

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

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<b>L.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-1153</b>
	)	<b>Issued: January 18, 2024</b>
<b>U.S. POSTAL SERVICE, MORTON POST OFFICE, Morton, IL, Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 8, 2023 appellant filed a timely appeal from an August 8, 2023 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.<sup>2</sup>

**ISSUE**

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

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

<sup>2</sup> The Board notes that following the August 8, 2023 decision, OWCP received additional evidence. 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.*

## **FACTUAL HISTORY**

On June 1, 2023 appellant, then a 44-year-old city carrier assistant 2, filed an occupational disease claim (Form CA-2) alleging he sustained possible carpal tunnel syndrome, pinched nerve, or spinal injury causally related to factors of his employment. He explained that he had performed repetitive reaching, twisting and stretching of his neck, shoulder and arms over the course of 22 years. Appellant noted that he first became aware of his condition and its relationship to his federal employment on April 26, 2023.

In a report dated May 30, 2023, Dr. Douglas J. Marshall, a Board-certified internist, advised that he had treated appellant on May 26, 2023, prescribed medication, and precluded him from using his right upper extremity in any work capacity until such time that he released appellant from his care.

In a June 5, 2023 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 evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

Thereafter, OWCP received a May 26, 2023 office-visit note from Dr. Myron B. Stachniw, a Board-certified orthopedic surgeon, who noted appellant's complaints, detailed appellant's history of injury, reviewed diagnostic tests, and provided examination findings. Physical examination findings included tenderness along the medial border of the scapula and some decreased light touch over the radial aspect of the arm. Appellant complained of right shoulder pain radiating down his arm when moving his neck. Dr. Stachniw diagnosed neck pain.

In a June 14, 2023 office visit note, Dr. Christine M. Dipompeo, an orthopedic surgeon specializing in spine surgery, reported that appellant was seen for complaints of cervical pain. She reviewed diagnostic tests and conducted a physical examination. On physical examination Dr. Dipompeo reported nonantalgic gait; positive right Spurling's, right shoulder, and abduction relief sign; negative bilateral cubital tunnel and carpal tunnel Tinel's signs. She diagnosed cervical radiculopathy and cervical pain. Dr. Dipompeo related that she would restrict appellant's use of his right upper extremity as this was contributing to his worsening symptoms.

The record also contains a June 26, 2023 note by Danny Schroeder, a physical therapist. Appellant's diagnoses were listed as cervical radiculopathy and neck pain.

In a note dated July 5, 2023, Dr. Dipompeo diagnosed cervical radiculopathy, which she opined could have been caused and aggravated by work.

In a follow-up development letter dated July 10, 2023, OWCP advised that an interim review had been performed and the evidence was insufficient to support his claim. It informed him of the medical evidence required to establish his claim and that he had 60 days from the initial letter of June 5, 2023 to submit the requested information.

In a July 26, 2023 progress report, Dr. Dipompeo related appellant's diagnoses as cervical pain, cervical radiculopathy, and cervical disc disease. She noted that she had discussed with appellant that the nature of his job delivering mail and parcels likely has accelerated his cervical disc degeneration. Dr. Dipompeo related that any sort of overuse of appellant's arms and shoulders

could absolutely cause degeneration of his disc, as well as worsening of symptoms from disc degeneration and nerve compression.

In a July 28, 2023 report, Dr. Karen M. Hannah, a chiropractor, diagnosed cervical radiculopathy. She attributed the condition to consistent and downward force to his cervicothoracic region from his satchel.

By decision dated August 8, 2023, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted factors of his federal employment.

### **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, 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>4</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.

