



shoulders, and knees due to factors of his federal employment including a two-day work project that required bending, kneeling, lifting, attaching hardware, long hours on his feet, and many trips up and down stairs. He noted that he first started to experience aches and pains following the first day of the project. Appellant indicated that he first became aware of his condition and realized its relationship to his federal employment on April 7, 2016.

In an attached statement, appellant noted that the work project occurred from April 5 to 6, 2016 and that it required approximately six hours of continuous labor that put abnormal stress and strain on his body. He indicated that he was suffering from pain in his neck, shoulders, and knees and that he had severe pain in his right knee. Appellant reported that he had previously experienced neck, shoulder, and knee pain after special projects that had required extensive physical endurance, but the pain had significantly increased after the most recent project. He also noted that he had a previously accepted traumatic injury claim under OWCP File No. xxxxxx060.<sup>2</sup>

In an April 12, 2016 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence necessary to support his claim and provided a questionnaire for completion. In a separate letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's alleged injury, including comments from a knowledgeable supervisor on the accuracy of his statements and explaining any points of disagreement. It afforded both parties 30 days to submit the requested evidence. No response was received.

By decision dated June 23, 2016, OWCP denied appellant's occupational disease claim. It accepted his duties as described, but denied his claim because no medical evidence was submitted to establish a medical diagnosis causally related to the accepted employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 27, 2017 appellant requested reconsideration.

Appellant submitted a series of reports dated May 26 to July 16, 2016 by Dr. Edward Boudreau, a chiropractor. In a May 26, 2016 narrative report, Dr. Boudreau related appellant's complaints of pain in his neck, shoulders, and upper back, stiffness, and decreased range of motion. He indicated that appellant had informed him that he had neck problems since April 7, 2016 after performing a project at work. In subsequent office visit notes, Dr. Boudreau provided examination findings and reported diagnoses of lumbar region subluxation (segmental dysfunction), lumbar facet syndrome, cervicobrachial syndrome, cervical disc degeneration, cervical region subluxation, head region subluxation, thoracic region subluxation, and myalgia.

A May 27, 2016 x-ray report of appellant's cervical spine revealed levo-scoliosis, moderate disc thinning at C4-5, C5-6, and C6-7, and rotational malpositions at the following levels: C2, C7,

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<sup>2</sup> On August 9, 2013 appellant filed a traumatic injury claim (Form CA-1) alleging that on August 7, 2013 he experienced pain in his shoulder, neck, knee, and left foot as a result of climbing a tower while in the performance of duty. OWCP accepted this claim for medical benefits and is currently closed and has not been administratively combined with this file.

T1, T2, and T3. Dr. Boudreau reported that appellant displayed signs of disc degeneration at C4-5, C5-6, and C6-7.

In a February 10, 2017 letter, Dr. Boudreau indicated that appellant was initially seen in his office on May 26, 2016 for complaints of neck and upper back pain following a work-related project that required heavy lifting and a substantial amount of overhead activity. He noted, “this would seem like a reasonable mechanism of injury for his presenting complaints.” Dr. Boudreau diagnosed cervicobrachial syndrome, cervical disc degeneration, cervical region subluxation, head region subluxation, and thoracic region subluxation. He indicated that these subluxations were noted on his x-ray report and listed under “rotational malpositions.”

In a February 22, 2017 narrative report, Dr. Stephen Meyers, a Board-certified family practitioner, indicated that appellant had been his patient for nearly 12 years and had intermittently sought treatment for neck and back pain related to a January 2008 motor vehicle accident. He recounted that appellant sought a written statement from him regarding his current neck and shoulder pain due to a work-related injury. Dr. Meyers noted that he did not immediately evaluate appellant, but related that appellant had informed him that on April 7, 2016 he was performing unusually physical labor. He reported that appellant subsequently underwent chiropractic and physical therapy treatment and that he had reviewed those treatment notes. Dr. Meyers noted examination findings of significant limitation in range of motion of appellant’s neck. He indicated that appellant’s degree of pain and need to seek treatment dramatically escalated after the reported date of injury. Dr. Meyers opined that it was “highly likely” that appellant’s current pain was caused, or at least greatly aggravated by, the unusual work that he reported performing on April 7, 2016.

In a completed questionnaire dated February 23, 2017, appellant responded to OWCP’s development letter. He believed that the activities which led to his condition were eight hours of hard labor that occurred over two days. Appellant described the duties as removing rotten deck boards, carrying heavy material up and down stairs, lifting and handling of deck material, and removal and reattachment of hardware.

In a February 23, 2017 narrative statement, appellant also indicated that he was submitting two letters which addressed OWCP’s request for additional information. He explained that he was very optimistic that the chiropractic treatment would resolve his issues, which was why he waited to seek treatment from a general physician. Appellant alleged that Dr. Boudreau properly documented and diagnosed the subluxation issue.

By decision dated March 23, 2017, OWCP modified its June 23, 2016 decision denying appellant’s claim. It noted that the medical evidence of record in fact provided medical diagnoses of cervical region subluxation, head region subluxation, and thoracic region subluxation. OWCP, however, continued to deny appellant’s claim because the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

On June 28, 2017 appellant requested reconsideration.

