

ISSUE

The issue is whether appellant has met his burden of proof to establish a condition causally related to the accepted July 18, 2017 employment incident.

FACTUAL HISTORY

On August 5, 2017 appellant, then a 32-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that, on July 18, 2017 during his assignment as the primary watch officer, he sustained pain in his upper right shoulder and the base of his neck radiating into his right arm when sitting at a “watch desk computer” while in the performance of duty. The employing establishment acknowledged on the claim form that he was in the performance of duty at the time of the alleged injury.

In employing establishment treating physician status reports dated August 4 and 17, 2017, Dr. Samuel W. Wiesel, a Board-certified orthopedic surgeon, diagnosed displacement of a cervical intervertebral disc. He noted that appellant had a history of numbness, tingling, and pain in his neck and right arm. Dr. Wiesel advised that appellant could work restricted duty.

An August 5, 2017 magnetic resonance imaging (MRI) scan revealed a right foraminal disc protrusion at C6-7 causing moderate-to-severe right neural foramen narrowing and mild narrowing of the central canal.

In an employing establishment practical exercise performance requirements form dated August 8, 2017, Dr. Wiesel advised that appellant was unable to perform the duties of his position.⁴ On August 17 and 28, 2017 he indicated that appellant could perform light-duty work. In an August 17, 2017 report, Dr. Wiesel advised that he was treating appellant for a neck condition and provided work restrictions.

The record contains a series of physical therapy reports dated August 2017.

In a September 1, 2017 treating physician status report, Dr. Seyed Babak Kalantar, a Board-certified orthopedic surgeon, diagnosed a herniated disc and cervical radiculopathy. He provided a history of appellant experiencing pain, weakness, and numbness in his right arm for the past six weeks and noted that an MRI scan showed a C7 herniated disc compressing the cord. Dr. Kalantar recommended surgery.

In a report dated December 11, 2017, Dr. Daniel Kendall, an osteopath and Board-certified anesthesiologist, evaluated appellant for neck pain and right arm numbness and weakness. He noted that sitting and driving aggravated the pain. Dr. Kendall diagnosed cervicgia, cervical radiculopathy, and other cervical disc displacement at C6-7. He recommended steroid injections for pain management.

On December 20, 2017 Dr. Kalantar related that appellant was scheduled for surgery on February 2, 2018 and anticipated that appellate would be off work from February 1 to 20, 2018. In an accompanying medical note of even date, he discussed his history of severe right arm pain

⁴ The record contains additional practical exercise performance requirements forms regarding appellant’s condition from August 8, 2017 through January 11, 2018.

and weakness for six weeks. Dr. Kalantar diagnosed a herniated cervical disc and cervical radiculopathy and advised that appellant was scheduled for surgery on February 2, 2018.

In a January 11, 2018 attending physician's report (Form CA-20), Dr. Kendal diagnosed cervical disc displacement at C6-7. On an accompanying form of even date, he found that appellant could perform modified work duties.

In a January 12, 2018 Form CA-20, Dr. Kalantar diagnosed cervical radiculopathy and checked a box marked "yes" that the condition was caused or aggravated by employment, noting that sitting, standing, and lifting aggravated appellant's condition.

On January 17, 2018 Dr. Kalantar advised that appellant had been "seen for work[-]related injuries sustained while performing duties." He indicated a diagnosis of herniated cervical disc and treatment which would entail cervical disc replacement surgery.

In a development letter dated January 30, 2018, OWCP notified appellant that his claim initially had appeared to be for a minor injury that had resulted in minimal or no lost time from work.⁵ It had 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 surgical authorization, it would formally adjudicate his claim. 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.

In a Form CA-20 dated February 19, 2018, Dr. Kalantar diagnosed cervical radiculopathy and status post cervical disc replacement. He checked a box marked "yes" that the condition was caused or aggravated by employment, noting appellant's condition "was aggravated by prolonged sitting, standing, [and] lifting."

On February 21, 2018 Dr. Kalantar discussed his evaluation of appellant beginning August 3, 2017 for right upper extremity pain, numbness, and weakness. He noted that appellant's condition had begun with the onset of acute pain while he was sitting at a watch desk computer. Dr. Kalantar reviewed his history of treatment, the findings of a C6-7 disc herniation on MRI scan, and surgery on February 2, 2018. He related:

"Based on [appellant's] description of symptoms it is reasonable to conclude that symptoms were aggravated by the work requirement as he may have had disc issues that were aggravated by sitting and working at a computer for extended periods of time. Without preinjury imaging, it is difficult to say if he had any preexisting disc disease, however, as symptoms did occur while working, it is reasonable to conclude the causative effect."

In a statement dated February 27, 2018, appellant related that on July 18, 2017 he had experienced pain and burning from his neck radiating into his right upper extremity. He advised that he used a computer at work. Appellant indicated that he had previously experienced some neck and right shoulder blade discomfort a few months prior to the incident, but thought he had a

⁵ In a note dated January 18, 2018, an administrative officer with a hospital advised that appellant's C7 disc herniation was related to his job duties.

“minor strain caused from remaining in a seated position for extended periods of time in an aircraft seat” and from working at a computer.

By decision dated March 8, 2018, OWCP denied appellant’s traumatic injury claim. It found that the medical evidence was insufficient to establish that he had sustained a diagnosed condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury and/or medical condition causally related to the accepted July 18, 2017 employment incident.

Appellant underwent physical therapy treatment in February and March 2018.

On April 3, 2018 appellant requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review.

Thereafter, OWCP received a February 2, 2018 operative report regarding appellant’s anterior cervical disc replacement at C6-7.

