

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

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<b>T.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1431</b>
	)	<b>Issued: April 27, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Bloomington, OH, Employer</b>	)	
_____	)	

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 20, 2019 appellant, through counsel, filed a timely appeal from a May 10, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish neck and upper extremity conditions causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On August 25, 2017 appellant, then a 46-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she injured her neck, head, eyes, shoulders, and arms due to factors of her federal employment, including turning her head thousands of times a day to look at mail, mailboxes, and traffic. She first became aware of her conditions on September 18, 2016, and she first realized her conditions were caused or aggravated by her federal employment on June 6, 2017.

A June 29, 2017 cervical spine magnetic resonance imaging (MRI) scan report by Dr. Harry Patton, a radiology specialist, indicated that appellant presented with quadriparesis, weakness in both arms, and blurring vision. The MRI scan was compared to an MRI scan taken on March 7, 2012. Dr. Patton's findings consisted of degenerative changes including mild disc space narrowing with disc desiccation and ucnate spurring from C3-4 through C6-7 which was worse on the left side. Additionally, at C2-3 there was a mild left lateral disc bulge, at C5-6 there was a central disc protrusion, and at C6-7 there was a broad-based disc protrusion abutting the ventral cord.

An August 24, 2017 medical report by Dr. John Columbus, an emergency medicine specialist, indicated that appellant complained of bilateral neck pain and pain radiating down both arms and into her wrists. He noted that appellant drives a rural truck and turns her head thousands of times each day. Dr. Columbus also noted that she cases mail which requires her to look up, and that when she looks up and looks back down she experiences a crunching in her neck that aggravates her pain. Appellant additionally noted that her arms feel weak at times. Dr. Columbus reported that in September 2016 she hurt her neck casing mail while she was lifting and turning, and he listed her date of injury as September 18, 2016. Physical examination findings included that appellant's neck was tender to palpation, her neck's range of motion was about 25 degrees in both directions, and her strength was normal. Dr. Columbus reviewed her MRI scan and diagnosed substantial aggravation of degenerative joint disease in her cervical spine from C3-4 to C6-7, bilateral upper extremity radiculopathy at C5-6 and C6-7, and substantial aggravation of a disc bulge from C3-4 to C6-7. Dr. Columbus opined that the findings from appellant's MRI scan were work-related due to repetitive motion. He recommended consultation with a neurosurgeon and continued her regular work restrictions.<sup>3</sup>

In a September 20, 2017 development letter, OWCP advised appellant that additional evidence was required in support of her compensation claim. It requested that she submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment factors

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<sup>3</sup> The Board notes that Dr. Columbus completed several state workers' compensation form reports.

caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested medical evidence.

A September 20, 2017 report by Dr. Columbus noted that appellant presented with pain in her neck and upper shoulders radiating into her hand and burning and tingling in her left hand. Appellant experienced discomfort all day, and the discomfort worsened when she tried to turn her head, but she was functional enough to do her job. A physical examination revealed that appellant's neck was tender to palpation bilaterally and up into the left occipital area more than anywhere else, and her neck's range of motion remained the same. Dr. Columbus repeated appellant's date of injury and diagnoses from his prior report, and he instructed that appellant continue with her regular work restrictions.

A September 20, 2017 state workers' compensation form report and discharge note by Dr. Columbus listed appellant's work restrictions and noted that they were permanent. Dr. Columbus diagnosed a shoulder injury, cervical disc disorder at C6-7, and spondylosis, and indicated that all of these conditions were preventing full-duty release to the job appellant held at the time of injury.

In an October 31, 2017 medical report, Dr. Columbus noted that appellant complained of neck pain and numbness and weakness in her hands. A physical examination revealed that both sides of appellant's occipital area was tender to palpation, and that her range of motion was diminished in the flexion of her neck and the rotation of her neck from side to side. Dr. Columbus completed an additional state workers' compensation form report which noted that appellant could return to work with restricted duty, and that the period of restricted duty should end on December 2, 2017.

By decision dated November 8, 2017, OWCP denied appellant's claim finding that the evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

In a November 17, 2017 letter, Dr. Columbus noted appellant's prior MRI scan and physical examination results and opined that there was a causal relationship between her placing mail up into a slot and looking left, right, up, and down. He noted that the neck pain she developed at that time was a new injury and a substantial aggravation of the preexisting conditions of a multilevel disc bulge, degenerative joint disease of the cervical spine, and bilateral upper extremity radiculopathy. Dr. Columbus also noted that appellant's conditions were work related and noted that therapy and a referral were indicated.

A November 27, 2017 medical report by Dr. Columbus noted that appellant complained of neck pain and numbness in her hands. Appellant also noted that she had difficulty moving her neck. A physical examination revealed that appellant's neck was tender to palpation on both sides of her neck in the occipital area and that her neck's range of motion was diminished in flexion, extension, side bending and side rotation. Dr. Columbus repeated the same date of injury and diagnoses, recommended that appellant remain on restrictions for lifting, and prescribed medication. A state workers' compensation form report dated November 27, 2017 by Dr. Columbus indicated that appellant should be able to return to the job she held on the date of her injury on December 27, 2017.

