



## **ISSUE**

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

## **FACTUAL HISTORY**

On October 19, 2016 appellant, then a 49-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed cephalgia and occipital cervical nerve palsy due to carrying her postal carrier bag which was excessively heavy. She noted that she first became aware of this condition in October 2012, but did not realize its relationship to factors of her federal employment until November 2012. Appellant stopped work on September 27, 2016.

In an October 21, 2016 form report, Dr. Walter G. Husar, a neurologist, diagnosed occipital pain, cephalgia, and cervical nerve sprain and strain with an onset date of October 2012. He indicated that appellant was capable of working two to four hours per day, three to four days per week, from November 16 to December 23, 2016.

In a December 1, 2016 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a December 9, 2016 report, Dr. Slobodan Miric, a Board-certified neurologist, diagnosed right occipital neuralgia, cervicalgia, and possible left C7 cervical radiculopathy. He detailed motor, sensory, and physical examination findings.

A December 12, 2016 bilateral upper extremity electromyograph/nerve conduction velocity (EMG/NCV) study showed left C6 subacute cervical radiculopathy and right mild carpal tunnel syndrome.

In a report dated December 22, 2016, Dr. Mehul Shah, a Board-certified anesthesiologist, diagnosed cervical radiculopathy, cervicalgia, sacroiliitis, lumbar facet arthropathy, and chronic low back pain. Appellant attributed her right-sided cervicalgia, left upper extremity radiculopathy, and numbness to her job duties including continuous activity and lifting of heavy packages. Dr. Shah opined that her cervical radiculopathy and cervicalgia along the occipital neuralgia “could be work related given her physically demanding job.”

In a report dated December 23, 2016, Dr. Miric, based on appellant’s examination findings, diagnosed cervical radiculopathy, chronic cervical spinal pain, and cervical spinal stenosis with myelopathy. He noted that she had related that approximately three years prior she slipped and fell at work, which aggravated her cervical spine pain.

Dr. Shah, in an unsigned January 19, 2017 report, detailed the history of appellant’s neck and arm pain beginning in 2012. He provided examination findings and diagnosed cervical radiculopathy. Dr. Shah attributed appellant’s condition and pain to her employment duties which required continuous activity and lifting of heavy packages. He recommended a functional capacity evaluation (FCE) to determine her work capacity.

By decision dated January 30, 2017, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed cervical condition was causally related to the accepted factors of her federal employment.

On February 22, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on August 15, 2017. Prior to the hearing, appellant submitted an undated report from Dr. Shah. Dr. Shah noted that appellant had experienced neck and arm pain since 2012, which she attributed to her employment duties including carrying up to 70-pound packages and continuous lifting. He opined that her condition was directly related to her physically demanding job.

In a decision dated October 12, 2017, the hearing representative affirmed OWCP's January 30, 2017 decision.

On August 17, 2018 appellant, through counsel, requested reconsideration and submitted an August 15, 2018 report from Dr. Shah, in support of her request. Dr. Shah reiterated her medical history and examination findings from his prior reports. He reviewed appellant's letter carrier job duties which included holding mail with the left arm for long periods of time, lifting trays and tubs of mail to vehicle tray level, loading large parcels into equipment, pushing/pulling up to 20 pounds and lifting between 15 and 35 pounds with occasional lifting up to 70 pounds. Based on his review of her work duties, Dr. Shah found that her years of repetitive heavy lifting and carrying a postal carrier bag, could cause and aggravate her herniated discs and spondylitic changes.

By decision dated November 14, 2018, OWCP denied modification.

On October 25, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence. Dr. Miric, in a June 28, 2019 report, detailed appellant's neurological and physical findings and diagnosed cervical spinal pain, cervical spondylosis, and mild compressive cervical myelopathy.

In his August 19, 2019 report, Dr. Miric reviewed a magnetic resonance imaging (MRI) scan which demonstrated stable cervical spondylosis and multilevel cervical disease which had not progressed since the prior study. He also related appellant's physical examination findings.

By decision dated January 15, 2020, OWCP denied modification.

On March 12, 2020 appellant, through counsel, requested reconsideration and submitted additional evidence.

In the February 24, 2020 report, Dr. Ira Goldstein, a Board-certified neurologist, noted that appellant's symptoms were not due to a single clear incident, and he noted that she had several falls over the years while working as a mail carrier. He reviewed an MRI scan which demonstrated C4-5 large disc osteophyte and retrolisthesis as well as films from 2016 to 2017 showing degenerative changes. Dr. Goldstein opined that appellant's duties which required heavy lifting exposed her neck and low back to greater mechanical stresses which accelerated her spinal degenerative disease. He explained that her long and repeated exposure to the mechanical stress

caused by her job duties led to her cervical disc degeneration, development of retrolisthesis, osteophyte production resulting in neural compression, and radiculopathy.

