

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

radiculopathy, as well as pain in his head, arms, and hands, due to constant use of his government-issued computer. He first became aware of his condition on March 1, 2020, and realized its relation to his federal employment on October 18, 2022. Appellant stopped work on April 30, 2021.<sup>2</sup>

In a December 23, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. In a separate letter of the same date, OWCP requested that the employing establishment provide comments regarding appellant's claim. It afforded appellant and the employing establishment 30 days to respond.

In a January 20, 2023 letter, the employing establishment acknowledged that appellant's position required intermittent use of a computer keyboard and mouse throughout the eight-hour workday, except when using the telephone.

OWCP received appellant's January 21, 2023 response to its questionnaire. Appellant reiterated his description of repetitive motion while working on his laptop computer.

In an October 18, 2022 report, Dr. John W. Ellis, a Board-certified family physician and occupational medicine specialist, reviewed appellant's medical course of treatment and provided physical examination findings. He diagnosed migraine headache syndrome, cervical degenerative disc disease, cervical spondylosis with radiculopathy, cervical neuroforaminal stenosis, obstructive sleep apnea, lumbar radiculopathy, and blood clotting disorder. Dr. Ellis opined that appellant's migraine headaches, which started while appellant was in the Army during Desert Storm, cervical radiculopathy, and obstructive sleep apnea were disabling. These conditions prevented him from successfully continuing to perform his job duties and rendered him unable to work since May 2021. Dr. Ellis explained that the migraine headaches were severely disabling as they occurred frequently; the cervical radiculopathy made it difficult for appellant to use the computer, read and write; and the obstructive sleep apnea resulted in tiredness and decreased complex integrate cerebral functioning, making it difficult for appellant to concentrate and perform his work. He opined that continued work in appellant's position would continue to aggravate his medical conditions. Dr. Ellis explained that appellant's undefined blood clotting disorder prevented him from undergoing surgery and put him at risk of death from either a leg clot or an embolus. He cautioned that appellant should not sit in one position for more than 15 minutes. Dr. Ellis opined that appellant had been disabled since May 2021, that his prognosis was poor, and that his condition would continue to progress.

By decision dated January 24, 2023, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted employment factors.

In an August 19, 2021 report, Dr. Scott Martin La Garza, a Board-certified orthopedic surgeon, reported examination findings and provided an impression of cervical spondylosis with stenosis and concordant radiculopathy at C4-C6. He indicated that appellant was a good candidate

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<sup>2</sup> Under OWCP File No. xxxxxx763, OWCP denied appellant's claim for a July 13, 2020 emotional condition due to migraines allegedly caused by excessive computer use. This case has not been administratively combined with the current claim by OWCP.

for an anterior cervical discectomy and fusion, noting that his symptomatic lumbosacral spondylosis could also be a surgical issue.

In an April 18, 2022 report, Dr. Nathan Overbey, a Board-certified anesthesiologist and interventional pain medicine specialist, reported that appellant had experienced neck pain for several years, right side worse than left side. He diagnosed degenerative disc disease with increased right C5-C6 radicular symptoms and chronic migraine aggravated by cervicogenic headache.

May 23 and August 4, 2022 reports were received from Dr. Christopher M. Bouvetto, a Board-certified physiatrist, concerning appellant's chronic cervical pain with associated headaches. In a May 23, 2022 report, Dr. Bouvetto reported that appellant was initially injured during his time in service. He noted that appellant was not currently working as repetitive typing and upper extremity use aggravated his neck and interscapular region. In his reports Dr. Bouvetto provided assessments of chronic cervical spine pain; mild spondylosis of the spine, history of remote spinal trauma in Desert Storm, clotting disorder and a list of comorbidities. He noted, in his August 4, 2022 report, that appellant remained limited in activities secondary to chronic pain.

