it denied the claim as the medical evidence of record failed to establish causal relationship between the August 13, 2013 work incident and a diagnosed medical condition.

On March 27, 2015 appellant, through counsel, requested reconsideration.

In a March 4, 2015 report, Dr. Kathleen Warner, a Board-certified internist, noted that appellant's job duties included clerical work as well as traveling for residential appointments in the community and involved postural stresses to her neck. She reported that on August 13, 2013 appellant was lifting three briefcases weighing approximately 9 to 12 pounds and, as she lifted a box, she felt a sudden sharp pain in the posterior of her neck which radiated to her left upper extremity. Dr. Warner explained that appellant's pain continued and she informed her supervisor on August 15, 2013 of the situation. She noted that appellant initially sought treatment on August 20, 2013. Dr. Warner discussed the pertinent medical records on file, including the MRI scan of the cervical spines performed on December 30, 2013, which revealed degenerative and postoperative changes and herniated discs at C3-C4 and C4-C5. She also documented the history concerning the 1999 motor vehicle accident which resulted in fracture to the cervical spine and surgery consisting of C6 corpectomy with fusion. Dr. Warner presented examination findings and explained that, based on the previous record, her diagnoses consisted of cervical disc herniation, left cervical radiculopathy, cervical spondylosis, and cervical facet arthropathy syndrome. She again described appellant's work duties and noted that "with her already established neck injuries, both from her previous military service and the automobile accident in 1999, which resulted in cervical fusion, appellant aggravated her preexisting injury to her neck. Because appellant had already been experiencing an increase in pain in her neck beginning January 2013, she did not experience immediate increase in pain. However, over the course of approximately two days, the pain dramatically increased. Appellant reported the injury on August 15, 2013 and received medical attention on August 20, 2013. Dr. Warner opined that, although appellant had previous injury to her neck, the lifting of boxes of files onto her desk on August 13, 2013 aggravated her preexisting degenerative cervical injures. This resulted in a traumatic injury to the neck, further aggravating her established cervical injuries. The result of the traumatic injury was decreased range of motion, tenderness, spasms, and increased symptomology of pain. While appellant had begun to experience pain in her neck in January 2013 and was not symptom free, Dr. Warner noted that appellant's condition materially worsened and, thus, she sustained injuries as a result of her lifting on August 13, 2013. In an April 1, 2015 follow-up note, Dr. Warner indicated that appellant was doing well with physical therapy and prescription management and will continue in such programs.

A June 9, 2015 treatment note from Dr. Thomas Crumbley, a chiropractor, was also received.

By decision dated June 22, 2015, OWCP denied modification of its prior decision as the evidence of record was of insufficient probative value to support causal relation.

On September 29, 2015 appellant, through counsel, again requested reconsideration. In the September 29, 2015 request, counsel discussed the new medical evidence from Dr. Rhett Krone, an emergency physician, and explained how his report established causal relationship.

Medical reports from Dr. Krone dated July 27 and September 9, 2015 were received. In his July 27, 2015 report, Dr. Krone indicated that appellant has a history of effusion of her cervical spine and had experienced trouble with her neck for some time. He noted that she filed a claim and apparently had appealed it. Appellant indicated that she had chronic pain in the mid and lower portion of her neck, but for the last week about once or twice a day, she had been having sharp, strong pain in the part of the spine which was lower than usual. Dr. Krone noted appellant's past medical history of cervical fusion and that she was on 70 percent disability for combat-related post-traumatic stress disorder from her military service. He also provided examination findings.

In his September 9, 2015 report, Dr. Krone noted that this medical report was generated to address the issue of causal relationship. He reported that appellant was initially seen by Dr. Warner, but that he now follows appellant's treatment as Dr. Warner was no longer with the practice. Dr. Krone indicated that appellant's job duties included clerical work, driving, and lifting and carrying files and material to the locations that she visits. He indicated that on August 13, 2013 appellant suffered an injury when she was lifting three briefcases filled with closed cases weighing approximately 9 to 12 pounds. Appellant reported that she experienced a sharp discomfort as she was performing the lifting, but it did not last and she did not give much thought to it. She continued to perform her duties for that day and treated the injury with over-the-counter remedies, but she still exhibited pain. When the pain did not subside and became increasingly worse, appellant sought medical treatment on August 20, 2013. Dr. Krone reported that appellant had previously been involved in an automobile accident in 1999, which resulted in a cervical fusion. He noted that she performed gainful employment without complaints of pain until January 2013 when she began to experience neck pain and sought medical attention.

