

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

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R.G., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, Union, NJ, Employer )

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**Docket No. 18-0236**  
**Issued: December 17, 2019**

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 13, 2017 appellant filed a timely appeal from a June 28, 2017 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish cervical and/or lumbar spine conditions causally related to the accepted March 2, 2017 employment incident.

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

<sup>2</sup> The Board notes that following the June 28, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: 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. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On March 3, 2017 appellant, then a 21-year-old safety and occupational health specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 2, 2017 he sustained left-sided neck, shoulder, mid-lower back, hip, and gluteal injuries and a headache while lifting and moving a table to resolve an electrical safety issue while in the performance of duty. He stopped work on March 2, 2017.

A March 2, 2017 computerized tomography (CT) scan of appellant's head revealed no acute intracranial pathology. A March 2, 2017 CT of his cervical spine revealed no fracture or subluxation. A March 2, 2017 chest x-ray revealed: a normal cardio mediastinal silhouette; no consolidation, pleural effusion, or pneumothorax; and no acute distracted fracture.

In an April 20, 2017 report, Dr. Sandeep Rathi, a physical medicine and rehabilitation specialist, noted that appellant was seen for a work-related injury which had occurred on March 2, 2017. He advised that appellant essentially fell backwards while holding onto a large object. Dr. Rathi related that he fell onto his mid-back region. He noted that appellant had a past medical history which was significant for Parkinson's disease, status post-deep brain stimulator placement. Dr. Rathi advised that, after the fall, he had significant complaints of axial cervical spine pain and, headaches. He also advised that appellant reported that he had low back pain with radiation into the left lower extremity, which was mostly into the lateral thigh and lateral calf. Dr. Rathi provided findings including tenderness to palpation of the cervical facet joints on the left at C2-3, C3-4, and less so at C4-5. He determined that there was increased pain with cervical facet loading on the left side, the Spurling's maneuver was negative bilaterally, there was cog wheeling noted in the upper extremities, straight leg raise was positive on the left, and sensory dysesthesias was in a left L5-S1 distribution. Dr. Rathi also found tenderness to palpation over the lower lumbar paraspinal musculature at the level of L4-5 and L5-S1 with the left greater than the right. He also found that S1 provocative maneuver was negative and there was no clonus present. Dr. Rathi diagnosed traumatic spondylopathy of the cervical region and radiculopathy of the lumbosacral region. He provided a duty status report (Form CA-17) restricting appellant to light-duty employment.

In an attending physician's report (Form CA-20) dated April 26, 2017, Dr. Rathi diagnosed cervical spondylopathy and lumbar radiculopathy. In a duty status report (Form CA-17) of the same date, he checked a box marked "yes" indicating that he believed appellant's conditions were caused or aggravated by slipping and falling while lifting a table. Dr. Rathi noted appellant's light-duty restrictions. He saw appellant for follow up on May 11, 2017. Dr. Rathi noted that appellant continued to have left lower extremity radicular pain and significant pain on the left side of the neck. He diagnosed traumatic spondylopathy of the cervical and lumbar regions of his spine.

OWCP also received physical therapy treatment notes dated March 17 to April 28, 2017 and a note for modified duty dated April 5, 2017.

In a letter dated May 22, 2017, OWCP advised appellant that, when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. It explained that therefore payment of a limited amount of medical expenses was administratively approved. OWCP informed appellant that the claim was now being reopened for consideration because the

medical bills exceeded \$1,500.00. It also advised him of the evidence needed to establish his claim. OWCP afforded appellant 30 days to submit the requested information.

OWCP subsequently received March 2, 2017 emergency room notes which provided a history that appellant fell at work while lifting a heavy table and had hit his head against a metal beam, denied loss of consciousness, and sustained pain in the neck and left shoulder. Dr. Shaun Chun, an emergency medicine specialist, assessed appellant's condition as head contusion and concussion.

A May 16, 2017 lumbar magnetic resonance imaging (MRI) scan revealed a clinical indication of lumbar radiculopathy and an impression of minimal degenerative spurring. A May 16, 2017 cervical MRI scan revealed minimal cervical spondylosis and mild osteoarthritic changes involving the posterior facet joints.

