



## ISSUE

The issue is whether appellant has met his burden of proof to establish a cervical condition causally related to the accepted September 16, 2016 employment incident.

## FACTUAL HISTORY

On September 21, 2016 appellant, then a 59-year-old electrician, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2016 he strained his left shoulder when climbing and working onboard a ship while in the performance of duty. He did not stop work.

Appellant came under the treatment of Dr. Eric W. Schwarz, an osteopath Board-certified in family practice, on September 21, 2016, for left upper extremity pain with burning paresthesias into the middle ring finger. Dr. Schwarz reported working 16 hours a day on electrical systems on large ships and his symptoms were aggravated by work. He noted appellant's history was significant for rotator cuff repair of the bilateral shoulders and type II diabetes mellitus controlled. Dr. Schwarz noted examination findings of normal strength of the left upper extremity, positive impingement of the left shoulder, positive Spurling's sign into the left forearm, positive Tinel's test at the left elbow, reflexes were equal, and sensation was intact. He diagnosed left cervical radiculopathy and left ulnar neuropathy, and placed appellant off work for 10 days.

In a development letter dated October 12, 2016, OWCP advised appellant that when his claim was originally received it was considered a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow limited medical payments, but the merits of the claim had not been formally adjudicated. OWCP advised that, because of appellant's request to authorize additional diagnostic testing, his claim would be formally adjudicated. It requested that he submit additional factual and medical information in support of his claim including a comprehensive medical report from his treating physician regarding how specific work incidents contributed to his left shoulder strain. OWCP afforded appellant 30 days to respond.

In a report dated September 29, 2016, Dr. Schwarz found normal strength of the left upper extremity, positive impingement of the left shoulder, positive Spurling's sign into the left forearm, positive Tinel's test at the left elbow, reflexes were equal, and sensation was intact. He diagnosed left cervical radiculopathy and left ulnar neuropathy, and placed appellant off work for 10 days. In a report dated October 20, 2016, Dr. Schwarz noted examination findings consistent with cervical nerve root impingement. Appellant reported working 16 hours per day on a ship doing electrical work in awkward and strenuous positions. He explained that on September 16, 2016 he was bundling wires all day, over his head, which put a lot of stress on his neck and shoulders. Dr. Schwarz noted his history was significant for a prior left shoulder rotator cuff injury and repair as well as diabetes. There were, however, no clinical signs that these conditions were aggravating his neck problem. Dr. Schwarz advised that it was likely that appellant had some degree of degeneration in his cervical spine prior to this injury, but opined that the radicular pain and weakness was acute and consistent with repetitive trauma related to the type and scope of work he had been doing.

Appellant sought treatment from Dr. Pulak Ray, a Board-certified neurologist. In reports dated October 17 and November 10, 2016, Dr. Ray noted complaints of neck pain and stiffness and left arm pain. Appellant reported that on September 16, 2016, while working onboard a ship, he experienced neck pain radiating down his shoulder and bicep to his digits after he braced himself from a fall which he believed placed a strain on his upper extremities. Dr. Ray noted findings on examination of intact cranial nerves, intact reflexes, normal strength in the upper and lower extremities, intact sensory examination, and a positive Spurling's test. He noted appellant's history was significant for diabetes mellitus. Dr. Ray advised that a magnetic resonance imaging (MRI) scan of the cervical spine revealed multilevel degenerative disc disease with reversal of the cervical lordosis and multilevel foraminal stenosis from C3-7. He diagnosed cervical radiculopathy into the left arm secondary to cervical spondylotic changes and cervicgia. Dr. Ray noted that appellant underwent a steroid injection without significant improvement and recommended an electromyogram (EMG) and a computerized tomography (CT) scan of the cervical spine. In an October 17, 2016 prescription note, he diagnosed radiculopathy of the cervical region and referred appellant for physical and aqua therapy.

