

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

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M.W., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Cleveland, OH, Employer )

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**Docket No. 17-0858  
Issued: July 3, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 9, 2017 appellant filed a timely appeal from a September 12, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that his neck and left shoulder conditions are causally related to the accepted July 26, 2016 employment incident.

**FACTUAL HISTORY**

On August 3, 2016 appellant, a 59-year-old technician, filed a notice of traumatic injury (Form CA-1), alleging that he sustained a neck and left shoulder sprain on July 26, 2016 as a result

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

of tripping on netting while in the performance of duty. He stopped work on the date of injury and then returned to work on August 3, 2016.

In a July 26, 2016 narrative statement, appellant indicated that he was responding to a belt problem on July 26, 2016 at approximately 4:15 p.m. when he walked around an automated postal center (APC) to retrieve a screwdriver. He stated that the APC was where clerks had been pulling mail trays and they had left webbing on the ground, which caught his right foot. Appellant lost his balance and went down to his left hand first, then his left knee. He stated that he had pain in the left shoulder as his arm had outstretched to break his fall.

Appellant submitted a witness statement dated July 26, 2016 from a coworker who indicated that he saw appellant's leg get caught in the netting part of an APC causing him to fall. The coworker confirmed that appellant had been walking around the APC to retrieve a tool for work and then complained about pain after the fall.

In a July 28, 2016 physical therapy referral form, Dr. Harkeet Sandhu, an internal and sports medicine specialist, diagnosed neck strain and left shoulder sprain.

On July 28, 2016 Aaron White, an unidentifiable healthcare provider, diagnosed neck strain and shoulder sprain. He excused appellant from work on July 28, 2016 and advised that he was capable of returning to work on August 1, 2016 with the following restrictions for a two-week period: lifting no more than 30 pounds; and no reaching above the shoulder.

In an August 8, 2016 development 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 x-rays of the cervical spine dated July 28, 2016 which showed satisfactory alignment of the cervical spine, with some degenerative changes of the C5-6 vertebrae and loss of disc space and bone spur formation at C6-7. There were no compression fractures.

Appellant also submitted a July 28, 2016 report in which Dr. Sandhu reiterated his diagnoses and asserted that appellant injured his neck and shoulder while he was at work. Dr. Sandhu stated that appellant fell at work on July 26, 2016 and stopped his fall with his left hand, injuring his left shoulder and neck. He noted that appellant did not visit the emergency room and no x-rays were taken. A physical examination of the cervical spine revealed limited range of motion due to pain and guarding of the cervical spine with forward and reverse extension. Appellant had limited left and right lateral rotation due to pain and guarding, no cervical midline tenderness, and a negative Spurling's test. Physical examination of the left shoulder revealed forward flexion and abduction of 180 degrees. Internal rotation was to the level of L1 and external rotation was from neutral to approximately 55 degrees. There were no signs of impingement with Hawkins' and Neer's testing, empty can testing was negative, cross body testing was negative, and an O'Brien's test was negative. There was no tenderness over the acromioclavicular (AC) joint and appellant was neurovascularly intact. Dr. Sandhu referred appellant to physical therapy and released him to light duty with no heavy lifting more than 30 pounds and no above the shoulder activities for two weeks.

By decision dated September 12, 2016, OWCP accepted that the July 26, 2016 employment incident occurred as alleged, but denied the claim finding that the medical evidence of record failed to establish causal relationship between appellant's diagnosed conditions and the July 26, 2016 work incident.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>2</sup> 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.<sup>3</sup>

To determine if 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.<sup>4</sup> The second component is whether the employment incident caused a personal injury.<sup>5</sup> 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.<sup>6</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>8</sup> 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).<sup>9</sup>

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>10</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>11</sup>

### ANALYSIS

OWCP accepted that the July 26, 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 on the basis that the medical evidence was insufficient to establish a causal relationship between the diagnosed condition(s) and the accepted employment incident. The issue is whether appellant's neck and left shoulder conditions resulted from the accepted July 26, 2016 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship.

With respect to the July 28, 2016 x-rays of the cervical spine, the Board notes that they are of limited probative value and insufficient to establish the claim because they fail to specifically address whether appellant's diagnosed conditions are causally related to the accepted July 26, 2016 work incident.<sup>12</sup> Regarding the July 28, 2016 note from Mr. White, because it cannot be determined whether this record is from a physician as defined in 5 U.S.C. § 8101(2), it does not constitute competent medical evidence.<sup>13</sup> Consequently, the above-noted evidence is insufficient to meet appellant's burden of proof with respect to causal relationship.<sup>14</sup>

In his report, Dr. Sandhu diagnosed neck strain and left shoulder sprain and asserted that appellant injured his neck and shoulder while he was at work. He stated that appellant fell at work on July 26, 2016 and stopped his fall with his left hand, injuring his left shoulder and neck. Dr. Sandhu referred him to physical therapy and released him to light duty with no heavy lifting more than 30 pounds and no above the shoulder activities for two weeks. The Board finds that Dr. Sandhu failed to provide sufficient medical rationale explaining how falling at work on July 26, 2016 either caused or contributed to appellant's conditions. Dr. Sandhu opined that appellant's conditions were causally related to the July 26, 2016 fall at work. However, the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.<sup>15</sup> Temporal relationship alone will not suffice.<sup>16</sup> A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed

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<sup>11</sup> *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

<sup>12</sup> *See K.W., id.*; *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).

<sup>13</sup> *R.M.*, 59 ECAB 690, 693 (2008). *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence).

<sup>14</sup> *See supra* notes 2-7.

<sup>15</sup> 20 C.F.R. § 10.115(e).

<sup>16</sup> *See D.I.*, 59 ECAB 158, 162 (2007).

conditions and appellant's specific employment factor(s).<sup>17</sup> Dr. Sandhu's report did not include sufficient medical rationale explaining how the July 26, 2016 work incident either caused or contributed to appellant's conditions. For these reasons, the Board finds that the evidence from Dr. Sandhu is insufficient to establish that appellant's diagnosed conditions are causally related to the July 26, 2016 work incident.

As appellant has not submitted rationalized medical evidence sufficient to establish his claim that he sustained a neck and left shoulder injury causally related to the accepted July 26, 2016 employment incident, he has failed to meet his 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 his burden of proof to establish that his neck and left shoulder conditions are causally related to the accepted July 26, 2016 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2018  
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

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<sup>17</sup> *Supra* note 8.