United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 20-0088**
	)	**Issued: June 4, 2020**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AIR MARSHAL SERVICE, Egg Harbor Township, NJ, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 9, 2019 appellant filed a timely appeal from an August 12, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a cervical condition causally related to the accepted March 28, 2019 employment incident.

FACTUAL HISTORY

On April 6, 2019 appellant, then a 51-year-old federal air marshal, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2019 he experienced several muscle spasms in his

[1] 5 U.S.C. § 8101 *et seq.*

neck, as well as popping and cracking in the upper neck area due to prolonged sitting with his neck in an awkward position while in the performance of duty. On the reverse side of the claim form, the employing establishment challenged the claim asserting that there was no evidence that he was injured as a result of a traumatic injury, as he claimed that his neck was injured while sitting in an awkward position on a long distance flight. Appellant stopped work on April 3, 2019.

In a development letter dated April 16, 2019, OWCP informed appellant that he submitted no evidence to establish that he actually experienced the employment incident alleged to have caused his injury. It advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. OWCP also requested a narrative medical report from appellant's physician, providing a firm diagnosis of a condition and a rationalized opinion on how the alleged incident caused or aggravated appellant's condition. It afforded him 30 days to provide the necessary information.

In a partially legible March 29, 2019 diagnostic report, Dr. Jason Beck, a Board-certified diagnostic radiologist, performed a computerized tomography (CT) scan of appellant's cervical spine. He noted no acute abnormality in appellant's cervical spine.

In an April 9, 2019 medical report, Dr. Kenten Wang, Board-certified in physical medicine, reviewed appellant's cervical spine x-ray and explained that the images showed mild anterolisthesis (slipped disc) of C3 on C4 and C4 on C5, which may cause some joint pressure. He referred appellant to acupuncture services to treat his condition. In a work status report of even date, Dr. Wang diagnosed facet syndrome of the cervical spine and recommended that appellant remain out of work until May 15, 2019.

In a May 3, 2019 statement, D.Q., appellant's coworker, reported that after landing on March 27, 2019 he had a conversation with appellant during which he complained of neck pain.

In a May 14, 2019 work status report, Dr. Kris Hirata diagnosed arthropathy of the cervical facet and recommended that appellant remain out of work through May 28, 2019.

In response to OWCP's questionnaire, appellant submitted an undated statement in which he explained that on March 27, 2019 he started experiencing pain in his neck approximately six hours into a flight from Los Angeles to London. The following day on the return flight, he began to experience muscle spasms in his neck that progressively got worse. After appellant returned home, he continued to have more severe spasms until he was eventually taken to the emergency room.

By decision dated May 28, 2019, OWCP denied appellant's traumatic injury claim finding that the evidence of record failed to establish that his diagnosed condition was causally related to the accepted March 28, 2019 employment incident. It explained that the medical evidence failed to provide an opinion on the connection between the accepted employment incident and his diagnosed condition.

OWCP continued to receive evidence. Appellant submitted an April 4, 2019 form report signed by Stanley Ragsdale, a physician assistant.[2] Mr. Ragsdale reported appellant's history of severe neck pain and spasms which began on a return flight from London. He checked a box marked "Yes" to indicate his belief that appellant's work duties were the competent producing cause of his injury and diagnosed neck pain and muscle spasms of the neck.

In an April 9, 2019 form report, appellant informed Dr. Wang of his history of neck pain and spasms that began during his return flight from the United Kingdom. On evaluation, Dr. Wang found mostly left cervical joint pain with possible neuralgia or radiculitis. He checked a box marked "Yes" to indicate his belief that appellant's work duties were the competent producing cause of his injury and diagnosed him with acute neck pain, neuralgia, and facet syndrome of the cervical spine.

In form reports dated April 30 and May 28, 2019, Dr. Hirata reviewed appellant's symptoms of neck pain.[3] On evaluation, he diagnosed appellant with arthropathy of the cervical facet and cervical disc degeneration, ordered a cervical spine MRI scan for further evaluation and referred appellant to physical therapy for treatment. Dr. Hirata checked a box marked "Yes" to indicate his belief that appellant's work duties were the competent producing cause of appellant's injury.

