

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

H.A., Appellant)
and) Docket No. 25-0887
DEPARTMENT OF LABOR, OFFICE OF)
WORKERS' COMPENSATION PROGRAMS,)
Washington, DC, Employer)
Issued: January 20, 2026

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 16, 2025 appellant filed a timely appeal from an August 25, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include cervical degenerative disc disease as causally related to, or consequential to, the accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 31, 2023 appellant, then a 62-year-old claims examiner, filed an occupational disease claim (Form CA-2) alleging that he developed cervicalgia, spinal stenosis, and right cubital tunnel syndrome due to factors of his federal employment, including typing and using a mouse. He noted that he first became aware of his conditions and realized their relationship to his federal employment on May 1, 2017.

In an April 13, 2023 report, Renato M. Rafi, an advanced registered nurse practitioner, noted appellant was seen for bilateral cubital tunnel syndrome. He also noted that appellant had complaints including cervicalgia and lumbago.

In a January 2, 2024 report, Dr. Albert H. Kim, Board-certified in family medicine, related that appellant was evaluated on February 21, 2023 for complaints of right elbow, right wrist, and cervical pain. He noted that appellant's work required use of a keyboard and mouse for eight to nine hours per day. Dr. Kim recounted that appellant had cervical pain which had been chronic since 2017, which worsened when he sat at his computer working. He concluded that, based on appellant's work history, duties performed, and complaints, appellant's right cubital tunnel syndrome and cervical pain were work related on a more probable than not basis.

By decision dated February 23, 2024, OWCP accepted the claim for right cubital tunnel syndrome. However, it denied expansion of the claim to include cervical pain, noting that pain is a symptom, not a valid diagnosis.²

In a report dated February 13, 2024, Dr. Timothy Andrew Gregory, a Board-certified neurologist, recounted that appellant described chronic neck discomfort, particularly when he sat at his desk at work. He diagnosed multilevel cervical degeneration, most significant for severe right foraminal stenosis at C3-4 and C5-6 and moderate canal stenosis at C4-5.

In a report dated May 4, 2024, Dr. Kim noted that appellant's claim had not been accepted for cervicalgia. He reviewed cervical magnetic resonance imaging (MRI) scans dated February 19, 2016, and December 17, 2023, which he related demonstrated cervical degenerative disc disease that had significantly progressed over the years. Dr. Kim recounted that appellant had performed duties as a medical benefits examiner, which included sitting at a computer desk for up to nine hours per day from September 2006 until he retired on October 31, 2023. Appellant experienced neck, shoulder, and headaches, as well as pin and needle sensations which radiated down his upper extremities. Dr. Kim opined that appellant's cervical degenerative disc disease symptoms were, more likely than not, attributable to his slouching and improper posturing while performing his work duties at computer stations for more than 17 years.

On August 28, 2024 OWCP advised appellant that it had received Dr. Kim's report, which requested expansion of the claim to include a cervical condition. It advised appellant of the

² By separate decision dated February 23, 2024, OWCP formally accepted the claim for right cubital tunnel syndrome.

medical evidence necessary to establish expansion of his claim and afforded 30 days to submit the necessary evidence. No additional evidence was received.

On June 27, 2025 OWCP referred appellant, together with a statement of accepted facts (SOAF), medical record, and list of questions, to Dr. Michael J. Johnson, an orthopedic surgeon, for a second opinion evaluation.

In a report dated August 11, 2025, Dr. Johnson summarized appellant's medical record and diagnosed cervical spine degenerative disc disease. He related that appellant's current physical examination was consistent with the diagnosis. In response to a query that he discuss the natural progression of appellant's preexisting or underlying condition and describe objective findings which supported a finding that appellant's work activities contributed to a material change to the preexisting or underlying condition, he opined that the diagnosed cervical degenerative disease was not directly caused by the accepted work duties. Dr. Johnson opined that appellant's condition was due to age, degeneration, and genetics. He concluded that there was no evidence that appellant's work duties caused, aggravated, accelerated, or precipitated the underlying cervical degenerative disc disease.

By decision dated August 25, 2025, OWCP denied appellant's request to expand the acceptance of his claim to include cervical degenerative disc disease as causally related to, or consequential to, the accepted employment injury.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.³ When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.⁴ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁵

The claimant bears the burden of proof to establish a claim for a consequential injury.⁶ As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship.⁷ The opinion of the

³ *M.L.*, Docket No. 24-0395 (issued May 6, 2025); *L.M.*, Docket No. 23-1040 (issued December 29, 2023); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

⁴ See *A.O.*, Docket No. 25-0544 (issued July 14, 2025); *J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); see also *Charles W. Downey*, 54 ECAB 421 (2003).

⁵ *A.O.*, *J.M.*, *id.*; *Susanne W. Underwood* (*Randall L. Underwood*), 53 ECAB 139, 141 n.7 (2001).

⁶ *V.K.*, Docket No. 19-0422 (issued June 10, 2020); *A.H.*, Docket No. 18-1632 (issued June 1, 2020); *I.S.*, Docket No. 19-1461 (issued April 30, 2020).

⁷ *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.⁸

The medical evidence required to establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, is rationalized medical opinion evidence.⁹ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹⁰ Additionally, the opinion of the physician must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the claimant.¹¹

In any case where 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.¹²

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹³ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.¹⁴

⁸ *M.M.*, Docket No. 20-1557 (issued November 3, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *C.S.*, Docket No. 23-0746 (issued December 11, 2023); *T.C.*, Docket No. 19-1043 (issued November 8, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹⁰ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *D.W.*, Docket No. 22-0136 (issued October 10, 2023); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *K.W.*, Docket No. 25-0707 (issued September 10, 2025); *D.F.*, Docket No. 25-0528 (issued June 9, 2025); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (May 2023); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ 5 U.S.C. § 8123(a). *See D.M.*, Docket No. 25-0317 (issued April 15, 2025); *R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

¹⁴ 20 C.F.R. § 10.321. *See also D.M.*, *id.*; *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

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

In a report dated May 4, 2024, Dr. Kim, appellant's treating physician, reviewed cervical MRI scans dated February 19, 2016 and December 17, 2023 which he related demonstrated cervical degenerative disc disease that had significantly progressed over the years. He also related that appellant's employment duties required sitting at a computer desk for up to nine hours per day from September 2006 until he retired on October 31, 2023. Dr. Kim concluded that the progression of appellant's cervical degenerative disc disease was more likely than not attributable to appellant's slouching and improper posturing while performing his work duties at computer stations for more than 17 years.

In his August 1, 2025 report, Dr. Johnson, OWCP's second opinion physician, diagnosed cervical spine degenerative disc disease. He opined that the accepted work duties did not cause or contribute to appellant's preexisting cervical degenerative disc disease, as appellant would have developed the condition regardless of his work duties.

As explained above, if there is a disagreement between an employee's physician and an OWCP referral physician, OWCP will appoint a referee physician or IME who shall make an examination.¹⁵ The Board finds that a conflict exists between Dr. Kim for appellant, and Dr. Johnson, an OWCP referral physician, regarding whether the acceptance of appellant's claim should be expanded to include cervical degenerative disc disease as causally related to or as a consequence of the accepted employment injury.

As there is an unresolved conflict in medical opinion regarding whether the acceptance of appellant's claim should be expanded to include an additional condition as causally related to or consequential to his accepted employment injury, the case must be remanded for OWCP to refer appellant, along with the case record, an updated SOAF, and a series of questions to an IME for resolution of the conflict in medical opinion evidence in accordance with 5 U.S.C. § 8123(a). 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.

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 25, 2025 is set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 20, 2026
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