Dr. Krone reported that the March 8, 2013 x-ray showed postoperative and degenerative changes and that appellant continued to work and cope with the mild-to-moderate pain in her neck. On August 13, 2013, while appellant was lifting the heavy briefcases, she noticed a sharp pain that went away. Because she was experiencing the symptomology of pain on and off in her neck, she did not give great weight to the pain that she initially felt while lifting the briefcases. However, after approximately two days, the pain persisted and appellant reported the injury. When the pain increased, she sought medical attention at the emergency room on August 20, 2013. Dr. Krone noted the results of the December 30, 2013 MRI scan. He opined that appellant sustained a traumatic injury on August 13, 2013 while lifting the heavy briefcases. Dr. Krone explained that appellant was a postsurgical patient for cervical fusion in 1999 and was basically symptom free postsurgery until January 2013, when she began to experience neck pain. He indicated that even though appellant did not attribute the activity of lifting the briefcases to causing immediate incapacity, she felt the effects of lifting those briefcases. Appellant continued to work, which created additional use of the muscles that experienced injury in the lifting of the briefcases, which substantiated the discomfort she felt from that activity. As she continued to use the muscles that were injured in the August 13, 2013 lifting incident and the repetitive use of those muscles increased the pain associated with the injury. Dr. Krone indicated that the fact that she did not experience total incapacity was not unusual. He noted that the initial pain was noticeable, and distinguishable from the on and off pain that she had been experiencing since January 2013. The pain that she experienced as a result of lifting of the briefcases was constant and became increasingly worse over two days. As the pain had been continual and left untreated, it had increased. Dr. Krone explained that this was a new pain and not a recurrence of the

previous 1999 car accident. He indicated that while she had some degenerative changes from the 1999 accident, her condition had resolved to the point that she was able to work and perform activities of daily living without the symptomology of pain. Appellant's work activities required her to use her back and neck as well as her back and neck muscles as she placed stress on her neck and back and neck muscles to keep her head balanced while sitting as she performed carrying and lifting duties and while filing and reviewing records.

Dr. Krone opined that appellant's condition is a new claim for injury that is directly related to the lifting that she performed on August 13, 2013. He summarized that she experienced a traumatic injury on August 13, 2013. Appellant's pain was initially sharp, but not lasting. However, the pain continued to graduate to the point where it required medical attention on August 20, 2013. Dr. Krone noted that appellant attempted to use home remedies, but the pain did not subside. He indicated that this injury permanently aggravated her preexisting degenerative condition, as she had low-graded occasional pain prior to the incident of lifting the heavy briefcases. Subsequent to the injury of August 13, 2013, appellant had weakness, decreased range of motion, and increased symptomology of pain. Dr. Krone opined that the August 13, 2013 employment incident caused a material worsening of her preexisting cervical injuries and that the lifting of the heavy briefcases on August 13, 2013 caused a permanent aggravation of appellant's degenerative cervical condition thereby establishing new injury. He explained that the simple cause and effect was established by the event. The lifting of the three heavy briefcases caused strain to appellant's cervical muscles. Appellant already had weak muscles in her neck as a result of her previous neck injury and degenerative cervical changes as demonstrated by diagnostics. The stress and strain exhibited on the neck muscles during the lifting of the heavy briefcases aggravated her established degenerative cervical changes resulting in permanent aggravation and injury to her neck muscles. Dr. Krone explained that the mechanism of injury is consistent with the report of the injury and examination of appellant. He opined that, based on a review of appellant's duties and responsibilities, the description of lifting the heavy briefcases, a review of the medical records and diagnostics, and his clinics examination of appellant, that she had sustained a traumatic injury on August 13, 2013 when she lifted the heavy briefcases. By decision dated November 16, 2015, OWCP denied modification of its prior decision. It found the evidence of record to be of insufficient probative value to establish a causal relation to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof 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 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.[4] 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.[5]

[4] *Joe D. Cameron,* 41 ECAB 153 (1989).