In a May 25, 2017 report, Dr. Rathi noted that appellant returned for follow up. He advised that appellant continued to have significant left-sided axial cervical spine pain as well as left-sided low back pain with radiation to the left lower extremity. Dr. Rathi advised that appellant continued with some mild improvement in physical therapy, although his pain complaints and level of pain were essentially unchanged from his last visit on May 11, 2017. He diagnosed traumatic spondylopathy of the cervical spine and radiculopathy of the lumbosacral region. Dr. Rathi indicated that appellant failed conservative treatment and extensive physical therapy. He recommended facet joint and steroid injections.

OWCP continued to receive physical therapy reports dated May 4 to 15, 2017.

By decision dated June 28, 2017, OWCP denied appellant's claim finding that he failed to establish a causal relationship between the accepted March 2, 2017 employment incident and the diagnosed cervical and lumbar spine conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>3</sup> 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> 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>5</sup> To determine if an employee sustained a traumatic injury in the performance of duty, OWCP

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

begins with an analysis of whether fact of injury has been established.<sup>6</sup> 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>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</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 accepted incident.<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>10</sup> 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 employee.<sup>11</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish cervical and/or lumbar spine conditions causally related to the accepted March 2, 2017 employment incident.

Appellant was initially treated in a hospital emergency room. The emergency room notes dated March 2, 2017 from Dr. Chun noted appellant's history of injury and assessed a head contusion and concussion. However, his report does not offer a medical opinion explaining that the employment incident caused the diagnosed conditions. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>13</sup> Consequently, the Board finds that this note from Dr. Chun is insufficient to establish appellant's claim.

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<sup>6</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>7</sup> *C.L.*, Docket No. 18-1732 (issued April 2, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *C.L.*, *id.*; *R.M.*, Docket No. 18-1281 (issued March 6, 2019); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>10</sup> *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>12</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>13</sup> *A.P.*, Docket No. 19-1158 (issued October 29, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Dr. Rathi provided several medical reports. In reports dated April 20 and May 11 and 25, 2017, he noted that appellant was seen for a post work-related injury on March 2, 2017. Dr. Rathi described the employment incident and advised that, after the fall, appellant had significant complaints of axial cervical spine pain, headaches, as well as low back pain with radiation into the left lower extremity, which was mostly into the lateral thigh and lateral calf. Based upon appellant's extensive physical examination findings he diagnosed cervical spondylopathy, and lumbosacral radiculopathy. Dr. Rathi provided a duty status report (Form CA-17) restricting appellant to light-duty employment and diagnosed cervical spondylopathy and lumbar radiculopathy. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>14</sup> As noted above, a medical report that does not provide an opinion on the issue of causal relationship is of no probative value.<sup>15</sup> Therefore, the Board finds that the reports of Dr. Rathi are insufficient to establish appellant's claim.

In an attending physician's report (Form CA-20) dated April 26, 2017, Dr. Rathi did offer a limited opinion regarding causal relationship by noting appellant's diagnoses, the history of injury and checking a box marked "yes" with regard to whether he believed appellant's conditions were caused or aggravated by employment activity. However, the Board has consistently held that merely checking a box marked "yes" on a form report, without further medical rationale, are of diminished probative value and will not suffice for purposes of establishing causal relationship.<sup>16</sup> Dr. Rathi's reports were therefore also insufficient to establish appellant's claim.

OWCP received numerous physical therapy reports. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.<sup>17</sup> Consequently, their medical findings and/or opinions are insufficient to establish entitlement to FECA benefits.<sup>18</sup>

OWCP received various diagnostic reports including CT and MRI scan reports. However, these diagnostic test reports lack probative value and are insufficient to establish causation, as they do not provide an opinion as to how the diagnosed conditions were causally related to the March 2, 2017 incident.<sup>19</sup>

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<sup>14</sup> See *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *L.N.*, Docket No. 19-0727 (issued September 10, 2019); see *S.G.*, Docket No. 18-0209 (issued October 4, 2018); *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Sedi L. Graham*, 57 ECAB 494 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>17</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>18</sup> *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not considered a physician as defined under FECA); see also *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>19</sup> *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); see *L.M.*, Docket No. 14-0973 (issued August 25, 2014).

On appeal appellant contends that he had witnesses to the incident. The Board notes that the employment incident is not disputed and that the claim is denied as he has not met his proof to establish causal relationship between his accepted employment incident and his diagnosed cervical and lumbar spine conditions. As explained above, the medical reports submitted do not adequately address how the March 2, 2017 employment incident either caused or aggravated a cervical or lumbar condition, and therefore these reports are insufficient to establish appellant's claim.

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 cervical and/or lumbar spine conditions causally related to the March 2, 2017 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2019  
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