



employment, including lifting trays from one all-purpose container (APC) to another, ripping off labels from the APC lid, and cleaning/scraping the lid. He noted that he first became aware of his condition and related it to his federal employment on July 21, 2022.<sup>2</sup> On the reverse side of the claim form, the employing establishment controverted appellant's claim. It contended that he did not lift trays from one APC to another. Rather, appellant was only required to rip off labels from an APC lid and clean/scrape the lid.

In a September 16, 2022 duty status report (Form CA-17), Dr. Serge Obukhoff, a neurosurgeon, diagnosed cervical spine myelopathy and advised that although appellant was unable to perform his regular work, he could resume work with restrictions.

In a development letter dated October 3, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

In an October 6, 2022 response, the employing establishment again controverted appellant's claim, contending that lifting trays from an APC was not within appellant's modified job duties. Rather, appellant was required to prepare green flats lids for no more than two hours per day. The employing establishment also contended that he failed to submit any medical evidence to support his claim.

In an October 10, 2022 response, appellant reiterated his history of injury and noted his part-time work schedule and activity outside of his federal employment.

Appellant submitted medical evidence, including medical reports dated September 21 and October 5, 2022, wherein Dr. Edward Mittleman, an attending family practitioner, diagnosed cervical sprain, permanent aggravation of cervical spondylosis, and cervical spine myelopathy. Dr. Mittleman opined that appellant's repetitive forceful work duties aggravated his cervical spondylosis and produced repetitive micro-tearing of his cervical tissues (sprain). He advised that although appellant was unable to perform his regular work, he could work with restrictions as of October 5, 2022.

On November 14, 2022, OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Jacob Rabinovich, a Board-

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<sup>2</sup> OWCP assigned the present claim OWCP File No. xxxxxx362. Appellant has prior claims before OWCP. Under OWCP File No. xxxxxx377, OWCP accepted appellant's August 20, 2015 traumatic injury claim (Form CA-1) for contusion of left middle finger without damage to nail and non-displaced fracture of proximal phalanx of left middle finger for closed fracture. It administratively closed the case. Under OWCP File No. xxxxxx795, OWCP accepted appellant's October 23, 2018 occupational disease claim for sprain of unspecified part of right wrist and hand; and trigger thumb, right thumb. It administratively closed the case. Under OWCP File No. xxxxxx410, OWCP denied appellant's October 30, 2021 occupational disease claim for a left shoulder injury. Under OWCP File No. xxxxxx958, it accepted appellant's December 13, 2021 occupational disease claim for impingement syndrome of left shoulder, bursitis of left shoulder, and tendinosis of left shoulder. Appellant's claims have not been administratively combined with the present claim by OWCP.

certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant sustained a medical condition caused or aggravated by his federal employment.

In a December 5, 2022 report, Dr. Rabinovich opined that appellant did not sustain a cervical or spinal condition or injury due to his federal employment. He noted that appellant's current symptoms were related to his prior left shoulder injury. Dr. Rabinovich related that appellant's magnetic resonance imaging (MRI) scan of the cervical spine did not relate clinically significant findings, other than age-related changes. He further noted that appellant's diagnosis of spondylosis involved essentially age-related changes, and he found no evidence of an aggravation injury. Dr. Rabinovich advised that appellant could perform the duties described in his October 2022 modified job offer. He concluded that medical treatment was not necessary for the cervical spine.

In a January 12, 2023 letter, OWCP requested that Dr. Mittleman review Dr. Rabinovich's December 5, 2022 report and submit an opinion on whether he agreed or disagreed with his findings and conclusions. It afforded him 30 days to respond. No response was received.

By decision dated February 14, 2023, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed cervical condition and the accepted factors of his federal employment. It accorded the weight of the medical evidence to the December 5, 2022 opinion of Dr. Rabinovich, the second opinion physician.