On December 8, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a December 29, 2017 report, Dr. Columbus indicated that appellant complained of neck pain, difficulty turning her neck, pain radiating down both shoulders, distal left forearm pain, and thumb pain. Physical examination findings included that appellant's neck was tender to palpation bilaterally up to the occipital area of her head and diminished range of motion in flexion, extension, side bending, and side rotation. Dr. Columbus repeated the same date of injury, diagnoses, and recommendations as in his previous medical report. A December 2017 state workers' compensation form report by Dr. Columbus repeated the information in his previous report and provided work restrictions.

In a June 14, 2018 telephonic hearing, appellant testified that her medical history included a low back herniated disc in 2006, bilateral carpal tunnel syndrome in 2010, and adhesive capsulitis and bursitis in her right shoulder in 2011.

Appellant additionally testified that she had no accidents or injuries outside of work that involved her neck, and that her only physical activity was walking.

By decision dated August 20, 2018, an OWCP hearing representative affirmed the November 8, 2017 OWCP decision finding that the evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and the accepted factors of her federal employment.

On February 12, 2019 appellant, through counsel, requested reconsideration.

In a February 1, 2019 letter, Dr. Columbus reviewed appellant's medical records and recorded that appellant had experienced neck pain in the past which was not reported as work related. He mentioned that she had a negative MRI scan of her cervical spine in 2008, a bone scan in 2011 which showed shoulder issues, but no significant issues with the cervical spine, and an MRI scan of her cervical spine in 2012 which displayed mild degenerative changes. Dr. Columbus noted that appellant's 2017 MRI scan displayed significant issues, and that between 2012 and 2017 the only lifting and repetitive movements she engaged in were at her job as a postal worker. He opined that, because of the nature of appellant's postal work, her physical examination, and her diagnostic tests, her "significant medical problems were related to her work and including diagnoses of a substantial aggravation of her degenerative disc disease with disc protrusion at C5-6 and C6-7. Dr. Columbus further opined that the repetitive motions and lifting that her job entailed indicated that her job significantly contributed to or caused the development of her conditions. He noted that he was "100 percent medically certain" that the clinical findings on appellant's cervical spine and physical examination were correlated with her employment injury.

By decision dated May 10, 2019, OWCP denied modification of its August 20, 2018 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</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 of FECA,<sup>5</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>6</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>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>10</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>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation,

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<sup>4</sup> *Id.*

<sup>5</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</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>7</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>10</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 8.

<sup>11</sup> *Id.*

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish neck and upper extremity conditions causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted a series of narrative reports and state workers' compensation form reports by her attending physician, Dr. Columbus. In reports dated August 24, September 20, October 31, November 27, and December 29, 2017, Dr. Columbus noted her history of injury, physical examination findings, and assigned restrictions. He did not, however, offer an opinion on the issue of causal relationship between the accepted factors of employment and the diagnosed conditions. The Board has consistently held that 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> These reports, therefore, are insufficient to establish appellant's claim.

In a November 17, 2017 report and a February 1, 2019 letter, Dr. Columbus provided his findings from his prior examinations of appellant and noted the treatment he had provided. He also set forth his opinion on the issue of causal relationship. In the November 17, 2017 report, Dr. Columbus opined that there was a causal relationship between appellant placing mail up into a slot and looking left, right, up, and down. He further opined that the neck pain appellant had developed at that time was a new injury and a substantial aggravation of the preexisting conditions of a multilevel disc bulge, degenerative joint disease of the cervical spine, and bilateral upper extremity radiculopathy. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to employment factors.<sup>14</sup> The Board finds that the November 17, 2017 report by Dr. Columbus fails to provide the necessary medical rationale to explain how the accepted employment factors he had identified were sufficient to have either caused her diagnosed conditions or aggravated her preexisting cervical spine conditions. In the February 1, 2019 letter, Dr. Columbus noted that he was "100 percent medically certain" that appellant's injuries were related to her employment duties. He opined that, because of the nature of appellant's postal work, her physical examination, and her diagnostic tests, her "significant medical problems were related to her work" and including diagnoses of a substantial aggravation of appellant's degenerative disc disease at C5-6 and C6-7 and substantial aggravation of her degenerative disc disease with disc protrusion at C5-6 and C6-7. In his letter, Dr. Columbus again failed to provide the medical rationale necessary to establish causal relationship.<sup>15</sup> The mere recitation of his patient's claimed

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<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); A.S., Docket No. 19-1955 (issued April 9, 2020).

<sup>13</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

<sup>15</sup> *Id.*

history of injury does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>16</sup> Without explaining physiologically how the accepted employment factors caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.<sup>17</sup> Thus, because of these deficiencies these opinions are insufficient to establish appellant's claim.

Finally, appellant also submitted a June 29, 2017 MRI scan. The Board has long held that diagnostic studies lack probative value on the issue of causal relationship as they do not address whether the employment factors caused a diagnosed condition.<sup>18</sup>

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between appellant's neck and upper extremity conditions and the accepted factors of her federal employment. Thus, appellant has not met her burden of proof to establish her 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 her burden of proof to establish neck and upper extremity conditions causally related to the accepted factors of her federal employment.

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<sup>16</sup> *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>17</sup> *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>18</sup> *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 27, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board