



## ISSUE

The issue is whether appellant has met his burden of proof to establish neck and left upper extremity conditions causally related to the accepted October 11, 2018 employment incident.

## FACTUAL HISTORY

On October 12, 2018 appellant, then a 48-year-old air marshal, filed a claim for traumatic injury (Form CA-1) alleging that on October 11, 2018 he experienced pain in his neck, left shoulder, and left upper arm when he hit his head on the ceiling of an aircraft that hit a pocket of turbulence while in the performance of duty. He stopped work on October 16, 2018 and worked intermittently thereafter.

Appellant was treated in the emergency department on October 16, 2018 by Dr. Zeljka Kostich, Board-certified in emergency medicine, for neck pain and numbness radiating into his left arm and hand. He reported working as an air marshal on a plane which experienced turbulence causing his head to strike a low ceiling. A computerized tomography scan of the cervical spine dated October 16, 2018 revealed moderate to marked arthritic changes. Dr. Kostich diagnosed cervical radiculopathy and referred appellant to a neurosurgeon for further evaluation. She advised that appellant would be off work for two weeks.

An x-ray of appellant's cervical spine dated October 24, 2018 revealed no acute pathology. An October 31, 2018 magnetic resonance imaging (MRI) scan revealed multilevel loss of intervertebral disc height and disc desiccation at C3-T4 and disc protrusions at C3-4, C4-5, C5-6, C6-7, C7-T1, T1-T2, and T2-T3.

The record contains page one of an authorization for examination and/or treatment (Form CA-16) dated October 24, 2018 from the employing establishment, which indicated that appellant was authorized to receive treatment for neck, left shoulder, and left arm pain.

Appellant attended physical therapy treatment from October 24 to November 7, 2018.

In a doctor's first report of occupational illness or injury dated October 24, 2018, Dr. Maria B. Ramirez, a Board-certified anesthesiologist, recounted the history of injury and treated appellant for cervical pain and numbness radiating down his arms. Findings on examination revealed paracervical, sternocleidomastoid, and trapezius tenderness to palpation, diffuse spasms, and restricted range of motion. Dr. Ramirez diagnosed cervical radiculopathy and referred appellant for further physical therapy. She returned appellant to modified duty on October 25, 2018.

On November 1, 2018 Dr. Howard Waters, a specialist in occupational medicine, saw appellant for persistent neck pain. Findings on examination were essentially normal. Dr. Waters diagnosed cervical radiculopathy and cervical degenerative disc disease and returned appellant to work with restrictions.

Appellant was treated by Dr. Moshe H. Wilker, a Board-certified orthopedist, on November 9, 2018 for neck pain radiating into the left arm which began on October 11, 2018. Dr. Wilker noted tenderness to palpation of the cervical spine and diminished sensation on the

cervical C7 dermatome. He diagnosed cervical radiculitis. In restriction orders dated November 9 and December 7, 2018, Dr. Wilker advised that appellant was disabled from work until January 4, 2019. He treated appellant again on December 7, 2018 for neck pain radiating into his left scapula and left arm. Findings on examination were unchanged. Dr. Wilker reviewed the MRI scan of the cervical spine which revealed three disc protrusions and stenosis. He diagnosed cervicgia and cervical radiculitis and recommended a thoracic posterior laminectomy. Dr. Wilker advised that appellant was disabled from work.<sup>3</sup>

In a letter dated December 20, 2018, the employing establishment contacted OWCP and noted that it was controverting appellant's claim on the basis of causal relationship, and that it proposed a second opinion medical examination be scheduled to address the issue.

In a December 21, 2018 physician review report, Dr. Tifani Gleeson, a Board-certified occupational medicine specialist, indicated that the employing establishment had contacted her to review the claim and that she had read the available medical reports and claim documentation, but had not spoken with or examined appellant. She noted that appellant was an air marshal who reported striking his head in an aircraft bathroom during turbulence. Appellant was treated in the emergency room on October 16, 2018 and was diagnosed with cervical radiculopathy. An October 31, 2018 MRI scan revealed cervical and thoracic protrusions and stenosis, and his physician recommended a posterior laminectomy. Dr. Gleeson opined that the medical records she reviewed did not support the medical necessity of surgery for the work injury and the provider had not offered substantial reasoning as to the necessity of surgery at that time. She recommended continued conservative care.

In a December 28, 2018 development letter, 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. The claim was administratively approved to allow payment for limited medical expenses, but the merits of the claim had not been formally adjudicated. OWCP advised that because appellant had requested authorization for surgery, his claim would be formally adjudicated. It requested that he submit factual and medical information, including a comprehensive report from his physician regarding how a specific work incident contributed to his claimed injury. OWCP afforded appellant 30 days to submit the necessary evidence.

On January 3, 2019 appellant followed up with Dr. Wilker for posterior neck pain radiating into the bilateral arms. He reported no improvement in his neck pain and numbness with conservative treatment. Dr. Wilker diagnosed cervical radiculitis and opined that this was "clearly" a work injury and recommended a T1-T2 laminectomy. In restriction orders dated January 4 and February 1, 2019, he noted that appellant was temporarily totally disabled from January 3 to August 3, 2019.