On September 7, 2023, appellant requested reconsideration. In support thereof, he submitted a June 1, 2023 report, wherein Dr. Mittleman noted his review of Dr. Rabinovich's December 5, 2022 report and opined that appellant's cervical spondylosis was caused by his original repetitive employment duties and aggravated by his current limited-duty work activities.

By decision dated September 12, 2023, OWCP denied modification of its February 14, 2023 decision.

On November 9, 2023, appellant requested reconsideration. In support thereof, he submitted a November 1, 2023 report, wherein Dr. Mittleman related that appellant had uncovertebral hypertrophy (spondylosis) at multiple levels. Dr. Mittleman noted that "in movement of the head and neck, the tissues produce irritation of the spondylotic change (temporary aggravation of cervical spondylosis)." He reiterated his prior opinion that appellant sustained cervical sprain and permanent aggravation of cervical spondylosis causally related to the accepted employment factors.

On November 21, 2023, OWCP determined that a conflict in medical opinion existed between Dr. Mittleman and Dr. Rabinovich regarding whether appellant sustained an injury or a medical condition to his neck and/or spine due to the accepted employment factors. On December 12, 2023, it referred appellant, along with a SOAF, the medical record, and a series of questions, to Dr. Allen S. Fonseca, a Board-certified orthopedic surgeon specializing in disease and surgery of the spine, for an impartial medical examination.

In a January 30, 2024 report, Dr. Fonseca serving as the impartial medical examiner (IME), recounted appellant's history of injury, reviewed the medical evidence of record, and noted appellant's chief complaint of neck pain on the left side. He performed a physical examination of appellant's cervical spine and diagnosed sprain of ligaments of cervical spine, initial encounter; two-millimeter (mm) central disc protrusion at C3-4 that resulted in mild spinal canal stenosis, uncovertebral hypertrophy, mild bilateral neuroforaminal stenosis and effacement of the ventral cerebrospinal fluid (CSF), and minimal contouring of the anterior cord without abnormal cord signal; a two-mm central disc protrusion, annular fissure, and uncovertebral hypertrophy at C4-5 that resulted in mild spinal canal stenosis and mild bilateral neuroforaminal stenosis, effacement of the ventral CSF and minimal contouring of the anterior cord without abnormal cord signal; and a two-mm diffuse disc bulge and uncovertebral hypertrophy at C5-6 that resulted in mild spinal canal stenosis and mild bilateral neuroforaminal stenosis, based on July 25, 2022 cervical spine MRI scan. Dr. Fonseca advised that appellant reached maximum medical improvement on January 30, 2024, the date of his examination. He determined that appellant had seven percent whole person permanent impairment due to his cervical spine conditions. Regarding causation, Dr. Fonseca concluded that appellant's cervical spine conditions were not work related, as his symptoms were an exacerbation of age-related degenerative changes and were not an aggravation of preexisting spondylotic change.

In a March 12, 2024 letter, OWCP requested that Dr. Fonseca provide a supplemental report addressing appellant's current diagnosis related to his claimed injury and whether the diagnosed condition was caused, aggravated, accelerated, or precipitated by the accepted factors of his federal employment.

In a supplemental report dated June 18, 2024, Dr. Fonseca reiterated his prior diagnoses of sprain of ligaments of cervical spine, initial encounter; and multilevel degenerative disc disease based on the July 25, 2022 cervical spine MRI scan. He opined that appellant's diagnosed conditions were not aggravated, accelerated, or precipitated by his employment factors. Dr. Fonseca explained that the degenerative changes in the cervical spine were consistent with age-related degeneration. Additionally, he found no evidence of aggravation of a preexisting underlying condition. Dr. Fonseca opined that appellant was able to perform all of the essential functions of his usual and customary work activities with no restrictions. In a June 18, 2024 work capacity evaluation (Form OWCP-5c), he reiterated his opinion regarding appellant's work capacity.