In response to OWCP's questionnaire, appellant indicated that on September 16, 2016 he was working on a ship banding bundles of wires in an overhead position and experienced shoulder pain, but continued to work. He reported working long hours to complete the ship's electrical system and had placed his body in a contorted and compromised position which aggravated his shoulder. Appellant thought he pulled a muscle in his left shoulder and that rest would relieve his symptoms, but the pain progressed and he sought medical treatment. He indicated that he never experienced pain down his arm and back until the employment incident on September 16, 2016.

By decision dated November 22, 2016, OWCP denied the claim finding that appellant had failed to establish an injury or medical condition causally related to the accepted September 16, 2016 employment incident.

On December 23, 2016 appellant requested reconsideration.

In a December 1, 2016 report, Dr. Ray noted appellant's continued complaints of neck pain and left arm pain with numbness and tingling. He noted that appellant received physical therapy for six weeks and one injection with little improvement in his condition. Dr. Ray noted the history of injury and provided examination findings of intact cranial nerves, reflexes, and strength in the upper and lower extremities and a sensory examination revealed left arm numbness and tingling, and a positive Spurling's test. He noted a November 23, 2016 EMG revealed chronic motor unit changes, a left C6 and C7 radicular pattern, and mild bilateral carpal tunnel syndrome. Dr. Ray also noted a CT scan of the cervical spine revealed severe foraminal stenosis, worse at C5-6 and C6-7. He indicated that appellant presented with progressive cervical spondylotic myelo-radiculopathy which was exacerbated after an injury at work. Dr. Ray advised that conservative treatment failed and he recommended anterior cervical discectomy and fusion at C5-7. He opined that it was more likely than not that appellant's injuries related to his work as an electrician.

In a letter dated December 17, 2016, Dr. Schwarz opined that, based on reasonable medical probability, appellant's injury occurred while at work. He explained that based upon his own opinion, and that of a neurosurgeon, the claim should not be questioned. Dr. Schwarz explained that although it was more difficult to understand a repetitive injury than a traumatic injury, it was

highly unlikely that appellant would have injured his neck had he been working at a desk and not doing the strenuous work in awkward positions while working at the ship yard.

In a letter dated February 21, 2017, Dr. Zeena Dorai, a Board-certified neurologist, opined, within a reasonable degree of medical certainty and based on history, physical examination, and MRI scan studies that appellant's cervical spine injury was due to a work-related injury.

By decision dated March 23, 2017, OWCP denied modification of its November 22, 2016 decision.

On August 22, 2017 appellant, through counsel, requested reconsideration.

In support of his request for reconsideration, appellant resubmitted Dr. Ray's December 1, 2016 report, Dr. Schwarz' December 17, 2016 report, and Dr. Dorai's February 21, 2017 letter.

A November 23, 2016 EMG revealed chronic C6 and C7 radiculopathy on the left, C7 radiculopathy on the right, ulnar neuropathy across the left elbow (cubital tunnel syndrome), and bilateral carpal tunnel syndrome.

On February 10, 2017 Dr. Dorai performed a C4-5, C5-6, and C6-7 anterior cervical discectomy with arthrodesis and diagnosed cervical stenosis.

In reports dated March 1 and April 26, 2017, a physician assistant treated appellant for routine postoperative follow-up visits status post anterior cervical discectomy and fusion from C4-7. She noted that appellant was progressing well and the left upper extremity pain had almost completely resolved.

By decision dated November 16, 2017, OWCP denied modification of it March 23, 2017 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 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>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

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<sup>3</sup> *Id.*

<sup>4</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).

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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

Rationalized medical opinion evidence is required to establish causal relationship. 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.<sup>8</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup>

In a 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 and the preexisting condition.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a cervical condition causally related to the accepted September 16, 2016 employment incident.

