

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

|                                      |   |                               |
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| O.S., Appellant                      | ) |                               |
|                                      | ) |                               |
| and                                  | ) | <b>Docket No. 18-1744</b>     |
|                                      | ) | <b>Issued: March 21, 2019</b> |
| DEPARTMENT OF THE AIR FORCE,         | ) |                               |
| MACDILL AIR FORCE BASE, FL, Employer | ) |                               |
|                                      | ) |                               |

*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 September 17, 2018 appellant filed a timely appeal from a May 18, 2018 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 a cervical condition causally related to the accepted factors of his federal employment.

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

<sup>2</sup> The Board notes that following the May 18, 2018 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 December 21, 2016 appellant, then a 44-year-old firefighter, filed an occupational disease claim (Form CA-2) alleging that he sustained dull and burning pain on his cervical spine while in the performance of duty. He explained that pulling and dragging large diameter hoses, connecting the hoses to the fire truck water supply, and running the truck's pump panel caused pain. Appellant noted that he first became aware of the condition, and its relationship to his federal employment duties, on November 28, 2016. On the reverse side of the claim form, the employing establishment noted that he first reported his condition to his supervisor on December 6, 2016.

In a report dated December 15, 2016, Dr. Anthony P. Moreno, Board-certified in orthopedic surgery, diagnosed cervicgia, disc degeneration, and spinal stenosis. He referred appellant for a magnetic resonance imaging (MRI) scan and x-rays.

In a statement dated December 18, 2016, appellant noted that heavy lifting and a high stress environment of his federal employment caused pain and continuous discomfort of his cervical spine. He noted that on October 2, 2008 he experienced a traumatic injury at work.<sup>3</sup> Appellant related that Dr. Moreno performed cervical surgery after the October 2, 2008 injury.

By development letter dated December 22, 2016, OWCP advised appellant that the evidence submitted was insufficient to support his claim. It requested that he provide a comprehensive medical report and complete a questionnaire to substantiate the factual elements of his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated January 4, 2017, Dr. Jayant Patel, Board-certified in diagnostic radiology and neuroradiology, performed an MRI scan of appellant's cervical spine. He noted impressions of degenerative foraminal narrowing at C5-6 and C6-7.

In a report dated January 26, 2017, Dr. Moreno diagnosed unspecified cervical disc degeneration and cervicothoracic spinal stenosis.

By decision dated January 31, 2017, OWCP denied appellant's claim. It found that the employment factors occurred as alleged and that medical conditions had been diagnosed. However, OWCP found that the medical evidence submitted was insufficient to establish that the diagnosed conditions were causally related to the accepted employment factors. It concluded, therefore, that appellant had not met the requirements to establish that he sustained an injury causally related to the accepted factors of his federal employment.

On February 1, 2018 appellant requested reconsideration of OWCP's January 31, 2017 decision and submitted additional evidence.

In a January 26, 2017 report, Dr. Moreno indicated that appellant sustained an employment-related injury causing cervical herniated disc. In a January 22, 2018 medical report,

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<sup>3</sup> Appellant had a prior traumatic injury claim on October 2, 2008, which OWCP accepted for cervical strain, cervical herniated disc at C5-6 and C6-7, and cervical radiculopathy under OWCP File No. xxxxxx726.

he indicated that appellant suffered from unspecified cervical disc degeneration, postlaminectomy cervical syndrome, cervicalgia, and cervicothoracic spinal stenosis.

By decision dated May 18, 2018, OWCP denied modification of its January 31, 2018 decision. It found that the medical evidence of record was insufficient to establish causal relationship because appellant failed to submit rationalized medical opinion evidence addressing how the accepted employment factors caused or aggravated his diagnosed conditions.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</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 the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, 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>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question, which requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.<sup>9</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 factors.<sup>10</sup>

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>6</sup> *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *See M.B.*, Docket No. 17-1999 (issued November 13, 2018); *Victor J. Woodhams*, *id.*

<sup>8</sup> *B.H.*, Docket No. 18-1219 (issued January 25, 2019); *see M.B.*, *id.*; *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *See M.B.*, *supra* note 7.

<sup>10</sup> *L.G.*, Docket No. 18-0321 (issued October 25, 2018).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a cervical condition causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted reports from Dr. Moreno dated December 15, 2016, January 26, 2017, and January 22, 2018. These reports do not contain a rationalized medical opinion regarding whether and how the November 28, 2016 employment factors caused or aggravated his diagnosed conditions. Dr. Moreno only generally referenced a work-related injury and diagnosed appellant with unspecified cervical disc degeneration, postlaminectomy cervical syndrome, cervicalgia, and cervicothoracic spinal stenosis. The Board has held that a medical opinion is of limited probative value if it is speculative and conclusory in nature.<sup>11</sup> A medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.<sup>12</sup> Without medical reasoning explaining how the accepted employment factors caused or contributed to the diagnosed conditions, Dr. Moreno's report is insufficient to establish the claim.<sup>13</sup>

Appellant submitted a report dated January 4, 2017 from Dr. Patel, who performed an MRI scan of appellant's cervical spine, and noted impressions of degenerative foraminal narrowing at C5-6 and C6-7. However, Dr. Patel offered no opinion on the cause of appellant's diagnosed conditions. The Board has held that diagnostic testing reports lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.<sup>14</sup> As such, the Board finds that Dr. Patel's report is insufficient to meet appellant's burden of proof.

In his personal statement dated December 18, 2016, appellant noted that heavy lifting and a high-stress environment of his federal employment caused pain and continuous discomfort of his cervical spine. However, an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.<sup>15</sup> The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relationship.<sup>16</sup>

As appellant has not submitted rationalized medical evidence to establish a medical condition causally related to the accepted employment factors, the Board finds that he has not met his burden of proof to establish his claim.

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<sup>11</sup> *M.W.*, Docket No. 17-0186 (issued March 13, 2018).

<sup>12</sup> *V.T.*, Docket No. 18-0881 (issued November 19, 2018).

<sup>13</sup> *R.T.*, Docket No. 17-2019 (issued August 24, 2018).

<sup>14</sup> *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

<sup>15</sup> *R.M.*, Docket No. 18-1363 (issued February 9, 2019); *D.D.*, 57 ECAB 734 (2006).

<sup>16</sup> *R.M.*, *id.*; *Daniel O. Vasquez*, 57 ECAB 559 (2006).

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 cervical conditions were causally related to the accepted factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2019  
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