A telephonic hearing was held on September 13, 2018. At the hearing, OWCP’s hearing representative questioned whether appellant was claiming a traumatic injury or an occupational disease, noting that the medical evidence indicated that his symptoms had developed over more than a single work shift. Appellant responded that his claim had elements of each, noting that sitting in his current position aggravated his condition. He advised that he had filed his claim as a traumatic injury due to the significant pain that he had experienced on the date of injury.

In a report dated September 26, 2018, Dr. Kalantar indicated that he had treated appellant since August 28, 2017 for a C6-7 disc herniation compressing the C7 nerve. He related:

“Based on [Dr. Kalantar’s] previous report of injury that occurred on July 18, 2017 and continued descriptions of symptoms it is reasonable to conclude that [appellant’s] symptoms consistent of injury to his cervical spine, right shoulder, and arm are caused and/or aggravated by performing work[-]related duties as a [f]ederal [a]ir [m]arshal. These include, but are not limited to, extensive and prolonged sitting on aircraft and working at a computer, performing work[-]related physical fitness testing/qualifications, defensive measure qualifications, and forearms training/qualifications.”

By decision dated November 27, 2018, OWCP’s hearing representative affirmed the March 8, 2018 decision. She noted that appellant might wish to pursue an occupational disease claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

⁶ *Supra* note 2.

employment injury.⁷ 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.⁸

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 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.⁹ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a condition causally related to the accepted July 18, 2017 employment incident.

On February 21, 2018 Dr. Kalantar advised that he had initially evaluated appellant on August 3, 2017 for pain and weakness in his right upper extremity that had begun when he sat at a watch desk computer. He opined that appellant's extended sitting and working at a computer while performing his duties had aggravated a possible preexisting disc condition, providing as a rationale that his symptoms had occurred while working. The Board has held, however, that an opinion that a condition is causally related because the employee was asymptomatic prior to the injury is insufficient, without adequate rationale, to establish causal relationship.¹² Dr. Kalantar failed to explain how a specific injury on July 18, 2017 resulted in an aggravation of appellant's back condition and thus his report is insufficient to meet appellant's burden of proof.

In a September 26, 2018 report, Dr. Kalantar diagnosed a C6-7 disc herniation compressing the nerve at C7. He noted that appellant had a history of an injury on July 18, 2017. Dr. Kalantar attributed appellant's conditions to his employment duties, including sitting on aircraft for extended periods, performing computer work, and engaging in physical training. He did not,

⁷ See *E.B.*, Docket No. 17-0164 (issued June 14, 2018); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ See *P.S.*, Docket No. 17-0939 (issued June 15, 2018); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁹ See *V.J.*, Docket No. 18-0452 (issued July 3, 2018); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹⁰ *Id.*

¹¹ See *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹² *S.G.*, Docket No. 18-0208 (issued October 4, 2018).

however, attribute any condition to the accepted July 18, 2017 employment incident, and thus his opinion is of limited probative value.¹³

On January 17, 2018 Dr. Kalantar diagnosed a cervical herniated disc requiring surgery and indicated that he had evaluated appellant for an employment injury that had occurred while he was performing his duties. He did not, however, describe the July 18, 2017 employment incident or provide any rationale for his finding that appellant had sustained an injury at work. The Board has held that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the described incident caused or contributed to a diagnosed medical condition.¹⁴ As Dr. Kalantar did not do so, this report is insufficient to establish appellant's claim.

In Form CA-20 reports dated January 12 and February 19, 2018, Dr. Kalantar diagnosed cervical radiculopathy and checked a box marked "yes" that the condition was caused or aggravated by employment. He concluded that extensive standing, sitting, and lifting aggravated appellant's condition. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.¹⁵

The remaining medical evidence of record fails to address causation. On December 11, 2017 Dr. Kendall discussed appellant's complaints of neck pain aggravated by sitting and driving. He diagnosed cervicgia, cervical radiculopathy, and disc displacement at C6-7. In reports dated September 1 and December 20, 2017, Dr. Kalantar noted appellant's history of right arm pain, numbness, and weakness for the past six weeks and diagnosed a herniated cervical disc and radiculopathy. In a January 11, 2018 Form CA-20 Dr. Kendall diagnosed cervical disc displacement. However, both Dr. Kendall and Dr. Kalantar, in these reports, failed to address the issue of causation. 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.¹⁶

Appellant further submitted physical therapy treatment notes. The Board has held that medical reports signed solely by a physical therapist are of no probative value as such health care providers are not considered physicians as defined under FECA and are therefore not competent to provide medical opinions.¹⁷ Consequently, this evidence is also insufficient to establish appellant's claim.

¹³ See *M.B.*, Docket No. 18-0906 (issued November 21, 2018).

¹⁴ *Id.*

¹⁵ See *R.A.*, Docket No. 17-1472 (issued December 6, 2017); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁶ See *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *S.G.*, Docket No. 19-0041 (issued May 2, 2019).

¹⁷ See *T.T.*, Docket No. 19-1121 (issued November 29, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA); *J.M.*, 58 ECAB 448 (2007) (physical therapists are not considered physicians under FECA).

The record further contains an August 5, 2017 MRI scan of appellant's cervical spine. Diagnostic studies lack probative value on the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁸

As appellant has not submitted rationalized medical evidence establishing that he sustained a medical condition causally related to the accepted July 18, 2017 employment incident, the Board finds that he has not met his burden of proof.¹⁹

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 10.607.²⁰

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a condition causally related to the accepted July 18, 2017 employment incident.

¹⁸ See *C.D.*, Docket No. 17-2011 (issued November 6, 2018).

¹⁹ See *K.K.*, Docket No. 19-1193 (issued October 21, 2019).

²⁰ The Board notes that, if appellant is alleging that he sustained an occupational disease, he may wish to file a separate claim for an occupational disease.

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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