



## ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained cervical conditions causally related to the accepted March 16, 2015 employment injury.

## FACTUAL HISTORY

On July 28, 2016 appellant, a 63-year-old woodcrafter, filed a traumatic injury claim (Form CA-1) alleging that he sustained a neck and leg injury on March 16, 2015 as a result of slipping on ice while getting logs in the performance of duty. He did not stop work. Appellant also filed claims for wage-loss compensation (Form CA-7) for the period September 21 to October 23, 2015.

Appellant submitted a witness statement from a coworker indicating that appellant slipped and fell on ice at work during the winter of 2015 on the north side of Building 369.

In a March 18, 2015 report Dr. Matthew T. Mayr, a Board-certified neurosurgeon, diagnosed neck pain, whiplash, and arm numbness. He noted that appellant presented with neck pain resulting from a ground-level fall. Appellant had slipped on ice and landed on his back. He had no loss of consciousness. Upon physical examination, Dr. Mayr found atrophy of appellant's left hand due to a prior C8 radiculopathy. He noted that appellant still had numbness in those areas.

A magnetic resonance imaging (MRI) scan of the cervical spine dated June 8, 2015 demonstrated an interval change at the C5-6 level with a disc herniation centrally and into the right neural foramen.

In a May 28, 2015 report, Dr. Mayr noted that appellant had increasing neck and arm pain. He noted that appellant had new right arm numbness that he had never had before and if he held his hand over his head, the whole arm went numb. On June 18, 2015 Dr. Mayr found that a cervical spine MRI scan showed a new herniated disc at C5-6. He also found that plain films showed severe degenerative disc disease at C4-5, C5-6, and C6-7 with collapse and significant anterior osteophytes. Dr. Mayr diagnosed herniated nucleus pulposus (HNP), cervical, and recommended surgery. On July 16, 2015 he indicated that appellant had been under his care for cervical spondylosis and stenosis and was planning to proceed with surgical intervention. On July 22, 2015 Dr. Mayr advised that appellant was capable of working with the following restrictions: no lifting, pushing, or pulling greater than 25 pounds; and no repetitive bending or twisting.

In an October 26, 2015 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a narrative statement dated October 27, 2015 indicating that he previously had "TI surgery, but there was nothing wrong with C3, C4, or C5."

By decision dated November 19, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted March 16, 2015 employment incident.

On December 18, 2015 counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Appellant submitted hospital records regarding his anterior cervical discectomy and fusion at C4-7 performed by Dr. Mayr on September 14, 2015, which included pre- and postoperative diagnostic testing results.

In a May 23, 2016 letter, counsel withdrew his request for an oral hearing and requested that the case proceed to a review of the written record.

Appellant submitted further documentation of his September 14, 2015 cervical surgery, including significant additional submissions of hospital records. He also submitted reports dated March 18, 2015 through April 6, 2016 from Dr. Mayr who reiterated that appellant slipped and fell on ice at work on March 16, 2015 and injured his back, neck, and arm. Dr. Mayr indicated that appellant was still having problems where he could not lift his head up and pain especially while driving distances. On April 6, 2016 he reported that appellant's pain was so bad that he went to the emergency room to be checked out a couple of weeks prior.

In a January 5, 2016 report, Dr. Mayr opined that appellant had recovered sufficiently to be able to return to light-duty work effective January 11, 2016 with the following restrictions: no lifting, pushing, or pulling greater than 10 pounds; no prolonged driving; no repetitive bending; no overhead work; and no crawling.

On April 19, 2016 Dr. Mayr noted that appellant was still under his care and provided the following work restrictions to be in effect for six months: no lifting, pushing, or pulling greater than 10 pounds; no overhead work; no repetitive bending or twisting; no crawling; and no prolonged driving.

By decision dated July 8, 2016, an OWCP hearing representative conducted a review of the written record and reversed the November 19, 2015 decision in part, finding appellant had established his claim for whiplash, resolved. The hearing representative also affirmed the November 19, 2015 decision in part, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's other diagnosed conditions and the accepted March 16, 2015 employment injury.

### **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 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>

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

<sup>4</sup> *See T.H.*, 59 ECAB 388 (2008).

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>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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>6</sup>

### ANALYSIS

By decision dated July 8, 2016, an OWCP hearing representative accepted appellant's claim for whiplash, resolved. Therefore, the issue currently under consideration is whether appellant's cervical conditions are causally related to the March 16, 2015 employment injury. The Board finds that he has not met his burden of proof to establish causal relationship.

In a report dated March 18, 2015, Dr. Mayr diagnosed neck pain, whiplash, and arm numbness resulting from a ground-level fall at work on March 16, 2015 where appellant had slipped on ice and landed on his back. Upon physical examination, he found atrophy of his left hand due to a prior C8 radiculopathy. In his October 27, 2015 narrative statement, appellant indicated that he previously had "TI surgery, but there was nothing wrong with C3, C4, or C5." In a May 28, 2015 report, Dr. Mayr noted that appellant had increasing neck and arm pain. He also noted that appellant had new right arm numbness that he had never had before. On June 18, 2015 Dr. Mayr found that a cervical spine MRI scan showed a new herniated disc at C5-6. He also found that plain films showed severe degenerative disc disease at C4-5, C5-6, and C6-7 with collapse and significant anterior osteophytes. Dr. Mayr diagnosed cervical HNP, cervical spondylosis, and cervical stenosis and recommended surgery. He performed an anterior cervical discectomy and fusion at C4-7 on September 14, 2015.

The Board finds that Dr. Mayr failed to provide sufficient medical rationale explaining the mechanism of how slipping on ice while getting logs at work on March 16, 2015 caused or aggravated appellant's cervical conditions. Dr. Mayr noted that appellant's conditions occurred while he was at work, but such generalized statements are insufficient to establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

diagnosed cervical conditions.<sup>7</sup> The need for rationale is particularly important as the evidence of record indicates that appellant had preexisting cervical conditions for which he received medical treatment and prior surgery. Dr. Mayr did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the accepted March 16, 2015 injury at work was sufficient to have caused or contributed to the diagnosed cervical conditions. Thus, the Board finds that the reports from Dr. Mayr are insufficient to establish that appellant sustained cervical conditions causally related to the accepted March 16, 2015 employment injury requiring surgical intervention on September 14, 2015.<sup>8</sup>

Other medical evidence of record, including diagnostic test reports, is of limited probative value as it does not specifically address whether appellant's diagnosed cervical conditions are causally related to the accepted March 16, 2015 work injury.<sup>9</sup>

The Board finds that appellant has not submitted rationalized medical evidence sufficient to support his allegation that he sustained cervical conditions and underwent surgery causally related to the accepted March 16, 2015 employment injury.

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 he sustained cervical conditions causally related to an accepted March 16, 2015 employment injury.

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<sup>7</sup> See *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

<sup>8</sup> *Cf. V.L.*, Docket No. 14-1040 (issued February 20, 2015) (where the claimant's treating physician diagnosed a herniated nucleus pulposus at C5-6 and explained that the employee was not symptomatic with neck pain until the whiplash effects of the motor vehicle incident snapped her head up-and-down likely resulting in a herniated disc at the level of the prior degenerative disc disease, the Board found that further development of the medical evidence was warranted and remanded the case for a review by an OWCP medical adviser).

<sup>9</sup> 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 21, 2018  
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