Appellant submitted a letter by Dr. Meyers, dated April 19, 2017, which is substantially similar to his February 22, 2017 letter. Dr. Meyers described the claimed April 7, 2016 employment injury and the subsequent chiropractic treatment that appellant received. He opined that appellant's "current pain predicament" was caused by the unusual work that he reportedly performed on April 7, 2016.

In a May 9, 2017 letter, Dr. Boudreau reiterated that appellant first presented in his office on May 26, 2016 with complaints of neck and upper back pain that began on April 7, 2016. He explained that, considering the degree of pain that appellant experienced after the reported injury, it was his opinion that the unusually physical work that appellant performed on April 7, 2016 was the cause of his neck and upper back pain.

By decision dated August 23, 2017, OWCP denied modification of the March 23, 2017 decision.

On October 17, 2017 appellant requested reconsideration.

In an October 4, 2017 letter, Dr. Boudreau clarified that appellant reported that his neck and upper back pain began on April 5, 2016 while working on a two-day project. He noted that the work required unusually physical activity, including heavy lifting and a substantial amount of overhead activity. Dr. Boudreau explained that, considering the degree of pain that he experienced after the reported injury, it was his opinion that the unusually physical work performed on April 5 and 6, 2016 caused appellant's neck and upper back pain.

By decision dated January 5, 2018, OWCP denied modification of its August 23, 2017 decision.

On September 13, 2018 appellant requested reconsideration.

In a September 12, 2018 letter, Dr. Boudreau described the type of work that appellant performed on April 5 and 6, 2016. He reported that intense physical labor can lead to micro-trauma to the connective tissue, resulting in hypertonicity, trigger points, inflammation, and pain. Dr. Boudreau explained that connective tissue attached to the vertebrae can, therefore, disarticulate the vertebrae, resulting in subluxation. He indicated that appellant was treated in his office for vertebral subluxations and connective tissue micro-trauma (myalgia, hypertonicity, and trigger points). Dr. Boudreau concluded that the unusually physical work that appellant performed on April 5 and 6, 2016 was the cause of his neck and upper back pain.

In a December 11, 2018 decision, OWCP denied modification of the January 5, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United

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<sup>3</sup> *Supra* note 1.

States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</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>5</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>6</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 employment factors identified by the claimant.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.<sup>9</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, 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>10</sup>

### ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant submitted a series of reports and letters dated May 26, 2016 to September 12, 2018 by Dr. Boudreau, a chiropractor. Dr. Boudreau provided a May 27, 2016 x-ray report which

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

<sup>5</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>6</sup> *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>7</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>8</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *see M.S.*, Docket No. 19-0913 (issued November 25, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

demonstrated rotational malpositions at C2, C7, T1, T2, and T3. Section 8101(2) of FECA<sup>11</sup> provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct subluxation, as demonstrated by x-ray to exist and subject to regulations by the Secretary.<sup>12</sup> As Dr. Boudreau diagnosed subluxation based on a May 27, 2016 x-ray report, he is a qualified physician under FECA and his opinion constitutes competent medical evidence.<sup>13</sup>

In his initial May 26, 2016 report, Dr. Boudreau related that on April 7, 2016 appellant had completed a two-day work project that required heavy lifting and a substantial amount of overhead activity and experienced neck, shoulder, and upper back pain. In subsequent examination notes, he reported diagnoses of cervicobrachial syndrome, cervical disc degeneration, cervical region subluxation, head region subluxation, and thoracic region subluxation. In letters dated May 9 and October 4, 2017, Dr. Boudreau opined that, considering the degree of pain that appellant experienced, the unusually physical work that appellant performed on April 5 and 6, 2016 was the cause of his neck and upper back pain. In a September 12, 2018 letter, he provided further explanation noting that “intense physical labor can lead to micro-trauma to the connective tissue, resulting in hypertonicity, trigger points, inflammation, and pain.” Dr. Boudreau further explained that this connective tissue and disarticulation of the vertebra could lead to subluxation, which is a diagnosed condition in this claim. He concluded that the unusually physical work that appellant performed on April 5 and 6, 2016 caused appellant’s neck and upper back pain.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant’s burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.<sup>14</sup> It has the obligation to see that justice is done.<sup>15</sup> The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to an appropriate Board-certified physician. The chosen physician shall provide a rationalized opinion on the issue of whether the diagnosed conditions are causally related to the accepted factors of appellant’s federal employment, giving consideration to the opinion of Dr. Boudreau. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant’s claim.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision.

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<sup>11</sup> 5 U.S.C. § 8101(2).

<sup>12</sup> See 20 C.F.R. § 10.311; *R.H.*, Docket No. 18-1544 (issued March 4, 2019); *M.B.*, Docket No. 17-1378 (issued December 13, 2018).

<sup>13</sup> *Id.*; see also *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>14</sup> *C.W.*, Docket No. 19-0231 (issued July 15, 2019); *D.G.*, Docket No. 15-0702 (issued August 27, 2015); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11, 2018 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 15, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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