



## ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted March 21, 2015 employment incident.

## FACTUAL HISTORY

On March 21, 2015 appellant, then a 50-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she sustained a work-related injury when a tractor she was driving jerked and threw her to a concrete floor. Regarding the cause of the injury, it was noted that she felt dizzy.<sup>3</sup> Appellant stopped work on March 21, 2015 and requested continuation of pay (COP). On the same Form CA-1, appellant's immediate supervisor indicated in box 28, relating to controverting COP and the claim indicating that no work factors caused her to fall.

Appellant submitted an April 3, 2015 report entitled "Treatment and Work Status Report" which is mostly illegible. The report was completed by a person with an illegible signature and appears to contain a diagnosis of musculoskeletal pain.

By development letter dated April 13, 2015, OWCP requested that appellant submit additional factual and medical evidence to establish her claim. It requested that she complete and return an attached development questionnaire regarding her March 21, 2015 fall.<sup>4</sup>

Appellant submitted a March 21, 2015 report entitled "Treatment and Work Status Report" in which a person with an illegible signature listed March 21, 2015 as the date of injury and diagnosed musculoskeletal pain. It was recommended that she work with restrictions including no lifting more than 20 pounds.

In a report dated March 24, 2015, Dr. Mary Moore, an attending osteopath and Board-certified family practitioner, noted that appellant was unable to work from March 24 to 26, 2015 and could resume work on March 27, 2015. In an April 2, 2015 note, she advised that appellant was unable to work from March 24 to 30, 2015. On April 9, 2015 Dr. Moore indicated that appellant was excused from work from April 6 to 9, 2015 and listed a diagnosis of "whiplash."<sup>5</sup>

In a note dated April 2, 2015, a person with an illegible signature indicated that appellant was seen on that date and that she was unable to work from March 24 to April 5, 2015. The person diagnosed whiplash and indicated that she could resume work on April 6, 2015 with restrictions including no lifting more than 20 pounds.

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<sup>3</sup> It appears that this portion of the form was completed on behalf of appellant by her supervisor and that she later signed the form.

<sup>4</sup> In an April 7, 2013 letter, OWCP advised appellant that it had deleted a duplicate file, bearing OWCP File No. xxxxxx288, which had inadvertently been created for the traumatic injury claim she filed on March 21, 2015.

<sup>5</sup> Whiplash is a popular nonspecific term applied to injury to the spine and spinal cord at the junction of the fourth and fifth cervical vertebrae, occurring as a result of rapid acceleration or deceleration of the body. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (30<sup>th</sup> ed. 2003).

In a decision dated May 15, 2015, OWCP denied appellant's claim for a work-related injury on March 21, 2015. It determined that her claim was denied on a factual basis because the evidence submitted was insufficient to establish that the March 21, 2015 event occurred as she described. OWCP advised appellant that the reason for this finding was that she failed to respond to the questionnaire sent with the April 13, 2015 development letter.

Appellant requested a review of the written record by a hearing representative of OWCP's Branch of Hearings and Review.

Appellant submitted an undated narrative statement in which she indicated that she was backing up on a tractor at work on March 21, 2015 and the tractor jerked and threw her off. She indicated that she landed on her back, but that her neck jerked and she hit her head on the concrete floor. Appellant also submitted several statements of coworkers who saw her fall on March 21, 2015 or witnessed the immediate aftermath of her fall.

In an April 15, 2015 statement, a coworker indicated that she witnessed appellant being thrown off a moving tractor and hitting her head on the concrete floor. In an April 18, 2015 statement, another coworker advised that he was three feet away when he heard a loud noise of a tractor hitting a wall and that he turned and saw her on the ground.

In a May 19, 2015 statement, a supervisor noted that she saw appellant on the ground and that appellant advised her that the tractor had jerked, causing her to fall to the ground. She indicated that she had misinterpreted appellant's comment, made on the date of the March 21, 2015 accident, about being dizzy. The supervisor noted that she later realized that appellant had actually reported feeling dizzy after the tractor accident occurred, rather than before it occurred.

