

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

S.L., Appellant	)	
	)	
and	)	Docket No. 20-0612
	)	Issued: September 28, 2020
DEPARTMENT OF HOMELAND SECURITY,	)	
FEDERAL AIR MARSHAL SERVICE,	)	
Chantilly, VA, Employer	)	
	)	

*Appearances:*  
Stephen V. Barszcz, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 27, 2020 appellant, through counsel, filed a timely appeal from a January 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish cervical spine conditions causally related to the accepted factors of his federal employment.

### **FACTUAL HISTORY**

On March 27, 2019<sup>4</sup> appellant, then a 41-year-old federal air marshal, filed an occupational disease claim (Form CA-2) alleging that he developed spinal cord disease, spinal stenosis, spondylosis with myelopathy, and cervical disc disorder with myelopathy and radiculopathy due to factors of his federal employment. He did not stop work.

In an accompanying narrative statement, appellant noted that he experienced severe pain in the neck radiating down to his right arm after attending protection response training from July 29 to August 3, 2018. He indicated that, during the physical training, he practiced hand-to-hand combat techniques, body throws, leg sweeps, forced building entries, and other law enforcement-related training. Appellant stated that he informed the employing establishment and received medical treatment. He reported that he saw multiple specialists for his spinal conditions and was informed that he would likely need surgery. Appellant noted that from September through December 2018, he experienced severe numbness in both legs and feet, right arm, and right shoulder blade area. He indicated that he also experienced extreme tingling in the hands and sensory issues in the hands and feet. Appellant related that he underwent cervical surgery on January 7, 2019. He noted that in February 2019 he was still experiencing right leg and arm numbness and weakness, pain radiating to the right arm, sensory issues in the hands and feet, balance problems, and muscle spasms in both legs and the right arm. Appellant alleged that the physical activities related to his work caused his cervical spine conditions. He indicated that these included push-ups, pull-ups, sit-ups, jogging, weight training, calisthenics, warm-up exercises, offensive and defensive training, striking, lifting, pulling, dragging, and restraining. Appellant stated that he had never previously suffered from similar conditions.

In an April 23, 2019 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

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>4</sup> Appellant originally filed a traumatic injury claim (Form CA-1) on August 9, 2018 but changed his claim to an occupational disease claim after consulting with the employing establishment.

evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response to OWCP's development letter, appellant submitted a medical release form dated September 6, 2018.

By decision dated June 20, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 17, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

A magnetic resonance imaging (MRI) scan of the cervical spine, dated August 8, 2018, revealed degenerative changes of the cervical spine, moderate central canal stenosis at C4-5 and C5-6; mild-to-moderate central canal stenosis at C3-4 and C6-7; and multilevel foraminal stenosis.

In an August 8, 2018 report, Allison Baldwin, a physician assistant, noted that appellant had pain in the right shoulder, upper back, right thumb, and right index finger. She indicated that appellant also had severe neck and right arm pain that began on August 1, 2018. Ms. Baldwin reviewed x-rays of appellant's cervical spine and diagnosed cervical degenerative disc disease at C5-6 with right arm cervical radiculopathy.

An August 13, 2018 report by Dr. Costa G. Soteropoulos, a Board-certified specialist in physical medicine and rehabilitation, noted that appellant experienced severe neck pain aggravated by sitting, standing, walking, lifting, coughing, sneezing, bending, and lying flat. He examined appellant and diagnosed cervical disc disorder at the C5-6 level with radiculopathy, cervicgia, radiculopathy cervicothoracic region, and myalgia.

In an August 17, 2018 report, Dr. Soteropoulos noted that appellant experienced continued discogenic pain and upper extremity radicular symptoms consistent with cervical radiculopathy. He examined appellant and diagnosed cervical disc disorder at the C5-6 level with radiculopathy. Dr. Soteropoulos administered an epidural steroid injection.

Dr. Raymond Kirchner, a Board-certified orthopedic surgeon, noted in a December 7, 2018 report that appellant presented with constant neck pain and right arm weakness with numbness and atrophy. He indicated that appellant experienced numbness, stiffness, limping, tingling, and weakness. Dr. Kirchner examined appellant and diagnosed cervical disc disorder with myelopathy and multilevel cervical spinal stenosis with suspected myeloradiculopathy. He recommended surgical decompression and stabilization and a neurology examination.

X-rays of the cervical spine, dated December 13, 2018, revealed mild disc space narrowing at C5-6.

In a December 13, 2018 report, Dr. Jae Lim, Board-certified neurosurgeon, noted that appellant presented with a five-month complaint of severe neck, arm, and leg pain. He related that appellant's symptoms began after he completed a training camp for his work. Dr. Lim indicated

that appellant also had numbness, tingling, and weakness in both of his arms and legs. He reviewed x-rays of appellant's cervical spine and diagnosed cervical spondylosis with myelopathy and recommended an anterior decompression procedure.

Dr. Lim, in a January 7, 2019 operative report, described the results of his surgical procedures, including anterior cervical discectomies, total disc replacement, and interbody fusion. He noted postoperative diagnoses of cervical degenerative disc disease and cervical stenosis with myelopathy.

Subsequently, in a January 24, 2019 report, Dr. Lim noted that appellant had residual numbness in his right arm following his surgical procedures, which was gradually improving. He examined appellant and diagnosed cervical spondylosis with myelopathy.

In a February 14, 2019 treating physician status report, Dr. Michelle Campbell, a Board-certified family practitioner, noted appellant's history of severe neck pain, tingling, and weakness in the right arm. She diagnosed cervical stenosis and cervical spondylosis with myelopathy. Dr. Campbell indicated that appellant could return to light-duty work on January 28, 2019.