[5] *See Irene St. John,* 50 ECAB 521 (1999); *Michael E. Smith,* 50 ECAB 313 (1999).

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 she actually experienced the employment incident that is alleged to have occurred.[6] An employee has not met his or her burden of proof of 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.[7] 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.[8]

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 medial 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.[9] Neither the 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.[10]

ANALYSIS

OWCP accepted that on August 13, 2013 appellant experienced pain in her neck when she lifted and carried three briefcases from her car to the office. It denied her claim as she did not submit rationalized, probative medical evidence to establish that the August 13, 2013 incident caused or contributed to a diagnosed medical condition. The Board finds that appellant has not met her burden of proof to establish an injury on August 13, 2013 causally related to the accepted employment incident.

In an August 20, 2013 emergency department report, an impression of acute muscular neck pain with history of cervical radiculopathy was provided. The Board finds that a diagnosis of acute muscular pain is a description of a symptom rather than a clear diagnosis of a medical condition.[11] Additionally, no specific reference was provided regarding the August 13, 2013 incident, only a general description was provided. Thus, this report is insufficient to establish a

[6] *Gary J. Watling*, 52 ECAB 278 (2001).

[7] *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

[8] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[9] *Solomon Polen*, 51 ECAB 341 (2000).

[10] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Robert Broom*, 55 ECAB 339 (2004). (The Board has consistently held that pain is a symptom rather than a compensable medical diagnosis).

medical diagnosis in connection with the injury. Additionally, the discharge instructions for cervical radiculopathy are of limited probative value as they are general in nature and not specific to appellant.[12]

In the August 29, 2013 FMLA paperwork, Dr. Hogue indicated that appellant had a history of herniated disc in her cervical spine at C3-C4 and C4-C5 since 1999. However, because the August 13, 2013 employment incident was not mentioned, this paperwork is insufficient to establish appellant's claim. In the accompanying August 29, 2013 attending physician's report, Dr. Hogue reported the history of injury as appellant lifting briefcases at work with an acute worsening of chronic neck pain. A diagnosis of cervicalgia was provided by checking a box marked "yes," indicating that the condition was caused or aggravated by employment. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[13] This report offered no rationalized medical explanation explaining how the accepted lifting incident on August 13, 2013 caused a diagnosed condition.[14] Furthermore, cervicalgia is another term for neck pain and is a description of a symptom rather than a clear diagnosis of a medical condition.[15] Thus, Dr. Hogue's reports are insufficient to establish appellant's claim.

In his September 11, 2013 report, Dr. Lewis provided a discussion of appellant's preexisting spine conditions dating back to 1999 and documented current examination findings, but does not discuss the August 13, 2013 work incident. While Dr. Lewis diagnosed facet arthropathy and recommended facet injections, he did not document the history of the August 13, 2013 work incident. Therefore this report is insufficient to establish appellant's claim as there is no way to determine whether this diagnosis is connected to the August 13, 2013 work incident or if it is an extension of continued degeneration of appellant's preexisting cervical spine conditions.

In his November 10 and December 30, 2013 reports, Dr. Edgar diagnosed colon cervicalgia, cervical degenerative disc disease, herniated nucleus pulposus, C3-C4 and C4-C5, cervical radiculopathy, loss of lordosis of cervical spine. However, these reports are insufficient to establish the claim as he did not provide a history of the August 13, 2013 incident[16] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[17] Rather, Dr. Edgar opined that at least some of the issues with

[12] *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).

[13] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[14] *See D.G.*, Docket No. 15-0948 (issued February 10, 2016).

[15] *See supra* note 10 and cases contained therein.