In a March 24, 2015 narrative report, Dr. Moore noted that appellant reported that on March 21, 2015 that she was riding a tractor and that it "bucked off" and threw her backwards, causing her to hit her head on the concrete. She indicated that appellant visited the emergency room on the date of the accident and that a computerized tomography scan of her head was "unremarkable per patient."<sup>6</sup> Dr. Moore noted that appellant complained of neck pain, which had started to improve, pain at the back of her head, and upper back pain, but that she reported no headaches, dizziness, nausea, mood changes, or difficulty with focus. She diagnosed whiplash (ICD-9 code 847.0),<sup>7</sup> somatic dysfunction of cervical region (739.1), and somatic dysfunction of thoracic region (739.2). Dr. Moore detailed her treatment of appellant in narrative reports dated April 2 and 9, 2016. Both reports contained the diagnoses of whiplash (847.0), somatic dysfunction of cervical region (739.1), and somatic dysfunction of thoracic region (739.2), but the April 9, 2015 report also included the diagnosis of upper extremity somatic dysfunction (739.7).<sup>8</sup>

By decision dated November 2, 2015, OWCP's hearing representative affirmed OWCP's May 15, 2015 decision as modified to reflect that appellant had established the occurrence of the

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<sup>6</sup> The record does not contain any reports of diagnostic testing.

<sup>7</sup> ICD stands for International Classification of Diseases.

<sup>8</sup> Appellant also submitted duplicate copies of disability notes of Dr. Brown that had previously been considered by OWCP.

March 21, 2015 employment incident of being thrown from a tractor to the floor. However, the claim remained denied as she had not established a diagnosed condition related to the accepted employment incident. The hearing representative noted that reports of Dr. Moore contained diagnoses such as whiplash/sprain of neck, but that the reports did not contain a rationalized medical opinion relating a diagnosed medical condition to the March 21, 2015 employment incident.

On October 21, 2016 appellant requested reconsideration of the November 2, 2015 decision. She indicated that she was submitting the findings of a May 11, 2015 magnetic resonance imaging (MRI) scan of her cervical spine which showed that she sustained a herniated cervical disc due to the March 21, 2015 fall.

Appellant submitted the findings of the May 11, 2016 MRI scan of her cervical spine which contained an impression of multilevel degenerative disc disease and facet arthroplasty, with associated central spinal canal stenosis, neural foraminal narrowing, and mass effect upon the spinal cord (most significant at C3-4 and generally progressively lessening through C5-6) partially-empty sella and low-lying cerebellar tonsils projecting to the inferior margin of the foramen magnum; very early degenerative discogenic endplate change and otherwise moderate diffuse background marrow cellularity most likely secondary to benign red marrow persistence/reconversion; and paranasal sinus disease with probable reactive changes.

In a July 27, 2016 note, Dr. Necholas Ghannam, an attending Board-certified internist, indicated that appellant had cervical spine stenosis in multiple levels which was due to arthritis changes and disc herniation. She noted that appellant would follow up with a neurosurgeon for potential surgery.

In a letter dated September 8, 2016, Dr. Moore advised that appellant was seen in March 2015 “for neck injury” at the clinic where she previously practiced and indicated that visit notes had been requested from that time, but were not yet available to her. She noted that appellant was treated conservatively and that she continued to report pain. Dr. Moore indicated that appellant started to receive follow-up care from Dr. Ghannam and noted that an MRI scan ordered by him showed degenerative changes of the cervical spine with central spinal stenosis and minimal disc indentation of the anterolateral aspect of the spinal cords at the levels of C2 through C6.

In a decision dated November 1, 2016, OWCP denied modification of its November 2, 2015 decision denying appellant’s claim for a work-related March 21, 2015 injury. It found that the record still lacked a rationalized medical report relating a diagnosed condition to the accepted March 21, 2015 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>9</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,

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<sup>9</sup> *Supra* note 2.

and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>10</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>11</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing the fact of injury. 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.<sup>12</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>13</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 claimant, 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 claimant.<sup>14</sup>

### ANALYSIS

Appellant filed a traumatic injury claim alleging she sustained a work-related injury on March 21, 2015 injury when a tractor she was driving jerked and threw her to a concrete floor. Although OWCP initially denied her claim on a factual basis, the hearing representative in a November 2, 2015 decision accepted that the incident of being thrown from a tractor to the floor on March 21, 2015 occurred as alleged. However, the claim remained denied as she further found that appellant failed to submit rationalized medical evidence establishing a diagnosed condition related to the accepted March 21, 2015 employment incident. Appellant subsequently requested reconsideration and, by decision dated November 1, 2016, OWCP denied modification of its November 2, 2015 decision.