By decision dated July 19, 2024, OWCP denied modification of its September 12, 2023 decision. It accorded the special weight of the medical evidence to the June 18, 2024 opinion of Dr. Fonseca, as the IME.

OWCP thereafter received a September 20, 2022 cervical spine MRI scan report.

OWCP also received an undated note, wherein Dr. Mittleman diagnosed radiculopathy, cervical region.

Additionally, OWCP received a form report with an illegible signature of a healthcare provider, indicating that appellant sustained an occupational repetitive neck strain injury.

On October 31, 2024, appellant requested reconsideration. In support thereof, he submitted a September 19, 2024 report, wherein Dr. Mittleman opined that appellant's cervical spondylosis was temporarily aggravated and not caused by the accepted factors of his federal employment. Dr. Mittleman contended that since none of OWCP's physicians considered appellant's condition as a temporary aggravation, then their conclusions should be negated.

By decision dated November 19, 2024, OWCP denied modification of its July 19, 2024 decision.

On April 1, 2025, appellant requested reconsideration. In support thereof, he submitted a March 24, 2025 report, wherein Dr. Basimah Khulusi, a Board-certified physiatrist, diagnosed cervical sprain and aggravation of cervical spondylosis. Dr. Khulusi disagreed with Dr. Fonseca's opinion that appellant did not sustain a work-related neck condition, noting that it was noncongruent and inconsistent. She related that Dr. Fonseca opined that appellant suffered a work-related injury and then determined that appellant had seven percent whole person permanent impairment due to his cervical spine condition and that he could perform his work activities with no restrictions. Dr. Khulusi cited Chapter 2.805.2b(2) of OWCP's procedures<sup>3</sup> and contended that when Dr. Fonseca admitted that appellant had suffered an industrial neck injury and then stated that the injury caused permanent impairment, this meant that appellant suffered permanent aggravation of his cervical spondylosis. She, thus, concluded that Dr. Fonseca's opinion was of no probative value.

By decision dated June 12, 2025, OWCP denied modification of its November 19, 2024 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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>6</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>7</sup>

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2b(2) (January 2013).

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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 employment factors identified by the employee.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</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>10</sup>

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.<sup>11</sup>

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.<sup>12</sup> 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 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.<sup>13</sup>

### ANALYSIS

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

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<sup>8</sup> *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett, id.*

<sup>9</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>10</sup> *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>11</sup> Federal (FECA) Procedure Manual, *supra* note 4 at Chapter 2.805.3e (May 2023); *L.K.*, Docket No. 26-0052 (issued February 24, 2026); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>12</sup> 5 U.S.C. § 8123(a). *See R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

<sup>13</sup> 20 C.F.R. § 10.321. *See also 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).

In a January 30, 2024 report, Dr. Fonseca, serving as the IME, indicated that he reviewed the medical record, SOAF, and examined appellant. He noted appellant's chief complaint of neck pain on the left side and documented physical examination findings in the cervical spine. Dr. Fonseca diagnosed sprain of ligaments of cervical spine, initial encounter; two-mm central disc protrusion at C3-4 that resulted in mild spinal canal stenosis, uncovertebral hypertrophy, mild bilateral neuroforaminal stenosis and effacement of the ventral CSF, and minimal contouring of the anterior cord without abnormal cord signal; a two-mm central disc protrusion, annular fissure, and uncovertebral hypertrophy at C4-5 that resulted in mild spinal canal stenosis and mild bilateral neuroforaminal stenosis, effacement of the ventral CSF and minimal contouring of the anterior cord without abnormal cord signal; and a two-mm diffuse disc bulge and uncovertebral hypertrophy at C5-6 that resulted in mild spinal canal stenosis and mild bilateral neuroforaminal stenosis based on July 25, 2022 cervical spine MRI scan. He determined that appellant had seven percent whole person permanent impairment due to his cervical spine conditions. Dr. Fonseca concluded that appellant's cervical spine conditions were not work related, as his symptoms were an exacerbation of age-related degenerative changes. In his June 18, 2024 supplemental report, he restated his prior diagnoses of sprain of ligaments of cervical spine, initial encounter; and multilevel degenerative disc disease based on the July 25, 2022 cervical spine MRI scan. Dr. Fonseca opined that appellant's diagnosed conditions were not aggravated, accelerated, or precipitated by factors of his employment. He also found no evidence of aggravation of a preexisting underlying condition. Dr. Fonseca reasoned that the degenerative changes in the cervical spine were consistent with age-related degeneration. He concluded that appellant could perform his usual and customary work activities with no restrictions. Dr. Fonseca reiterated his opinion regarding appellant's work capacity in a June 18, 2024 Form OWCP-5c. The factors that comprise the evaluation of medical opinion evidence include the opportunity for and thoroughness of physical examination, the accuracy, or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>14</sup> Dr. Fonseca based his opinion on a proper factual and medical history and physical examination findings. He explained that appellant's diagnosed conditions were not caused, aggravated, or accelerated by his work duties. Accordingly, the Board finds that Dr. Fonseca's opinion constitutes the special weight of the medical opinion evidence.<sup>15</sup>

