

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

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**R.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hazelwood, MO, Employer**

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**Docket No. 17-0871  
Issued: November 6, 2017**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 13, 2017 appellant, through counsel, filed a timely appeal from a February 1, 2017 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 to consider the merits of the 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 his burden of proof to establish a recurrence of disability on or after August 27, 2015 causally related to his December 16, 2014 employment injury.

## FACTUAL HISTORY

On December 17, 2014 appellant, then a 29-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1), alleging that on December 16, 2014 a metal door hit his head from above on the left side of his neck behind his ear and his left shoulder. The employing establishment controverted the claim asserting that appellant was performing his duties in an unsafe manner.

In a letter dated January 2, 2015, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal or no lost time from work. It authorized a limited amount of medical expenses without considering the merits of the claim. OWCP reopened appellant's claim due to the challenge from the employing establishment. It requested additional factual and medical evidence in support of appellant's claim and afforded him 30 days for a response.

OWCP accepted appellant's claim on February 4, 2015 for concussion without loss of consciousness, trapezius strain, and cervical strain. It authorized compensation benefits commencing March 12, 2015.

Dr. Dirk H. Alander, a Board-certified orthopedic surgeon, began treating appellant due to his accepted employment injuries and found that he was totally disabled. He diagnosed resolving cervical strain on March 18, 2015. Dr. Alander referred appellant for a neurological consultation due to headaches on April 15, 2015.<sup>3</sup>

Dr. Lizette Alvarez, a Board-certified physiatrist, examined appellant on April 30, 2015 and noted his history of injury. She diagnosed postconcussive headaches. Dr. Alvarez reported diplopia on the extreme lateral gaze. She found discomfort with palpation of the greater occipital nerve on the right. Dr. Alvarez noted that appellant's right eye was slower in tracking and he had significant tenderness over the right occipital nerve.

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<sup>3</sup> Appellant submitted a series of reports from Dr. Jeffrey R. Stark, a chiropractor, beginning on December 1, 2014. On December 19, 2014 and February 18, 2015 Dr. Stark indicated that he reviewed appellant's computerized tomography (CT) scan and found a subluxation at C5. He released appellant from his care on March 23, 2015. Dr. Kenneth R. Teater, a chiropractor, examined appellant on May 9, 2016 due to his May 3, 2015 motor vehicle accident. On July 10 and 28, 2015 he indicated that appellant could return to regular duty. 5 U.S.C. § 8101(2) provides that 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 demonstrated by x-ray to exist. Appellant has submitted reports from Dr. Stark and Dr. Teater, chiropractors. Neither physician diagnosed a subluxation of the spine based on x-rays. Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not considered a physician under FECA and his opinion does not constitute competent medical evidence. *F.D.*, Docket No. 15-0868 (issued August 10, 2015).

Appellant was in a nonemployment-related motor vehicle accident on May 4, 2015.

Dr. Alander released appellant from his treatment on May 25, 2015 noting the motor vehicle accident. Dr. Alvarez examined appellant on June 1, 2015 and described his motor vehicle accident. She found discomfort with palpation of the cervical paraspinals and occipital notches. Dr. Alvarez noted that appellant's neck pain and headaches had improved and recommended work hardening.

Appellant filed claims for compensation (Form CA-7) requesting leave without pay from May 16 through June 26, 2015. OWCP authorized compensation benefits through June 26, 2015.

Dr. Alvarez completed a report on July 6, 2015 and opined that appellant's condition was improving. She noted decreased neck pain with no numbness or weakness. Appellant continued to exhibit mild diplopia which was also improving. Dr. Alvarez released appellant to return to work with no restrictions and opined that he had reached maximum medical improvement.

Appellant returned to regular-duty work on July 20, 2015.

Dr. Alvarez examined appellant on August 17, 2015. She noted that appellant reported a recurrence of headaches on the right side and that he denied any new injuries. Dr. Alvarez reported discomfort with palpation of the area of the right occipital notch. She noted, "Pressure in this area somewhat mimicked the patient's symptoms." Dr. Alvarez opined, "The patient's symptoms are consistent with right greater occipital neuralgia. I believe that this is directly related to his work injury."

Appellant filed a claim for recurrence (Form CA-2a) and alleged that on August 27, 2015 he sustained a recurrence of his December 16, 2014 work injury. He noted that he had a lifting restriction and was able to work despite his condition. Appellant did not stop work at that time.

In a statement dated August 27, 2015, appellant reported that he was throwing boxes and felt a pain in his neck from his previous injury. He noted that he tried to work through the pain and hypothesized that he lifted more than he could handle.

Appellant provided his hospital notes from August 28, 2015. He described neck pain after lifting boxes weighing between 30 and 40 pounds. Appellant attributed his condition to his December 2014 work injury. Dr. Harlan D. Hodges, a physician specializing in emergency medicine, diagnosed cervical strain.

On September 9, 2015 Dr. Alvarez diagnosed right greater occipital neuralgia and again noted that pressure in the area reproduced appellant's symptoms.

In a letter dated October 1, 2015, OWCP requested additional medical and factual evidence in support of appellant's claimed recurrence of his medical condition. It afforded him 30 days to submit the requested information.

Dr. Alvarez completed a note on September 21, 2015 and diagnosed cervicgia, myofascial pain, and greater occipital neuralgia. She found that appellant had slight anterior

head posture, discomfort with palpation of the right greater occipital nerve, and trigger points along the upper trapezius on the right. Dr. Alvarez found that appellant was totally disabled through September 23, 2015. On October 26, 2015 she examined appellant due to his right neck pain. At appellant's request Dr. Alvarez released him to full duty lifting up to 50 pounds.