The Board finds that appellant has failed to submit rationalized medical evidence establishing a diagnosed condition causally related to the accepted March 21, 2015 employment incident.

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<sup>10</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>11</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift, whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

<sup>12</sup> *Julie B. Hawkins*, 38 ECAB 393 (1987).

<sup>13</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>14</sup> *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

Appellant submitted a March 24, 2015 narrative report in which Dr. Moore, an attending physician, noted that she reported that on March 21, 2015 she was riding a tractor and it “bucked off” and threw her backwards, causing her to hit her head on the concrete. Dr. Moore noted that appellant complained of neck pain, which had started to improve, pain at the back of her head, and upper back pain. She diagnosed whiplash (ICD-9 code 847.0), somatic dysfunction of cervical region (739.1), and somatic dysfunction of thoracic region (739.2). The Board notes that the ICD-9 code 847.0 designates a diagnosis for “sprain of neck” rather than for whiplash. Dr. Moore also produced reports dated April 2 and 9, 2016. Both reports contained the diagnoses of whiplash (847.0), somatic dysfunction of cervical region (739.1), and somatic dysfunction of thoracic region (739.2), but the April 9, 2015 report also included the diagnosis of upper extremity somatic dysfunction (739.7). In various notes from March and April 2015, Dr. Moore found disability between March 24 and April 9, 2015. One of these notes contained a diagnosis of whiplash.

The Board finds that the submission of these reports would not establish appellant’s claim that she sustained injury due to the accepted March 21, 2015 employment incident. Although these reports contain diagnoses such as whiplash/sprain of neck, and somatic dysfunction of the cervical, thoracic and upper extremity regions, Dr. Moore did provide any opinion on the cause of these diagnosed conditions. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.<sup>15</sup>

In a note dated April 2, 2015, a person with an illegible signature noted that appellant was seen on that date and that she was unable to work from March 24 to April 5, 2015. The person provided a diagnosis of whiplash and indicated that appellant could resume work on April 6, 2015 with work restrictions. The Board has held that medical reports with illegible signatures do not constitute medical evidence and have no probative value.<sup>16</sup>

In a July 27, 2016 note, Dr. Ghannam, an attending physician, indicated that appellant had cervical spine stenosis in multiple levels which was due to arthritis changes and disc herniation. However, she did not provide any indication that the arthritic changes and disc herniation were related to the March 21, 2015 employment incident. The Board has found that reports containing no opinion on causation are insufficient to establish a claim.<sup>17</sup>

In a letter dated September 8, 2016, Dr. Moore advised that appellant was seen in March 2015 “for neck injury” at the clinic where she previously practiced and she discussed appellant’s treatment by Dr. Ghannam and the results of a May 11, 2015 MRI scan of appellant’s cervical spine. Although she mentioned a neck injury, Dr. Moore did not provide any opinion on the cause or precise nature of the neck injury. The record contains a report of a May 11, 2015 MRI scan showing degenerative cervical disc changes, but the report does not contain an opinion that these changes were caused or aggravated by the March 21, 2015 employment incident. The Board has held that, reports of diagnostic tests are of limited probative value as they fail to provide an

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<sup>15</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>16</sup> See *Merton J. Sills*, 39 ECAB 572 (1988).

<sup>17</sup> See *R.R.*, Docket No. 17-1368 (issued October 19, 2017).

opinion on the causal relationship between appellant's employment factors and the diagnosed conditions.<sup>18</sup>

As noted above, a claimant has the burden of proof to submit rationalized medical evidence establishing that an employment incident caused a personal injury.<sup>19</sup> The Board finds that appellant has not submitted sufficient medical evidence to establish a work-related injury on March 21, 2015. As such, appellant has failed to meet her 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 her burden of proof to establish an injury causally related to the accepted March 21, 2015 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 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>18</sup> *D.E.*, Docket No. 17-1874 (issued February 9, 2018).

<sup>19</sup> *See supra* notes 12 and 13.