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; (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>5</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background, 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.<sup>7</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *G.J.*, Docket No. 23-0577 (issued August 28, 2023); *C.K.*, Docket No. 19-1549 (issued June 30, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *G.J., id.*; *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>6</sup> *G.J., id.*; *I.J.*, Docket No. 19-1343 (issued February 26, 2020); *T.H.*, 59 ECAB 388 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>7</sup> *G.J., id.*; *D.J.*, Docket No. 19-1301 (issued January 29, 2020).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

In support of his claim appellant submitted notes dated June 14, and July 5, and 26, 2023 from Dr. Dipompeo diagnosing cervical radiculopathy and cervical disc disease. Dr. Dipompeo's June 14, 2023 note diagnosed cervical radiculopathy, and restricted use of appellant's right upper extremity, however, this report did not offer an opinion on 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>8</sup> In the July 5, 2023 note, Dr. Dipompeo found appellant's work could be the cause of his cervical radiculopathy. The Board has held that a report is conclusory and of limited probative value regarding causal relationship if it does not contain medical rationale.<sup>9</sup> In a July 26, 2023 progress report, Dr. Dipompeo related appellant's diagnoses as cervical radiculopathy, and cervical disc disease. She noted that she had discussed with appellant that the nature of his job delivering mail and parcels likely accelerated his cervical disc degeneration. Dr. Dipompeo related that any sort of overuse of appellant's arms and shoulders could absolutely cause degeneration of his disc, as well as worsening of symptoms from disc degeneration and nerve compression. The Board finds, however, that she failed to provide a well-rationalized medical opinion of how the work factors appellant identified in his claim physiologically caused or aggravated appellant's diagnosed cervical radiculopathy. Without explaining how the accepted employment factors physiologically caused or contributed to appellant's diagnosed cervical radiculopathy, and cervical disc degeneration Dr. Dipompeo's July 5, 2023 note is of limited probative value.<sup>10</sup> For these reasons, the Board finds that the evidence from Dr. Dipompeo is insufficient to establish appellant's claim.

In a May 26, 2023 note, Dr. Stachniw diagnosed neck pain. However, the Board has held that pain is a symptom, not a diagnosis of a medical condition.<sup>11</sup> As such, this report is insufficient to meet appellant's burden of proof.

In a May 30, 2023 report, Dr. Marshall advised that appellant was precluded from using his right upper extremity or working in any capacity due to prescribed medication. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a

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<sup>8</sup> *C.R.*, Docket No. 23-0330 (issued July 28, 2023); *K.K.*, Docket No. 22-0270 (issued February 14, 2023); *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>9</sup> *See A.M.*, Docket No. 22-0504 (issued February 9, 2023); *R.W.*, Docket No. 19-1733 (issued April 13, 2021); *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>10</sup> *See J.A.*, Docket No. 22-0869 (issued July 3, 2023); *M.M.*, Docket No. 20-1538 (issued December 27, 2022); *J.K.*, Docket No. 22-0945 (issued December 16, 2022).

<sup>11</sup> *See J.R.*, Docket No. 21-1257 (issued April 27, 2022); *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

particular medical condition.<sup>12</sup> As Dr. Marshall did not diagnose a medical condition, this evidence is insufficient to establish appellant's claim.<sup>13</sup>

In a report dated July 28, 2023, Dr. Hannah, a chiropractor, diagnosed cervical radiculopathy. The Board notes that section 8101(2) of FECA<sup>14</sup> provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.<sup>15</sup> OWCP's implementing federal regulation at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrated on x-ray. As Dr. Hannah did not diagnose a subluxation as demonstrated by x-ray, she is not considered a physician under FECA and her report does not constitute probative medical evidence.<sup>16</sup> Thus, this evidence is insufficient to establish appellant's claim.

Appellant also submitted June 26, 2023 note from a physical therapist. The Board has held that medical reports signed solely by physical therapists are of no probative value, as they are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion.<sup>17</sup>

As the medical evidence of record is insufficient to establish causal relationship between appellant's medical condition 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.

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<sup>12</sup> *B.M.*, Docket No. 23-0243 (issued June 12, 2023); *A.R.*, Docket No. 19-1560 (issued March 2, 2020); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

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

<sup>14</sup> 5 U.S.C. § 8101(2).

<sup>15</sup> *Id.*; 20 C.F.R. § 10.311.

<sup>16</sup> *See J.A.*, Docket No. 22-0869 (issued July 3, 2023); *L.M.*, Docket No. 22-0667 (issued November 1, 2022); *T.H.*, Docket No. 17-0833 (issued September 7, 2017); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>17</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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *C.F.*, Docket No. 22-0806 (issued July 12, 2023) (neither a nurse practitioner nor a physical therapist is considered a physician as defined under FECA); *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).

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 8, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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