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<sup>3</sup> The Board notes that the case record as transmitted to the Board contains a December 13, 2018 medical report for an individual other than appellant. Upon return of the case record OWCP shall ensure that all misfiled medical documents are redacted from this file and placed into the correct file.

By decision dated February 13, 2019, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish that the medical condition was causally related to the accepted employment incident.

On February 18, 2019 appellant requested an oral hearing before an OWCP hearing representative that was held on June 10, 2019.

By decision dated July 30, 2019, an OWCP hearing representative affirmed the decision dated February 13, 2019.

### **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 period of FECA,<sup>5</sup> and 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 determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>8</sup> There are 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>9</sup> The second component is whether the employment incident caused a personal injury.<sup>10</sup>

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

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *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> *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

<sup>8</sup> *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>9</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *S.S.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

complete factual and medical background.<sup>12</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 incident.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish neck and left upper extremity conditions causally related to the accepted October 11, 2018 employment incident.

Appellant was treated by Dr. Kostich in the emergency room on October 16, 2018 for neck pain and numbness radiating into his left arm and hand. Dr. Kostich diagnosed cervical radiculopathy. Similarly, in a doctor's first report of occupational illness or injury dated October 24, 2018, Dr. Ramirez treated appellant for cervical pain and numbness radiating down his arms. Dr. Ramirez diagnosed cervical radiculopathy. Likewise, on November 1, 2018, Dr. Waters saw appellant in follow up for persistent neck pain for which he diagnosed cervical radiculopathy and cervical degenerative disc disease. Drs. Kostich, Ramirez, and Waters noted that appellant sustained an injury on October 11, 2018 while working as an air marshal, however, the mere recitation of a patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.<sup>14</sup> Without explaining physiologically how the accepted employment incident caused or contributed to the diagnosed conditions, the physician's reports are of limited probative value.<sup>15</sup> The Board finds that Drs. Kostich, Ramirez, and Waters did not sufficiently explain how the accepted October 11, 2018 employment incident caused or contributed to the cervical and left upper extremity conditions which have been diagnosed in this claim. As these physicians failed to provide medical rationale to support their conclusory opinions, the Board finds that the reports from Drs. Kostich, Ramirez, and Waters are insufficient to meet appellant's burden of proof with respect to causal relationship.

Appellant was treated by Dr. Wilker on November 9, 2018, for neck pain radiating into the left arm and he diagnosed cervical radiculitis. On January 3, 2019 Dr. Wilker treated appellant in follow up for chronic radiating neck pain. He diagnosed cervical radiculitis and opined that this was "clearly" a work injury and recommended a T1-T2 laminectomy. While Dr. Wilker provided an affirmative opinion which supported causal relationship, he did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to his diagnosed conditions.<sup>16</sup> A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident was sufficient to result in the diagnosed medical

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<sup>12</sup> *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *Id.*

<sup>14</sup> *N.S.*, Docket No. 19-0167 (issued June 21, 2019); *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

<sup>15</sup> *M.N.*, Docket No. 19-0694 (issued September 3, 2019); *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>16</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

condition is insufficient to meet a claimant's burden of proof to establish a claim.<sup>17</sup> Thus, the Board finds that these reports from Dr. Wilker are also insufficient to establish causal relationship.

In restriction orders dated November 9, 2018 to February 1, 2019, Dr. Wilker advised that appellant was disabled from work until August 3, 2019. He treated appellant again on December 7, 2018 for neck pain radiating into his left scapula and left arm. Dr. Wilker diagnosed cervicgia and cervical radiculitis and recommended a thoracic posterior laminectomy. These reports are insufficient to establish the claim as Dr. Wilker did not specifically address whether appellant's employment incident had caused or aggravated a diagnosed medical condition. As the Board has held, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship. As such, these reports are of no probative value.<sup>18</sup>

The employing establishment sent the medical record it possessed to Dr. Gleeson for a records review after noting it wanted a second opinion examination in its controversion letter. In her December 21, 2018 physician review report she discussed the necessity of surgery, but failed to address the issue of causal relationship. As she expressed no opinion as to causal relationship, her report has no probative value and is insufficient to establish appellant's claim.<sup>19</sup>

OWCP received an x-ray of the cervical spine and an MRI scan of the right shoulder. The Board has held, however, that reports of diagnostic tests standing alone lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.<sup>20</sup> Appellant also submitted reports from a physical therapist. Certain healthcare providers such as physical therapists are not considered "physician[s]" as defined under FECA.<sup>21</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing causal relationship between his neck and left upper extremity conditions and the accepted October 11, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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<sup>17</sup> *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

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

<sup>19</sup> *Id.*

<sup>20</sup> *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

<sup>21</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. *S.T.*, Docket No. 17-0913 (issued June 23, 2017) (a physical therapist is not considered a "physician" as defined under FECA). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

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 neck and left upper extremity conditions causally related to the accepted October 11, 2018 employment incident.<sup>22</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>22</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 171062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).