In letter dated March 16, 2020, OWCP requested clarification from Dr. Goldstein regarding the physiological process by which the accepted specific employment factors caused or aggravated the diagnosed conditions. It advised that pain was not a valid diagnosis under FECA, but considered a symptom. OWCP afforded Dr. Goldstein 20 days to respond. No response was received.

By decision dated June 3, 2020, OWCP denied modification.

On September 18, 2020 appellant, through counsel, requested reconsideration. Accompanying her reconsideration request was a September 17, 2020 report from Dr. Goldstein. Dr. Goldstein summarized appellant's medical treatment, medical history, noted her employment duties, and attributed her neck pain and neurological symptoms to the effects of mechanical stresses due to heavy labor. He explained that long work hours, frequent overtime, 60- to 80-pound mailbag, and continuous walking, lifting, bending while carrying a heavy bag over her right shoulder contributed to the development of right-sided disc osteophyte complex, cervical radiculopathy, and neck pain. Appellant's symptoms were modest outside of her work, and most notable while she was working, which he explained was consistent with her work activity contributing to the exacerbation and development of her radiculopathy.

By decision dated December 2, 2020, OWCP denied modification.

### **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 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;

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

<sup>4</sup> *H.H.*, Docket No. 20-0839 (issued May 25, 2021); *C.G.*, Docket No. 20-0957 (issued January 27, 2021); *J.W.*, Docket No. 18-0678 (issued March 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *H.H.*, *id.*; *J.S.*, Docket No. 18-0657 (issued February 26, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *H.H.*, *id.*; *L.J.*, Docket No. 19-1343 (issued February 26, 2020); *R.R.*, Docket No. 18-0914 (issued February 24, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

(2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) rationalized 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 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>

### ANALYSIS

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

In support of her claim, appellant provided narrative reports from Dr. Goldstein dated February 24 and September 17, 2020. Dr. Goldstein summarized her medical treatment, noted her history of falls at work and provided physical examination findings. He explained that her long and repeated exposure to the mechanical stress caused by her job duties led to her cervical disc degeneration, development of retrolisthesis, osteophyte production resulting in neural compression, and radiculopathy which he attributed to appellant's employment. In both reports, Dr. Goldstein opined that her cervical conditions were exacerbated by her employment duties, which included long work hours, frequent overtime, carrying a 60- to 80-pound mailbag over her right shoulder, and lifting and bending. In both reports, he explained that her duties exposed her neck to greater mechanical stresses which in turn accelerated her spinal degenerative disease. The Board finds that, while not fully rationalized and sufficient to establish the claim, Dr. Goldstein's reports provide a mechanism of injury, reference objective diagnostic reports, and support that appellant's diagnosed conditions are causally related due to the accepted employment factors.<sup>10</sup> They also raise an uncontroverted inference between appellant's diagnosed conditions and her accepted factors of employment and, thus, they are sufficient to require OWCP to further develop the medical evidence.<sup>11</sup>

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

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<sup>7</sup> *C.G.*, *supra* note 4; *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>8</sup> *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>10</sup> *E.P.*, Docket No. 19-1703 (issued April 16, 2021); *C.W.*, Docket No. 19-0322 (issued July 18, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *M.R.*, Docket No. 20-0101 (issued September 14, 2021); *Richard E. Simpson*, 55 ECAB 490 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).

responsibility in the development of the evidence.<sup>12</sup> OWCP has an obligation to see that justice is done.<sup>13</sup>

The case shall therefore be remanded to OWCP for further development. On remand OWCP shall prepare a statement of accepted facts, the medical evidence of record, and appellant to a specialist in the appropriate field of medicine for a second opinion evaluation. Upon referral, the physician shall conduct a physical examination and provide a rationalized medical opinion as to whether her cervical conditions were caused or aggravated by factors of her employment. If the second opinion physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why the opinion differs from that of Dr. Goldstein's reports. Following this, and any other further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>12</sup> See *supra* note 4; *H.H.*, Docket No. 20-0839 (issued May 25, 2021); *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

<sup>13</sup> See *H.H.*, *id.*; *J.P.*, *id.*; *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 2, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with decision of the Board.

Issued: January 19, 2022  
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