

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

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**W.C., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE,  
ROBBINS AIR FORCE BASE,  
Warner Robins, GA, Employer**

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**Docket No. 09-248  
Issued: July 17, 2009**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 3, 2008 appellant, through his representative, filed a timely appeal from the August 15, 2008 merit decision of the Office of Workers' Compensation Programs, which denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case. The Board has no jurisdiction to review the September 2, 2008 medical report submitted after the Office's August 15, 2008 decision.<sup>1</sup>

**ISSUE**

The issue is whether the work incident on March 14, 2007 caused an injury to appellant's neck. Appellant's attorney argues that the Office's decision is contrary to fact and law.

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<sup>1</sup> The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On May 20, 2008 appellant, then a 63-year-old aircraft mechanic, filed a claim alleging that he injured his neck in the performance of duty on March 14, 2007: “I was working on the left wing on the torque box covers and I bent over to pick up parts and sharp pain hit me in my lower back, and when it did I raised up quickly and hit my neck on the torque box cover.” The Office asked appellant to submit a detailed narrative report from his physician explaining how the diagnosed condition was believed to have been caused or aggravated by the incident alleged.

On June 24, 2008 Dr. George S. Stefanis, appellant’s neurological spine surgeon, reported that appellant was found to have disc protrusions “following the injury that he describes to us.” He noted a disc/osteophyte complex causing stenosis at C4-7, with the C5-6 level being the worst. There also appeared to be foraminal encroachment at all those levels, with the lower two being the worst. Dr. Stefanis stated: “The patient did give a history to us of bending up and raising up quickly, and his neck hitting the torque box cover.”

In a decision dated August 15, 2008, the Office denied appellant’s claim for compensation. It found that he failed to establish that the claimed medical condition was related to the established work-related event.

## **LEGAL PRECEDENT**

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Causal relationship is a medical issue,<sup>4</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>5</sup> must be one of reasonable medical certainty,<sup>6</sup>

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *E.g., John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>7</sup>

When a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.<sup>8</sup>

### **ANALYSIS**

The Office does not dispute that on March 14, 2007 appellant was working on the left wing of an aircraft when he rose up quickly and hit his neck on the torque box cover. It described this as an established work-related event. Appellant has therefore met his burden to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The only question that remains is whether this event caused or aggravated a diagnosed medical condition.

Dr. Stefanis, appellant's neurological spine surgeon, only hinted at a causal relationship. On June 24, 2008 he reported that appellant was found to have disc protrusions "following the injury that he describes to us." After noting a disc/osteophyte complex, cervical stenosis and foraminal encroachment, he stated that appellant "did give a history to us of bending up and raising up quickly, and his neck hitting the torque box cover." The Board finds that this medical evidence fails to establish causal relationship. Dr. Stefanis did not really offer his opinion on whether the incident in question caused or aggravated any of the cervical conditions he described. He simply noted a temporal sequence of events: Appellant hit his neck on the torque box cover, and later, he was found to have disc protrusions and other cervical conditions. Dr. Stefanis provided no medical rationale to support any kind of causal relationship between the two. He did not explain from a medical perspective how he was able to determine to a reasonable degree of medical certainty that the incident caused or aggravated at least one of the identified cervical conditions.

Because Dr. Stefanis did not offer sound medical reasoning to support that the March 14, 2007 work incident caused or aggravated any of appellant's diagnosed neck conditions, the Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on March 14, 2007, as alleged.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty. The medical opinion evidence fails to establish the critical element of causal relationship.

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<sup>7</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 15, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board