

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

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**M.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bellmawr, NJ, Employer**

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**Docket No. 22-0710  
Issued: August 3, 2022**

*Appearances:*

*Thomas R. Uliase, 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

JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 7, 2022 appellant, through counsel, filed a timely appeal from an October 25, 2021 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the 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.

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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.

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

## ISSUE

The issue is whether appellant has met her burden of proof to establish a cervical condition causally related to the accepted factors of her federal employment.

## FACTUAL HISTORY

On February 5, 2021 appellant, then a 49-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she herniated a cervical disc causally related to factors of her federal employment. She attributed her condition to carrying a mailbag weighing up to 25 pounds on her neck and upper back for over 21 years. Appellant indicated that she became aware of her condition on August 26, 2020 and attributed it to her federal employment on December 8, 2020. She did not stop work.<sup>3</sup>

In a January 5, 2021 statement, appellant described the work factors that she believed had caused her condition, including carrying mail on her back for over 20 years.

Electrodiagnostic testing performed on September 27, 2018 revealed irritation of the left low cervical dorsal nerve root and findings consistent with carpal tunnel syndrome.

In a development letter dated February 16, 2021, OWCP advised appellant of the type of evidence needed to establish her occupational disease claim, including a report from her attending physician addressing the causal relationship between those exposures and the claimed conditions. It provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond to its request.

Thereafter, appellant submitted a report dated August 26, 2020 from Dr. Vincent M. Padula, an osteopath. Dr. Padula evaluated appellant for bilateral neck pain radiating through the upper extremities into the hands. He noted that she had difficulty carrying a mailbag and parcels and that performing repetitive upper extremity movements like sorting mail caused “severe burning in her neck as well as tingling down the upper extremities into her hands.” Dr. Padula reviewed the findings from an October 24, 2018 magnetic resonance imaging (MRI) scan. He diagnosed a cervical disc herniation, cervical foraminal stenosis, cervical facet syndrome, and cervical radiculopathy. On September 3, 2020 Dr. Padula administered a cervical epidural steroid injection.<sup>4</sup>

In a report dated September 15, 2020, Dr. Padula discussed appellant’s continued symptoms of neck pain worse on the right. He noted that she had difficulty turning her head while driving and carrying and delivering mail. Dr. Padula diagnosed cervical radiculopathy, cervical spondylosis without myelopathy or radiculopathy, and chronic pain syndrome.

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<sup>3</sup> OWCP previously accepted that on January 24, 2018 appellant sustained a left hand contusion, a abrasion, and sprain, and a left wrist contusion, a abrasion, and sprain, assigned OWCP File No. xxxxxx790. It further accepted her March 2020 occupational disease claim for bilateral carpal tunnel syndrome, assigned OWCP File No. xxxxxx773.

<sup>4</sup> Dr. Padula provided appellant with epidural steroid injections from September to December 2020.

In a report dated December 8, 2020, Dr. Padula found that appellant's symptoms had improved with cervical blocks. He indicated that she was "a mail carrier and has a walking route, she has to carry a large parcel over her shoulder which exacerbates her symptoms." Dr. Padula diagnosed cervical radiculopathy, cervical panniculitis, cervical spondylosis, and chronic pain syndrome.

By decision dated April 20, 2021, OWCP denied appellant's occupational disease claim. It found that she had not established a medical condition causally related to the accepted employment factors.

On May 17, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated August 24, 2021, Dr. Padula advised that appellant had "a progressive history of cervical and lumbar spine pain with numbness, tingling, and paresthesias into [the] bilateral hands." He noted that her symptoms increased when she performed her work duties. Dr. Padula reviewed appellant's job description, which included repetitive hand activities and lifting up to 80 pounds. He diagnosed cervical radiculopathy, a disc bulge at C5-6, a herniation on the left at C4-5, facet joint hypertrophy at C2-7, a disc herniation at L4-5, and a disc bulge at L3-4. Dr. Padula discussed the results of diagnostic testing. He related, "I feel [appellant's] occupation as a mail carrier, carrying large packages as well as a mailbag on her shoulders, have and will certainly exacerbate her underlying conditions including cervical facet arthropathy, cervical disc herniations, and cervical radiculopathy."