On November 13, 2015 OWCP informed appellant that his claim was open for medical expenses due to his accepted conditions of concussion without loss of consciousness, sprain of the left shoulder and upper arm, and neck sprain.

Appellant filed a claim for compensation (Form CA-7) on December 9, 2015 for the period September 19 through October 23, 2015. OWCP authorized compensation for September 21 and 22, 2015. In a letter dated December 15, 2015, it requested additional medical evidence supporting appellant's disability for work for the period claimed. OWCP afforded appellant 30 days to respond.

In a letter dated January 5, 2016, the employing establishment noted that appellant was pending removal for falsification of medical documentation relating to his injury and absence from work. It submitted a note dated November 2, 2015 indicating specific dates of disability and a December 30, 2015 handwritten note indicating that the dates were not approved.

Dr. Alvarez corresponded with appellant on January 4, 2016 and noted her concerns about the level of commitment and compliance from appellant. She noted, "On December 29, 2015, it was brought to our attention that the return to work form that was provided to you dated November 2, 2015 was altered. A number of dates and comments in the reviewed section were added by someone other than me or my staff." Dr. Alvarez released appellant as a patient effective January 4, 2016.

In a decision dated March 31, 2016, OWCP denied appellant's claim for recurrence of disability and wage-loss compensation from August 27, 2015 and continuing. It noted that there was no detailed and rationalized medical evidence addressing whether his condition was a recurrence, due to his May 3, 2015 motor vehicle accident, or due to lifting boxes on August 27, 2015. OWCP found that appellant had not established that his ongoing condition was due to his accepted December 16, 2014 employment injury. On April 5, 2016 counsel requested an oral hearing from OWCP's Branch of Hearings and Review on this decision.

Dr. Alander examined appellant on March 24, 2016 due to headaches, visual disturbances, and neck pain. He diagnosed chronic neck pain with complaint of chronic headache. Dr. Alander noted that he did not have treatment options available for appellant's headaches and noted that he did not plan on making a return appointment.

In a report dated August 22, 2016, Dr. Howard Place, a Board-certified orthopedic surgeon, reviewed appellant's history of injury and medical treatment. He noted appellant's symptoms of pain on the right side of his head and neck as well as double vision. Dr. Place diagnosed cervicgia and offered appellant no treatment.

Appellant testified at the oral hearing before an OWCP hearing representative on November 18, 2016. He testified that he did not return to full duty and was not required to lift and throw heavy sacks. Appellant noted that on August 27, 2015 he lifted a box and felt as if

someone had grabbed his neck. He reported that his neck pain was the same as his original injury. Appellant testified that he stopped work on September 19, 2015 due to his neck pain from the lifting incident on August 27, 2015.

By decision dated February 1, 2017, OWCP's hearing representative found that appellant had not submitted the necessary medical opinion evidence needed to establish that his claimed recurrence in August 2015 was causally related to his December 16, 2014 employment injury.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>4</sup> Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between his recurrence of disability commencing August 27, 2015 and his December 16, 2014 employment injury.<sup>5</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>6</sup>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>7</sup> Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.<sup>8</sup>

### **ANALYSIS**

The Board finds this case not in posture for a decision.

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>6</sup> *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

<sup>7</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>8</sup> *A.D.*, 58 ECAB 149 (2006).

OWCP accepted appellant's claim for concussion without loss of consciousness, trapezius strain, and cervical strain resulting from the December 16, 2014 employment injury. Appellant returned to regular-duty work on July 20, 2015. He filed a recurrence claim on August 27, 2015. Appellant reported that he was throwing boxes and felt a pain in his neck from his previous injury. He noted that he tried to work through the pain and hypothesized that he lifted more than he could handle. Appellant sought medical treatment on August 28, 2015 and received the diagnosis of cervical strain.

Appellant filed a Form CA-2a and described a new employment incident on August 27, 2015 while performing his job duties. While he filed a claim for recurrence of a medical condition, in fact, his claim as made on the Form CA-2a was for a new traumatic injury. The lifting incident on August 27, 2015 is an intervening event such that appellant cannot establish that his current condition is a spontaneous recurrence of his previous neck conditions.<sup>9</sup>

Appellant immediately sought medical treatment from Dr. Hodges. He received a new diagnosis of cervical sprain. Appellant then filed an incorrect claim form for recurrence of disability.

Given the intervening employment event on August 27, 2015, this claim cannot be factually or medically established based on the claim form filed. The Board finds that this case shall be remanded and that OWCP should develop appellant's claim as a new traumatic injury. OWCP procedures require that, if doubt exists regarding the type of claim, the claimant should be asked to clarify what condition is being claimed or whether the claimed condition is due to a traumatic injury, occupational disease, or recurrence.<sup>10</sup> The Board finds that appellant's claim for a traumatic injury, while made on the wrong form, was clear on its face and should have been developed as a traumatic injury by OWCP.

It is well established that proceedings under FECA are not adversarial in nature and that while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. OWCP has an obligation to see that justice is done.<sup>11</sup> As appellant has received no guidance from OWCP regarding the specific evidence required to establish his traumatic injury claim, the Board finds that this case must be remanded for further development.<sup>12</sup>

### **CONCLUSION**

The Board finds this case not in posture for a decision.

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<sup>9</sup> *Supra* note 4.

<sup>10</sup> S.S., Docket No. 16-0675 (issued July 15, 2016); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7b(1) (June 2011).

<sup>11</sup> S.S., *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

<sup>12</sup> 20 C.F.R. § 10.121. This provision requires OWCP to inform a claimant of the additional evidence needed to establish the claim and allow 30 days for submission of the evidence requested.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: November 6, 2017  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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