Appellant submitted a March 24, 2025 report by Dr. Khulusi. Dr. Khulusi disagreed with Dr. Fonseca's opinion that appellant did not sustain a work-related neck condition and contended that it was of no probative value. She alleged that Dr. Fonseca's opinion was inconsistent regarding the cause of appellant's cervical condition as he opined that appellant had a permanent impairment, which meant that appellant suffered permanent aggravation of his cervical spondylosis. However, Dr. Khulusi failed to provide a rationalized medical opinion explaining how appellant's cervical condition was caused or aggravated by the accepted employment factors. The Board has held that a report is of limited probative value if it does not contain

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<sup>14</sup> See *L.K.*, Docket No. 20-0443 (issued August 8, 2023).

<sup>15</sup> See *A.L.*, Docket No. 25-0492 (issued May 27, 2025).

medical rationale explaining how a given medical condition/disability was causally related to the accepted employment factors.<sup>16</sup> Therefore, this evidence is insufficient to establish the claim.

Appellant also submitted an undated note and a September 19, 2024 report by Dr. Mittleman. However, Dr. Mittleman was on one side of the conflict in medical opinion, which was resolved by Dr. Fonseca as the IME. The Board has long held that reports from a physician who was on one side of a medical conflict that an IME resolved, are generally insufficient to overcome the special weight accorded to the report of the IME, or to create a new conflict.<sup>17</sup> This evidence is, therefore, insufficient to establish the claim.

Additionally, appellant submitted a September 20, 2022 cervical spine MRI scan report. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship.<sup>18</sup> Thus, this evidence is insufficient to establish the claim.

Lastly, appellant submitted a form report with an illegible signature of a healthcare provider, indicating that appellant sustained an occupational repetitive neck strain injury. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.<sup>19</sup> Therefore, this evidence is of no probative value and is insufficient to establish the claim.

As the medical evidence of record is insufficient to establish a cervical condition causally related to the accepted employment factors, the Board finds that appellant 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.

### **CONCLUSION**

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

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<sup>16</sup> See *C.M.*, Docket No. 25-0772 (issued December 15, 2025); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>17</sup> See *S.V.*, Docket No. 25-0688 (issued September 5, 2025); *E.B.*, Docket No. 24-0780 (issued June 5, 2025); *E.H.*, Docket No. 19-1352 (issued December 18, 2019).

<sup>18</sup> *B.S.*, Docket No. 25-0757 (issued November 21, 2025); *P.G.*, Docket No. 24-0511 (issued June 26, 2024); *C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>19</sup> *T.L.*, Docket No. 23-1039 (issued February 23, 2024); *A.S.*, Docket No. 21-1263 (issued July 24, 2023); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 12, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 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