A telephonic hearing was held on September 9, 2021. Appellant described her work duties and noted that on August 25, 2020 she felt a significant pain between her shoulder blades but continued working. She related that she experienced continual pain from carrying a bag weighing up to 80 pounds on her left shoulder.

In a report dated September 16, 2021, a physician assistant excused appellant from work for the period September 16 to 20, 2021.

By decision dated October 25, 2021, OWCP's hearing representative affirmed the April 20, 2021 decision.

### **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 that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,<sup>6</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to

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

<sup>6</sup> *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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>

In an occupational disease claim, appellant's burden of proof requires submission of 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 employment factors identified by the employee.<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<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 her burden of proof to establish a cervical condition causally related to the accepted factors of her federal employment.

On August 24, 2021 Dr. Padula advised that appellant had a history of worsening pain in her lumbar and cervical spine with numbness and tingling in her hands bilaterally. He noted that her symptoms increased when performing the duties of her employment. Dr. Padula reviewed appellant's work duties and diagnosed cervical radiculopathy, a disc bulge at C5-6, a herniation on the left at C4-5, facet joint hypertrophy at C2-7, a disc herniation at L4-5, and a disc bulge at L3-4. He opined that working as a mail carrier, particularly carrying large packages and a mailbag on her shoulders, had and would continue to exacerbate her underlying cervical facet arthropathy, cervical disc herniations, and cervical radiculopathy. While Dr. Padula provided an affirmative opinion on causal relationship, he did not provide medical rationale sufficient to explain how or why he believed appellant's employment duties caused or aggravated the diagnosed conditions. The Board has held that medical opinion evidence should offer a medically-sound explanation of

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<sup>7</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>8</sup> *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *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>9</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>10</sup> *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>11</sup> *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

how the specific employment incident or work factors physiologically caused the injury.<sup>12</sup> Without this explanation regarding causal relationship, Dr. Padula's report is insufficient to meet appellant's burden of proof to establish her claim.<sup>13</sup>

In an August 26, 2020 report, Dr. Padula discussed appellant's complaints of bilateral neck pain radiating into the upper extremities. He noted that she related that her symptoms increased when she carried her mailbag or parcels and that performing repetitive work duties caused burning in her neck with radiation into her hands. Dr. Padula diagnosed cervical disc herniation, cervical foraminal stenosis, cervical facet syndrome, and cervical radiculopathy. In reports dated September 15 and December 8, 2020, he again discussed her complaints of neck pain with increased symptoms delivering mail. Dr. Padula diagnosed cervical radiculopathy, cervical spondylosis without myelopathy or radiculopathy, and chronic pain syndrome. On December 8, 2020 he also diagnosed cervical panniculitis. In these reports, however, Dr. Padula did not specifically address the cause of the 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>14</sup> Accordingly, these reports are insufficient to meet appellant's burden of proof to establish her claim.

Appellant submitted a September 16, 2021 report from a physician assistant. The Board has held that medical reports signed solely by a physician assistant lack probative value as they are not considered physicians as defined under FECA and are, therefore, not competent to provide a medical opinion.<sup>15</sup> Consequently, this report is not sufficient for the purpose of establishing entitlement to FECA benefits.

Appellant further submitted the results of electrodiagnostic testing performed on September 27, 2018. The Board has held that diagnostic 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 incident caused a diagnosed condition.<sup>16</sup> This evidence, therefore, is also insufficient to establish appellant's claim.

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<sup>12</sup> See *T.H.*, Docket No. 21-0935 (issued February 24, 2022); *H.A.*, Docket No. 18-1466 (issued August 23, 2019).

<sup>13</sup> *W.R.*, Docket No. 19-0460 (issued May 18, 2020).

<sup>14</sup> *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> 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 Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *L.T.*, Docket No. 19-0145 (issued June 3, 2019); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); see *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).

<sup>16</sup> *S.W.*, Docket No. 21-1105 (issued December 17, 2021); *W.L.*, Docket No. 20-1589 (issued August 26, 2021).

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 her burden of proof to establish a cervical condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 3, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board