X-rays of the cervical spine, dated February 19, 2019, revealed no fracture or subluxation.

Dr. Lim noted in a February 19, 2019 report that appellant had imbalance, foot dysesthesias, and leg weakness following his surgical procedures. He reviewed x-rays of appellant's cervical spine and diagnosed cervical spondylosis with myelopathy.

In an August 28, 2019 report, Dr. Demetri Adarmes, a Board-certified specialist in physical medicine and rehabilitation, noted that appellant had severe neck pain, loss of sensation at the C5 and below level, and bilateral weakness in the triceps. He indicated that appellant performed training at work which included extremely physically demanding defensive tactics classes. Dr. Adarmes related appellant's history of present illness and past medical history. He examined appellant and reviewed his medical records and MRI scans of his spine. Dr. Adarmes diagnosed cervical disc disorder at C5-6 with myelopathy, cervical disc displacement with radiculopathy, and neuromuscular dysfunction of the bladder secondary to myelopathy. He opined that appellant's work duties contributed to, aggravated, and caused his diagnosed conditions.

By decision dated January 9, 2020, OWCP modified the June 20, 2019 decision, finding that while the medical evidence of record was sufficient to establish the medical component of fact of injury, it was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted factors of his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</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

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<sup>5</sup> *Supra* note 2.

time limitation period of FECA,<sup>6</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>7</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>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 identified employment factors.<sup>9</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> 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>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish cervical spine conditions causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted medical reports from Dr. Soteropoulos dated August 13 and 17, 2018. Dr. Soteropoulos diagnosed cervical disc disorder at the C5-6 level with radiculopathy, cervicalgia, radiculopathy cervicothoracic region, and myalgia, but did not offer an opinion as to whether appellant's employment caused or aggravated his diagnosed conditions. 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>12</sup> As such, these reports are insufficient to meet appellant's burden of proof to establish his claim.

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<sup>6</sup> *R.M.*, Docket No. 20-0342 (issued July 30, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> *See B.H.*, Docket No. 18-1693 (issued July 20, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *L.S.*, Docket No. 19-1769 (issued July 10, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>11</sup> *B.C.*, Docket No. 20-0221 (issued July 10, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>12</sup> *L.B.*, Docket No. 19-1907 (issued August 14, 2020); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

In reports dated December 13, 2018 to February 19, 2019, Dr. Lim diagnosed cervical degenerative disc disease and cervical spondylosis with myelopathy and reported appellant's progress following his surgical procedures. On December 13, 2018 he noted that appellant reported symptoms after completing a training camp for work. However, in all of his reports, Dr. Lim failed to address the cause of appellant's diagnosed conditions. Accordingly, as previously noted, these reports are insufficient to establish appellant's claim.<sup>13</sup>

Similarly, in a December 7, 2018 report, Dr. Kirchmier diagnosed cervical disc disorder with myelopathy and multilevel cervical spinal stenosis with suspected myeloradiculopathy, but did not offer an opinion as to whether appellant's employment caused or aggravated his diagnosed condition. Accordingly, this report is of no probative value and is insufficient to establish appellant's claim.<sup>14</sup>

Appellant submitted a February 14, 2019 treating physician status report from Dr. Campbell who diagnosed cervical stenosis and cervical spondylosis with myelopathy. Dr. Campbell provided a detailed history of appellant's severe neck pain, tingling, and weakness in the right arm and noted his work restrictions. However, she did not offer an opinion on causal relationship in her report. As such, this report is also insufficient to establish appellant's claim.<sup>15</sup>

Appellant also submitted an August 28, 2019 report from Dr. Adarmes who noted appellant's history of illness and work activities. Dr. Adarmes diagnosed cervical disc disorder at C5-6 with myelopathy, cervical disc displacement with radiculopathy, and neuromuscular dysfunction of the bladder secondary to myelopathy. He opined that appellant's work duties contributed to, aggravated, and caused his diagnosed conditions. However, a medical opinion must provide an explanation of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.<sup>16</sup> While Dr. Adarmes indicated that appellant's diagnosed conditions were work related, he failed to provide medical rationale explaining the basis of his conclusory opinion. As such, his opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.<sup>17</sup>

Appellant submitted a report from Ms. Baldwin, a physician assistant, dated August 8, 2018. Certain healthcare providers such as physician assistants are not considered

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

<sup>16</sup> *R.D.*, Docket No. 19-1076 (issued July 2, 2020).

<sup>17</sup> *Id.*

“physician[s]” as defined under FECA.<sup>18</sup> Consequently, this report will not suffice for purposes of establishing appellant’s claim.<sup>19</sup>

The record contains an MRI scan report and x-ray reports dated August 8, 2018 to February 19, 2019. The Board has held, however, that diagnostic test reports standing alone lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment factors caused appellant’s diagnosed condition.<sup>20</sup>

On appeal counsel asserts that the medical evidence of record is sufficient to establish that appellant’s diagnosed conditions were causally related to his work activities. As explained above, the evidence of record does not contain a rationalized medical report from a physician to establish that appellant’s cervical spine conditions were causally related to the accepted factors of his federal employment.

As appellant has not submitted rationalized medical evidence explaining the causal relationship between his diagnosed cervical spine conditions and the accepted factors of his federal employment, the Board finds that he has not met his burden of proof.

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 spine conditions causally related to the accepted factors of his federal employment.

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<sup>18</sup> Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section 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. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); *see also C.K.*, Docket No. 19-1549 (issued June 30, 2020) (physician assistants are not considered physicians under FECA).

<sup>19</sup> *Id.*

<sup>20</sup> *C.B.*, *supra* note 15.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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