[16] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[17] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

appellant's neck were likely caused by her previous fusion to the neck as well as her military service. In his May 28, 2013 report, he indicated that appellant had an incident on August 13, 2013, when she was carrying three large briefcases for her job which severely aggravated her neck symptoms. Dr. Edgar opined that an incident of carrying heavy objects such as the briefcases could have exacerbated or aggravated her condition. The Board notes that, while Dr. Edgar's report provides some support for causal relationship, his report is speculative as he qualifies his support by noting that appellant's job activity "could have" exacerbated or aggravated her condition. Dr. Edgar provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant's burden of proof.[18]

In his May 13, 2014 report, Dr. Hamati provided examination findings and discussed the results of MRI scans from March 8 and April 25. He recommended that appellant continue physical therapy, work with the pain clinic, take inflammatory medicine, and avoid any major activity such as lifting, bending, or twisting. Dr. Hamiti explained "I cannot find any objective findings other than what this lady is complaining. Rationale that she has a bulging disc above her fusion, it is my opinion that lifting of the briefcases may have aggravated it, but she already had a documented degenerative disc disease at those levels before and after." Although Dr. Hamiti indicated that the August 13, 2013 lifting incident may have aggravated her preexisting bulging disc above her fusion, his opinion is of limited probative value as it is speculative or equivocal in character and his medical reasoning that the bulging disc was present both before and after the work incident fails to offer any support on how the preexisting bulging disc was materially affected by the August 13, 2013 employment incident.[19]

In her March 4, 2015 report, Dr. Warner described appellant's job duties and indicated that they involved postural stresses to her neck. She also provided a history of the August 13, 2013 lifting incident and noted that appellant felt a sudden sharp pain in the posterior of her neck which radiated to her left upper extremity. Dr. Warner explained that appellant's pain continued and she informed her supervisor on August 15, 2013 of the situation and sought treatment on August 20, 2013. She also discussed the pertinent medical records on file, noting that appellant had degenerative and postoperative cervical changes and herniated discs at C3-C4 and C4-C5, and documented the history concerning the 1999 motor vehicle accident which resulted in fracture to the cervical spine and surgery consisting of C6 corpectomy with fusion. Dr. Warner diagnosed cervical disc herniation, left cervical radiculopathy, cervical spondylosis, and cervical facet arthropathy syndrome. She noted that "with her already established neck injuries, both from her previous military service and the automobile accident in 1999, which resulted in cervical fusion, appellant aggravated her preexisting degenerative cervical injuries by lifting boxes of files onto her desk on August 13, 2013. Dr. Warner explained that because appellant had already been experiencing an increase in pain in her neck beginning January 2013, she did not experience immediate increase in pain, but over the course of two days, the pain dramatically increased. This resulted in a traumatic injury to the neck, which aggravated appellant's established cervical injuries and resulted in decreased range of motion, tenderness, spasms, and increased symptomology of pain. Dr. Warner further explained that while appellant had begun

[18] Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

[19] *Id.*

to experience pain in her neck in January 2013 and was not symptom free, her condition materially worsened and, thus, she sustained injuries as a result of her lifting on August 13, 2013.

While Dr. Warner explained that the August 13, 2013 injury aggravated appellant's preexisting degenerative cervical injuries and her condition had materially worsened resulting in further decrease in range of motion, the onset of spasms, and increased symptoms, she failed to adequately explain how she could attribute an increase in appellant's symptoms or worsening of her preexisting condition to the work event, as appellant's pain did not increase until two days after the lifting event as she was sitting at a computer. Moreover, while he premises support for her opinion on causal relationship by noting that appellant suffered decreased range of motion, tenderness, and spasms, her examination was more than one and a half years following the work injury and fails to describe any preinjury findings were compared to the findings on examination closely following the work event. Appellant also does not provide any significant discussion of the clinical or diagnostic findings relating to treatment appellant received prior to the August 13, 2013 employment incident as compared to the clinical and diagnostic findings after the work event to establish an actual worsening of appellant's preexisting cervical spine condition. Due to the age of Dr. Warner's report, such discussion is necessary to properly establish the causal relationship between the August 13, 2013 employment incident and a diagnosed condition. Additionally, while Dr. Warner indicated that the work injury aggravated appellant's preexisting neck and degenerative cervical spine conditions, she failed to explain how the August 13, 2013 work incident caused or contributed to a definitive condition and document the findings on examination and/or diagnostic testing in support of her opinion. For these reasons, his report is insufficient to establish appellant's claim.