On January 28, 2023 appellant requested reconsideration. OWCP received a March 31, 2023 letter, in which appellant requested that his claim be accepted for the conditions diagnosed in Dr. Ellis' reports; an undated statement from appellant regarding his work exposures and the development of his claimed conditions. OWCP also received an October 23, 2019 magnetic resonance imaging (MRI) scan of the thoracic spine which noted minor degenerative disc changes; an October 24, 2019 MRI scan of the lumbar spine which noted minor facet arthropathy at L5-S1, with broad-based disc bulge and flattening of the anterior thecal sac at L4-5, mild narrowing left foramen; and an October 25, 2019 MRI scan of the cervical spine which noted C3-4 disc bulge, left side facet arthropathy, right side joint arthropathy; C4-5 central disc protrusion/osteophyte with significant joint space narrowing, mild facet arthropathy and stenosis; and C5-6 disc bulge and central disc protrusion, facet arthropathy and mild stenosis.

In a January 27 and March 23, 2023 reports, Dr. Ellis noted appellant's job requirements included the use of a computer, standing and sitting for prolonged periods of time, and traveling long distances by different modes of travel for extended periods of time. He diagnosed cervical radiculopathy, cervical spondylosis with myelopathy, cervical stenosis, lumbar spondylosis with radiculopathy, lumbar stenosis, lumbar degenerative disc disease, cervicogenic headaches, migraines, deep vein thrombosis, anticoagulation therapy, and pulmonary embolism, which he opined were caused, aggravated by and accelerated by appellant's work conditions. Dr. Ellis opined that appellant's diagnosed conditions were aggravated and expedited by his time working for the Federal Government as he travelled less after COVID-19 due to governmental restrictions and most of his work was performed at home on a computer. He explained that although appellant was used to sitting and standing for prolonged periods of time, working from home limited his mobility which caused severe worsening in his cervical symptoms, migraines, and low back radiculopathy. Dr. Ellis also indicated that the nature of his job which required traveling long distances was a direct cause of appellant's deep vein thromboses which turned into pulmonary emboli, for which he was on blood thinners, and required hospital stays. He concluded that although appellant had prior neck and back injuries, his job required prolonged periods of sitting, standing and traveling, which over time caused acceleration and aggravation of his previously

diagnosed lumbar spine condition to the point that surgery has been recommended. Dr. Ellis noted, however, that due to his extensive history of deep vein thrombosis and pulmonary embolisms, appellant could not undergo surgery unless it was a lifesaving surgery.

By decision dated April 19, 2023, OWCP denied modification of its January 24, 2023 decision.

OWCP continued to receive evidence.

In a May 11, 2023 report, Dr. Ellis reported that appellant's job requirements involved use of a computer, standing and sitting for prolonged periods of time, and travel for greater than 50 percent of the time, mainly during the months of February through September, which involved 10 or more hours per day several times a week during heavy travel months. He indicated that in January 2020 appellant had increased difficulty using the computer to complete assignments. Dr. Ellis noted appellant's physical examination findings and provided assessments of cervical radiculopathy, cervical spondylosis with myelopathy, cervical stenosis, lumbar spondylosis with radiculopathy, lumbar stenosis, lumbar degenerative disc disease, cervicogenic headaches, migraines, deep vein thrombosis, anticoagulation therapy, and pulmonary embolism, which he opined were caused, aggravated, and accelerated by appellant's work conditions. He reiterated his previous explanations as to how prolonged periods of sitting, standing, and traveling accelerated and aggravated appellant's previously diagnosed spine condition to the point surgery was recommended, and also how extensive use of the computer entering data and reports triggered and aggravated appellant's diagnosed migraine condition. Dr. Ellis indicated that the nature of the job which required extensive travel caused appellant to work in areas which were not ergonomically appropriate for somebody with a history of neck and lumbar spine issues, which in turn caused a worsening of his cervical and lumbar spine issues. He explained that the use of hotel room desks and working from his lap on a laptop computer or tablet caused a strain of the cervical muscles along with sprain and strain of the lumbar muscles. This increased inflammation in the entire spinal canal thereby causing irritation to the nerve root which exited the spine and caused appellant's radicular symptoms in his upper and lower extremities. Dr. Ellis indicated that the increased inflammation also caused osteophyte formation in the central canal space, as well as the foramina noted on the MRIs. Therefore, he concluded that the diagnosed conditions were aggravations caused by his job-related duties.

