

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

F.M., Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 17-1918
Issued: February 1, 2018**

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 11, 2017 appellant filed a timely appeal from a March 17, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish a cervical condition causally related to the accepted October 14, 2016 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided the Board includes evidence received after OWCP issued its March 17, 2017 decision. The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1). Therefore, evidence not before OWCP at the time of the March 17, 2017 decision will not be considered by the Board for the first time on appeal. *Id.*

FACTUAL HISTORY

On October 18, 2016 appellant, a 60-year-old rigger, filed a traumatic injury claim (Form CA-1) alleging that he sustained a “jammed neck” on October 14, 2016 as a result of crawling through staging in a passageway and hitting a crossbar with his hard hat. He did not stop work.

In a November 21, 2016 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted narrative statements dated October 17 and December 12, 2016, reiterating that on the date of injury he had to crawl through staging that was in a passageway and when he got to the end his hard hat hit the staging crossbar. He stated that he heard his neck make a cracking sound and felt a slight tingle. When appellant moved his neck it would crack and the left side of his neck felt tight. He reported the incident to his supervisor and then sought medical care.

In a November 16, 2016 report, Dr. Aldo Dumlao, a Board-certified family practitioner, diagnosed cervicgia and cervical radiculopathy. He noted that appellant had left-sided neck pain for the past month. Dr. Dumlao indicated that one month prior appellant was crawling on the floor when he hit his head while wearing a hard hat at work. Appellant stated that he felt a crack on the left side and was able to stand up. The incident occurred on a Friday and after the weekend appellant returned to work and then experienced worsening pain.

On December 30, 2016 OWCP sent appellant an acceptance letter noting that his claim had been accepted for the conditions of cervical muscle spasm/strain.

By decision dated December 30, 2016, OWCP advised appellant that it had sent the prior acceptance letter in error and, based on further review, it denied the claim because the medical evidence of record failed to establish a diagnosis in connection with the injury and/or events as cervicgia and radiculopathy were considered pain symptoms of a medical diagnosis under FECA.

In a November 30, 2016 report, Dr. Bernardo Joe Ordonez, a Board-certified neurosurgeon, confirmed that appellant was seen in his office that day and was taken off work until his next appointment, which was scheduled for January 5, 2017. At that next visit Dr. Ordonez diagnosed cervical spondylosis with myelopathy and radiculopathy as well as thoracic radiculopathy.

Subsequently, appellant submitted a November 30, 2016 report from Dr. Ordonez who noted that appellant struck his head at work on a low lying beam while wearing a hard hat and developed neck pain predominantly on the left. He also stated that he felt off balance and initially experienced vertigo.

On February 9, 2017 appellant requested reconsideration.

In a January 25, 2017 narrative statement, appellant stated that, although Dr. Dumlao’s name appeared on the letterhead of the report, he never saw him for his work-related injury. He

further indicated that he first saw Dr. Ordonez in 2001 and informed him at that time that in 1996 he had sneezed while walking through his kitchen and felt a tingle in his mid-back.

Appellant submitted a magnetic resonance imaging (MRI) scan of the cervical spine dated August 30, 2001 which demonstrated mild cervical spondylosis.

An October 5, 2001 MRI scan of the thoracic spine revealed a moderate left disc herniation at T5-6.

An MRI scan of the cervical spine dated December 19, 2016 showed multilevel degenerative disc disease and facet/uncovertebral joint hypertrophy and mild central canal stenosis at C4-6.

In an attending physician's report (Form CA-20) dated December 27, 2016, Dr. Ordonez diagnosed cervical radiculopathy and reiterated that appellant struck his head at work on October 14, 2016.

In an attending physician's report (Form CA-20) dated January 19, 2017, Dr. Ordonez diagnosed cervical spondylosis with myelopathy and radiculopathy and indicated that appellant had not yet been advised to return to work.

By decision dated March 17, 2017, OWCP accepted that the October 14, 2016 employment incident occurred as alleged, and also accepted that there was a medical diagnosis in connection with the employment incident. However, it denied appellant's traumatic injury claim because the medical evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and the October 14, 2016 work incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

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 in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁵ The second component is whether the employment incident

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

caused a personal injury.⁶ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁷

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.⁸

ANALYSIS

OWCP accepted that the October 14, 2016 employment incident occurred as alleged, and also accepted that there was a medical diagnosis in connection with the employment incident. However, it denied appellant's traumatic injury claim because the medical evidence of record was insufficient to establish a causal relationship between the diagnosed condition and the accepted employment incident. The issue is whether appellant's cervical condition resulted from the October 14, 2016 employment incident. The Board finds that appellant has not met his burden of proof to establish a causal relationship.

The MRI scans of the cervical and thoracic spine dated August 30, October 5, 2001, and December 19, 2016 are of limited probative value because they do not specifically address whether appellant's cervical and thoracic conditions are causally related to the accepted October 14, 2016 employment incident.⁹ Thus, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.¹⁰

The record reflects that appellant was initially seen by Dr. Dumalo, who on November 16, 2016 noted his chief complaint of left-sided neck pain and referred him to an orthopedist. He offered no opinion on the causal nature of the injury.

In his reports, Dr. Ordonez diagnosed cervical spondylosis with myelopathy and radiculopathy, and reported that appellant struck his head at work on a low lying beam while wearing a hard hat. He opined that appellant's condition was causally related to the October 14,

⁶ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

⁷ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

⁹ *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ *See supra* notes 5-6.

2016 head-hitting incident at work. The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.¹¹ Temporal relationship alone will not suffice.¹² A physician's opinion must be supported by medical rationale which explains the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹³ The Board finds that Dr. Ordonez failed to provide sufficient medical rationale explaining how the October 14, 2016 employment incident either caused or contributed to appellant's diagnosed cervical condition. The need for rationale is particularly important as the evidence indicates that appellant had a preexisting cervical condition.¹⁴

As appellant has not submitted rationalized medical evidence sufficient to establish his claim that he sustained a neck injury causally related to the October 14, 2016 employment incident, he has failed to meet his burden of proof to establish entitlement to FECA benefits.

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 his burden of proof to establish a cervical condition causally related to the accepted October 14, 2016 employment incident.

¹¹ 20 C.F.R. § 10.115(e).

¹² See *D.I.*, 59 ECAB 158, 162 (2007).

¹³ *Victor J. Woodhams*, *supra* note 6.

¹⁴ See *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2018
Washington, DC

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

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

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