

**United States Department of Labor  
Employees' Compensation Appeals Board**

P.C., Appellant	)	
	)	
and	)	<b>Docket No. 20-0778</b>
	)	<b>Issued: November 9, 2020</b>
DEPARTMENT OF HOMELAND SECURITY,	)	
CUSTOMS & BORDER PATROL, El Paso, TX,	)	
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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 24, 2020 appellant filed a timely appeal from an October 31, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 her burden of proof to establish a medical condition causally related to her accepted March 1, 2019 employment incident.

**FACTUAL HISTORY**

On March 3, 2019 appellant, then a 55-year-old customs and border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that at 1:00 a.m. on March 1, 2019 she sustained a headache with neck pain, tenderness and pain in the upper chest, pain in the left arm socket, and

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

pain in the left arm as a result of a scuffle with a noncompliant suspect during a pat-down discovery of hard narcotics while in the performance of duty. She did not stop work.

In an April 8, 2019 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence from appellant and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a March 1, 2019 narrative statement, appellant described the events of February 28, 2019 when a suspect refused to cooperate with a pat-down, became aggressive and fell onto a wooden bench causing appellant and two other agents to fall to the ground. She landed on the suspect. The suspect was found to have crystal meth powder which was released into the air during the altercation. Appellant reported a headache and soreness to the neck following this incident.

On April 4, 2019 appellant underwent a cervical magnetic resonance imaging (MRI) scan which demonstrated anterior spondylosis at C2-6 and C7-T1, a shallow posterior disc protrusion at C6-7, and a dumbbell-shaped mass at C2-3 compressing the upper cervical cord identified as a nerve sheath tumor.

On April 12, 2019 Dr. Victor M. Villalobos, a Board-certified family practitioner, noted appellant had headaches and severe neck pain and opined that she was totally disabled from work.

In a May 1, 2019 progress note, Dr. Bratislav M. Velimirovic, a Board-certified neurosurgeon, diagnosed cervical myelopathy. He reviewed appellant's MRI scan and noted that appellant had sustained a work-related injury approximately one month prior to his examination. On May 5, 2019 Dr. Velimirovic recommended light-duty work pending completion of an angiogram.

In response to OWCP's development questionnaire, appellant submitted an April 26, 2019 statement where she indicated that immediately after the incident she experienced neck pain and severe headache. She completed her shift at 6:00 a.m. and her pain continued to worsen. Appellant took pain reliever allowing her to sleep. She denied sustaining any other injury. Appellant sought medical treatment on the date of injury. She described her regular work duties including working on a computer, passport applications, assisting with pat-downs of applications, wearing her gun belt, interviewing applicants, transporting detainees, and stamping permits. Appellant requested annual leave from April 3 through 13, 2019 and used sick leave on April 2, 2019.

By decision dated May 17, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence did not establish a causal relationship between her diagnosed condition and the accepted employment incident. On June 7, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a May 17, 2019 note, Dr. Velimirovic examined appellant due to neck pain. He diagnosed cervical spine tumor.

On June 4, 2019 appellant underwent a cervical angiogram. In a June 5, 2019 note, Dr. Velimirovic examined appellant due to neck pain and diagnosed a cervical spine tumor. He noted that she experienced a work injury and that since the injury she had experienced progressive neck pain, headaches, upper extremity pain, and lower extremity pain. Dr. Velimirovic opined that appellant's current condition was a consequence of her work injury. He examined her on

August 1, 2019 due to neck pain. Dr. Velimirovic diagnosed cervical myelopathy and noted that appellant had undergone cervical tumor resection with decompression and fusion on July 3, 2019.

On August 20, 2019 appellant asserted that she underwent cervical fusion as a result of employment-related cervical compression. She attributed this condition to her March 1, 2019 employment injury while conducting a partial pat-down on a suspect.

A hearing was held on September 10, 2019 before an OWCP hearing representative.

In a September 30, 2019 note, Dr. Villalobos reported examining appellant on April 1, 2019 due to headaches, neck pain, and left shoulder pain. He noted that she described her employment incident. Dr. Villalobos reviewed appellant's MRI scan results which demonstrated a nerve sheath tumor that was extending within the central canal and compressing the upper cervical cord causing pain and discomfort. He indicated that the cause of this condition was unknown and that he was unable to confirm or deny that appellant's condition could have been aggravated by her work incident.

On October 3, 2019 Dr. Velimirovic opined that appellant's current neck pain had a spontaneous onset. He diagnosed cervical myelopathy. Dr. Velimirovic noted that appellant had a history of injury at work and had undergone a posterior cervical laminectomy for tumor resection. He reviewed appellant's September 30, 2019 computerized tomography (CT) scan of the cervical spine.