In support of his claim, appellant submitted reports from Dr. Schwarz dated September 21 and 29, 2016, which noted that he presented with left upper extremity pain with burning paresthesias. Dr. Schwarz diagnosed left cervical radiculopathy and left ulnar neuropathy. Although he provided examination findings and diagnosed cervical conditions, he did not offer an

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<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> *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>7</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>8</sup> *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

<sup>9</sup> *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

opinion as to causal relationship. 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.<sup>11</sup> These reports, therefore, are insufficient to establish appellant's claim.

In a report dated October 20, 2016, Dr. Schwarz noted appellant's examination was consistent with cervical nerve root impingement. He advised that it was likely that appellant had some degree of degeneration in his cervical spine prior to this injury, but opined that the radicular pain and weakness was acute and consistent with repetitive trauma related to the type and scope of work he had been performing. Similarly, in his letter dated December 17, 2016, Dr. Schwarz noted that, based on reasonable medical probability, appellant's injury had occurred while at work. The Board finds that, although Dr. Schwarz supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinions. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>12</sup> Dr. Schwarz did not sufficiently explain the process by which performing electrical work, including bundling wires overhead and in awkward positions, would cause or aggravate the diagnosed conditions nor did he provide an explanation as to why his conditions were not due to age-related degenerative changes from his preexisting conditions. These reports are thus insufficient to establish appellant's claim.

Appellant submitted reports from Dr. Ray dated October 17 and November 10, 2016. Dr. Ray diagnosed cervical radiculopathy into the left arm secondary to cervical spondylotic changes and cervicalgia. These reports do not contain an opinion on the issue of causal relationship and therefore are of no probative value as to that issue.<sup>13</sup>

In a December 1, 2016 report, Dr. Ray noted appellant's history of a September 16, 2016 employment incident onboard a ship. He noted that appellant presented with progressive cervical spondylotic myeloradiculopathy which was exacerbated after an injury at work. Dr. Ray opined that it was "more likely than not" that appellant's injuries related to his work as an electrician. The Board finds that this report is not provided with certainty and is merely speculative. It has long been held that medical opinions that are speculative or equivocal in character have little probative value.<sup>14</sup> Therefore, this report is insufficient to establish appellant's claim.

Appellant submitted a February 21, 2017 report from Dr. Dorai, who noted within a reasonable degree of medical certainty, that, based upon the history of injury, physical examination findings, and MRI scan studies appellant's cervical spine injury was due to a work-related injury. The Board finds that although Dr. Dorai supported causal relationship, she did not provide medical

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<sup>11</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</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); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *T.M.*, *supra* note 12.

rationale explaining the basis of her conclusory opinion regarding the causal relationship.<sup>15</sup> She did not explain the process by which performing his electrician duties would cause or aggravate the diagnosed conditions and therefore this report is insufficient to establish appellant's claim.

The record also contains records from a physician assistant dated March 1 and April 26, 2017. The reports from the physician assistant have no probative medical value on the issue of causal relationship as physician assistants are not considered "physicians" as defined under FECA.<sup>16</sup> Consequently, the medical findings and/or opinions of a physician assistant are of no probative value for purposes of establishing entitlement to compensation benefits.<sup>17</sup>

The remainder of the medical evidence including an EMG scan report, a CT scan report, and Dr. Dorai's operative report lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's accepted employment incident and his diagnosed cervical radiculopathy, cervical spondylotic, and cervicalgia.<sup>18</sup> For this reason, this evidence is insufficient to meet his burden of proof.

The Board finds that appellant has not submitted sufficient medical evidence to meet his 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 cervical conditions causally related to the accepted September 16, 2016 employment incident.

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<sup>15</sup> *Supra* note 8.

<sup>16</sup> 5 U.S.C. § 8101(2). *B.K.*, Docket No. 19-0829 (issued September 25, 2019); *T.C.*, Docket No. 19-0227 (issued July 11, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law). Federal (FECA) Procedure Manual, *supra* note 10 at Chapter 2.805.3a(1) (January 2013).

<sup>17</sup> *N.R.*, Docket No. 19-1366 (issued December 6, 2019); *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

<sup>18</sup> *Supra* note 16.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 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