In a June 7, 2019 narrative report, Dr. Tanvir Mahtab, Board-certified in occupational medicine, found tenderness and spasms extending to the trapezius musculatures of appellant's upper back on examination. He diagnosed cervical spine sprain, cervical radiculopathy, and strains of the right and left trapezius and indicated by replying "Yes" that these conditions were related to stowing luggage in an overhead compartment.

In a June 10, 2019 attending physician's report (Form CA-20), Dr. Mahtab reviewed appellant's history of neck pain in relation to the accepted March 28, 2019 employment incident. He repeated his diagnoses of cervical radiculopathy and right and left trapezius strains. Dr. Mahtab checked a box marked "Yes" to indicate his belief that appellant's conditions were caused or aggravated by the March 28, 2019 employment incident.

In a June 13, 2019 letter, appellant requested reconsideration of OWCP's May 28, 2019 decision.

In a July 5, 2019 treating physician's progress report and work status report, Dr. Gerald West, Board-certified in occupational medicine, reviewed appellant's history of neck pain beginning on March 28, 2019 after stowing luggage in an overhead compartment. He diagnosed acute neck pain, a cervical spine sprain, cervical radiculopathy, and a right trapezius strain.

[2] The report makes reference that Dr. Charles Yanni, Board-certified in family medicine was a supervisory physician.

[3] In an unsigned April 30, 2019 after visit summary, it was noted that appellant was seen by Dr. Kris Hirata, Board-certified in physical medicine, for arthropathy of the cervical (neck) facet. He ordered a magnetic resonance imaging (MRI) scan and referred appellant to physical therapy.

Dr. West opined that appellant's condition was related to his job as an air marshal and indicated that he would be able to return to work at full capacity.

In an August 6, 2019 treating physician's progress report, Dr. West again noted appellant's history of pain after stowing luggage in an overhead compartment and diagnoses of cervical disc degeneration and arthropathy of the cervical facet. Appellant informed Dr. West that he was still experiencing spasms that made international plane travel more challenging. Dr. West concluded that, based on appellant's symptoms, the mechanism of injury, review of the medical file, the physical examination, and absent evidence to the contrary, appellant's conditions were causally related to the described employment events. In a work status report of even date, he opined that appellant was able to return to work at full capacity.

By decision dated August 12, 2019, OWCP denied modification of its May 28, 2019 decision.

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,[4] 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.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] 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.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *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).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

opinion evidence sufficient to establish such causal relationship.[10] The opinion of the physician must be based on a complete factual and medical background, 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 incident.[11]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a cervical condition causally related to the accepted March 28, 2019 employment incident.

In a June 7, 2019 narrative report, Dr. Mahtab replied "Yes" to the question of whether the cervical spine sprain, cervical radiculopathy, and strains of the right and left trapezius were causally related to stowing items in an overhead compartment. However, he had an inaccurate history of injury as OWCP accepted that appellant was seated in an awkward position when he experienced neck pain. Additionally, no medical rationale accompanied his affirmative medical opinion. As stated above, to establish causal relationship, the opinion of the physician must be based on a complete factual and medical background.[12] Dr. Mahtab did not do so. His report is therefore of limited probative value and insufficient to establish appellant's claim.

In his attending physician's report dated June 10, 2019, Dr. Mahtab diagnosed a cervical spine sprain, cervical radiculopathy, and strains of the right and left trapezius. He checked a box marked "Yes" to indicate his belief that appellant's conditions were caused or aggravated by appellant's federal employment. The Board has held that a physician's opinion on causal relationship which consists of checking a box marked "Yes" in response to a form question, without explanation or rationale, is of diminished probative value and is insufficient to establish a claim.[13] Without explaining how prolonged sitting with his neck in an awkward position caused or contributed to appellant's cervical conditions, Dr. Mahtab's progress reports is of limited probative value.[14]

In treating physician's progress reports dated July 5 and August 6, 2019, Dr. West noted that appellant's neck pain, which began on March 28, 2019 after stowing luggage in an overhead compartment. He diagnosed acute neck pain, a cervical spine sprain, cervical radiculopathy, cervical disc degeneration, a right trapezius strain, and arthropathy of the cervical facet. Dr. West opined that, based on appellant's symptoms, the mechanism of injury, a review of the medical file, physical examination, and absent evidence to the contrary, appellant's conditions were causally related to the described employment events. While he provided an affirmative opinion which supported causal relationship, he did not provide a pathophysiological explanation as to how the

[10] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[11] *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *I.J.*, 59 ECAB 408 (2008).