In his September 9, 2015 report, Dr. Krone described appellant's work duties, the August 13, 2013 work incident, appellant's symptoms and course of action. He also noted appellant's prior medical history and that she returned to gainful employment following her 1999 cervical fusion without complaints of pain until January 2013. Dr. Krone indicated that diagnostic testing revealed postoperative and degenerative cervical changes. On the issue of causal relationship, he opined that appellant permanently aggravated the degenerative changes in her cervical spine as a result of lifting heavy briefcases on August 13, 2013. Dr. Krone explained that appellant was basically symptom free postsurgery until January 2013, when she began to experience pain in her neck. Since appellant remembered the August 13, 2013 employment incident, he believe it was apparent that she experienced initial discomfort when she lifted the briefcases and felt the effects of lifting those briefcases. Dr. Krone indicated that appellant continued to work and use the injured muscles, that the repetitive use of those muscles increased the pain associated with the injury, and that the pain continued to persist despite home remedies following the injury such that appellant had to obtain medical treatment on August 20, 2013 due to the pain. He further explained that the initial pain was noticeable and distinguishable from the on and off pain that she had been experiencing since January 2013. Dr. Krone indicated that the pain appellant had begun to experience in January 2013 was nonconstant and nagging in nature while the pain from lifting the briefcases was constant and became increasingly worse over two days. He indicated that subsequent to the August 13, 2013employment incident, appellant had weakness, decreased range of motion, and increased symptomology of pain. Dr. Krone opined that the lifting of the heavy briefcases caused strain to appellant's cervical muscles. The effort of lifting required the use of appellant's back, shoulder, and neck muscles. Dr. Krone indicated that appellant's neck muscles were already weak from

her previous neck injury and degenerative cervical changes as demonstrated by diagnostics. The stress and strain exhibited on the neck muscles during the lifting of the heavy briefcases, aggravated her established degenerative cervical changes and resulted in permanent aggravation and injury to her neck muscles. Although Dr. Krone concluded that the work incident aggravated the diagnosed conditions, his report is deficient for the same reasons as Dr. Warner's report. More specifically, he fails to provide any significant discussion of the clinical or diagnostic findings relating to treatment appellant received prior to the August 13, 2013 employment incident as compared to the clinical and diagnostic findings after the work event to establish a permanent aggravation of appellant's preexisting cervical spine condition. Additionally, while Dr. Krone indicated that the work injury aggravated appellant's preexisting neck and degenerative cervical spine conditions, he failed to explain how the August 13, 2013 work incident caused or contributed to a definitive condition and document the findings on examination and/or diagnostic testing in support of his opinion. For these reasons, his report is insufficient to establish appellant's claim.

The remainder of the medial evidence is of limited probative value. The medical report from Dr. Crumbley, a chiropractor, failed to diagnose spinal subluxation by x-ray. Section 8101(2) of FECA provides that chiropractors are considered physicians 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.[20] Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a physician, and his or her reports cannot be considered as competent medical evidence under FECA.[21] Dr. Crumbley is not a physician as he did not diagnose a spinal subluxation demonstrated by x-ray. Thus, his report is of no probative medical value.

Appellant also provided evidence from a certified nurse practitioner and physical therapists. However, the Board has held that treatment notes signed by a nurse practitioner or a physical therapist are not considered probative medical evidence as these providers are not considered physicians under FECA.[22]

[20] 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulation provides: (c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x- ray, but the report must be available for submittal on request.

[21] *See Susan M. Herman*, 35 ECAB 669 (1984).

[22] *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). *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).

While the October 7, 2013 work slip includes a diagnosis of herniated cervical disc, it is insufficient to support appellant's claim as there is no discussion on history of injury, objective findings, or a physician's explanation and opinion on the cause of the condition.[23]

On appeal, appellant contends that the medical evidence submitted supports her claim. As found above, she has not established a causal relationship between the August 13, 2013 work incident and her diagnosed conditions. The Board finds that none of the medical evidence appellant submitted constituted rationalized medical evidence, based upon a specific and accurate history of employment conditions, which are alleged to have caused or exacerbated her medical condition.

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 her burden of proof to establish an injury causally related to the August 13, 2013 employment incident.

[23] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2015 is affirmed.

Issued: March 6, 2017
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