In an undated attending physician's report (Form CA-20) Dr. Velimirovic diagnosed cervical myelopathy. He indicated by checking a box marked "No" that he did not believe that appellant's condition was caused or aggravated by her employment. Dr. Velimirovic further noted that he was unable to determine the cause of her condition.

By decision dated October 31, 2019, OWCP's hearing representative affirmed the prior decision finding that there was no medical evidence of record establishing a causal relationship between appellant's diagnosed conditions and her accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</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>4</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *J.C.*, Docket No. 16-1724 (issued April 20, 2017); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>4</sup> *J.C., id.*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

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. 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.<sup>5</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>6</sup>

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 opinion evidence.<sup>7</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 the specific employment incident identified by the employee.<sup>8</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### ANALYSIS

The Board finds appellant has not met her burden of proof to establish that she sustained a medical condition causally related to her accepted March 1, 2019 employment incident.

In support of her traumatic injury claim, appellant submitted a June 5, 2019 note from Dr. Velimirovic who noted that appellant experienced a work injury and that since the injury she complained of progressive neck pain, headaches, upper extremity pain, and lower extremity pain. Dr. Velimirovic diagnosed a cervical spine tumor and opined that her current condition was a consequence of her work injury. However, he did not provide medical rationale explaining the basis of his conclusion regarding causal relationship.<sup>10</sup> Moreover, Dr. Velimirovic did not explain the mechanics of how the March 1, 2019 fall caused or aggravated a cervical spine tumor. As noted, to establish causal relationship, 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 the specific employment incident identified by the employee.<sup>11</sup> Dr. Velimirovic report is, therefore, insufficient to meet appellant's burden of proof.

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<sup>5</sup> *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *T.H.*, 59 ECAB 388 (2008); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>7</sup> *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> *D.G.*, Docket No. 19-1259 (issued January 29, 2020).

<sup>11</sup> *R.G.*, Docket No. 1809792 (issued March 11, 2020).

Appellant also provided a September 30, 2019 note from Dr. Villalobos reviewing her cervical MRI scan results which demonstrated a nerve sheath tumor that was extending within the central canal and compressing the upper cervical cord causing pain and discomfort. Dr. Villalobos indicated that the cause of this condition was unknown and that he was unable to confirm or deny that her condition could have been aggravated by her work incident. On October 3, 2019 Dr. Velimirovic opined that appellant's current neck pain had a spontaneous onset and diagnosed cervical myelopathy. He noted that appellant had a history of injury at work and had undergone a posterior cervical laminectomy for tumor resection. In his undated Form CA-20, Dr. Velimirovic diagnosed cervical myelopathy and noted that he was unable to determine the cause of appellant's condition. He further indicated by checking a box marked "No" that he did not believe that appellant's condition was caused or aggravated by her employment. Medical evidence offering no opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>12</sup> Furthermore, medical evidence which negates a causal relationship between appellant's employment incident and her diagnosed condition is of no probative value in establishing her claim.<sup>13</sup> For these reasons, these reports from Drs. Villalobos and Velimirovic are insufficient to meet appellant's burden of proof.

In an April 12, 2019 report, Dr. Villalobos diagnosed headaches and severe neck pain and opined that appellant was totally disabled. He did not provide an opinion on the causal relationship between her diagnosed condition and her employment incident. As noted above, medical evidence offering no opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>14</sup>

Similarly, on May 5, 2019 Dr. Velimirovic diagnosed cervical myelopathy and noted appellant had sustained a work-related injury approximately a month prior to his examination. On May 17, 2019 he examined her due to neck pain and diagnosed cervical spine tumor. On August 1, 2019 Dr. Velimirovic examined appellant due to neck pain diagnosing cervical myelopathy. He noted her cervical tumor resection with decompression and fusion on July 3, 2019. These reports are insufficient to meet appellant's burden of proof as Dr. Velimirovic failed to provide an opinion on the causal relationship between her diagnosed conditions and her accepted work-related injury.<sup>15</sup> In his October 3, 2019 report, Dr. Velimirovic negates causal relationship as it finds that appellant's neck pain was spontaneous rather than related to her accepted employment incident.<sup>16</sup> These reports from Drs. Villalobos and Velimirovic are therefore insufficient to establish appellant's claim.

The record also contains an April 4, 2019 cervical MRI scan, and an angiogram. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal

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<sup>12</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020).

<sup>13</sup> *K.R.*, Docket No. 19-0730 (issued June 5, 2020) (medical evidence which negates causal relationship is of no probative value in establishing causal relationship).

<sup>14</sup> *Supra* note 12.

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

<sup>16</sup> *Supra* note 13.

relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.<sup>17</sup>

As appellant has not submitted any rationalized medical evidence establishing a causal relationship between the claimed medical conditions and the accepted March 1, 2019 employment incident, she has not met her burden of proof. She 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 appellant has not met her burden of proof to establish that she sustained a medical condition causally related to her accepted March 1, 2019 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 31, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>17</sup> *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).