[12] *Supra* note 8.

[13] *See J.R.*, Docket No. 18-1679 (issued May 6, 2019); *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[14] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

accepted incident either caused or contributed to his diagnosed conditions.[15] 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 condition is insufficient to meet a claimant's burden of proof to establish a claim.[16] Further, Dr. West's reports noted that appellant's injury was caused by stowing luggage in an overhead compartment and made no mention of appellant's explanation that his injury was caused by sitting for a prolonged period with his neck in an awkward position. As stated above, to establish causal relationship, the opinion of the physician must be based on a complete factual and medical background.[17] For these reasons, Dr. West's progress reports are insufficient to meet appellant's burden of proof.

Similarly, in Dr. Hirata's April 30 and May 28, 2019 attending physician's supplementary reports, he noted neck pain had started after a plane flight four weeks prior and diagnosed arthropathy of the cervical facet and cervical disc degeneration and checked a box marked "Yes" to indicate his belief that appellant's work duties were the competent producing cause of his injury. As noted above, a physician's opinion on causal relationship which consists of checking "Yes" to a form question, without explanation or rationale is of diminished probative value and is insufficient to establish a claim.[18] Accordingly, Dr. Hirata's reports are insufficient to establish appellant's burden of proof.

In Dr. Hirata's May 14, 2019 work status report, he diagnosed arthropathy of the cervical facet and recommended that appellant remain out of work through May 28, 2019. The Board has 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.[19] For this reason, Dr. Hirata's work status report is insufficient to establish appellant's burden of proof.

Dr. Hirata's remaining medical evidence consisted of an unsigned April 30, 2019 visit summary in which he noted appellant's arthropathy of the cervical facet and referred appellant for an MRI scan and to physical therapy. The Board has consistently held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[20] For this reason, Dr. Hirata's visit summary is insufficient to establish appellant's burden of proof.

In an April 9, 2019 medical report and form report, Dr. Wang evaluated appellant for his history of neck pain and spasms, which began during his return flight from the United Kingdom. On evaluation and review of appellant's x-rays, he diagnosed facet syndrome of the cervical spine and checked a box marked "Yes" to indicate his belief that appellant's work duties were the

[15] *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).

[16] *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

[17] *Supra* note 8.

[18] *Supra* note 13.

[19] *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

[20] *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

competent producing cause of his injury. As stated previously, a physician's opinion on causal relationship which consists of checked "Yes" to a form question, without explanation or rationale is of diminished probative value and is insufficient to establish a claim.[21] For this reason, Dr. Wang's medical evidence is insufficient to establish appellant's burden of proof.

In a April 4, 2019 form report signed by Stanley Ragsdale, a physician assistant, reported appellant's history of severe neck pain and spasms and checked a box marked "Yes" to indicate his belief that appellant's work duties were the competent producing cause of his injury and diagnosed appellant with neck pain and muscle spasms of the neck. Certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.[22] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[23] Lastly, appellant provided a March 29, 2019 diagnostic report from Dr. Beck in which a CT scan of appellant's cervical spine revealed no acute abnormality in his cervical spine. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to the relationship between the accepted employment incident and the diagnosed conditions.[24] Accordingly, Dr. Beck's diagnostic report is insufficient to meet appellant's burden of proof.

As appellant has not submitted rationalized medical evidence establishing that his cervical conditions are causally related to the accepted March 28, 2019 employment incident, the Board finds that he has not met her burden of proof to establish his 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 a cervical condition causally related to the accepted March 28, 2019 employment incident.

[21] *Supra* note 13.

[22] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also supra* note 15 at Chapter 2.805.3a(1) (January 2013); *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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners are not considered physicians under FECA); *K.W.*, 59 ECAB 271, 279 (2007).

[23] *Id*.

[24] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2020
Washington, DC

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

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

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