On June 14, 2023 appellant requested reconsideration.

By decision dated September 11, 2023, OWCP denied modification of the April 19, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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,<sup>3</sup> that the claim was timely filed within the applicable

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<sup>3</sup> *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

time limitation period 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.<sup>5</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; (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>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> The opinion of the physician must be based upon 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>8</sup>

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>9</sup>

### ANALYSIS

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

In his January 27, March 23, and May 11, 2023 reports, Dr. Ellis noted appellant's job requirements included use of a computer, standing and sitting for prolonged periods of time, and traveling long distances by different modes of travel for extended periods of time. He elaborated, in his May 11, 2023 report, that appellant traveled for greater than 50 percent of the time, mainly during the months of February through September, for 10 or more hours per day several times a week during heavy travel months. Dr. Ellis diagnosed cervical radiculopathy, cervical spondylosis

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<sup>4</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>5</sup> *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *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>6</sup> *K.R.*, Docket No. 23-0696 (issued October 31, 2023).

<sup>7</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>8</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *J.L.*, Docket No. 20-0717 (issued October 15, 2020).

with myelopathy, cervical stenosis, lumbar spondylosis with radiculopathy, lumbar stenosis, lumbar degenerative disc disease, cervicogenic headaches, migraines, deep vein thrombosis, anticoagulation therapy, and pulmonary embolism, which he opined were caused, aggravated by and accelerated by appellant's work conditions. In his May 11, 2023 report, he opined that the extensive travel involved in appellant's job caused or aggravated a worsening of his cervical and lumbar spine issues, noting that appellant's work on a laptop computer or tablet on hotel room desks or from his lap, was not ergonomically appropriate for somebody with a history of neck and lumbar spine issues. Dr. Ellis further opined that working on a laptop computer or tablet from hotel room desks and or his lap caused a strain of the cervical muscles and a sprain/strain of the lumbar muscles, noting that such position caused increased inflammation in the entire spinal canal, which caused irritation to the nerve root which exited the spine and caused appellant's radicular symptoms in his upper and lower extremities. He also indicated that the increased inflammation also caused osteophyte formation in the central canal space and the foramina's noted on the MRI scans.

Dr. Ellis provided an affirmative opinion on causal relationship and a pathophysiological explanation as to how appellant's job duties, which involved his use of a laptop, caused or aggravated appellant's preexisting cervical and lumbar spine conditions. While his report is not completely rationalized to meet appellant's burden of proof to establish his claim, it is sufficient to require OWCP to further develop his claim.<sup>10</sup>

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While it is appellant's burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence.<sup>11</sup> It has an obligation to see that justice is done.<sup>12</sup>

The case must, therefore, be remanded for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts, and the medical evidence of record to a specialist in the appropriate field of medicine. The referral physician shall provide a rationalized opinion on whether any of the diagnosed conditions are causally related to the accepted employment factors. If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale why his or her opinion differs from that of Dr. Ellis. Following this and other such 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>10</sup> *L.J.*, Docket No. 22-1176 (issued November 20, 2023); *F.U.*, Docket No. 22-1205 (issued January 9, 2023); *D.V.*, Docket No. 21-0383 (issued October 4, 2021); *K.S.*, Docket No. 19-0506 (issued July 23, 2019); *H.T.*, Docket No. 18-0979 (issued February 4, 2019); *D.W.*, Docket No. 17-1884 (issued November 8, 2018); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 11, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 28, 2024  
Washington, DC

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

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

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