

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

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W.M., Appellant	)	
	)	
and	)	<b>Docket No. 19-1442</b>
	)	<b>Issued: February 10, 2020</b>
DEPARTMENT OF THE ARMY, ANNISTON	)	
ARMY DEPOT, Anniston, AL, Employer	)	

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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 June 17, 2019 appellant filed a timely appeal from a February 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, during the pendency of this appeal, OWCP issued a July 9, 2019 nonmerit decision, which denied reconsideration of the February 13, 2019 merit decision that is the subject of the current appeal. The Board and OWCP may not simultaneously exercise jurisdiction over the same issues. 20 C.F.R. §§ 501.2(c)(3), 10.626. *See Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's July 9, 2019 decision is set aside as null and void.

## **ISSUE**

The issue is whether appellant has met his burden of proof to establish cervical degenerative disc disease causally related to the accepted factors of his federal employment.

## **FACTUAL HISTORY**

On December 14, 2018 appellant, then a 55-year-old sandblaster, filed an occupational disease claim (Form CA-2) alleging that he developed degenerative disc disease at C6-7, pinched nerves in his neck, and bulging discs and spasms due to factors of his federal employment. He indicated that his doctor believed his injury was related to his helmet use over a long period of time. Appellant noted that he first became aware of his condition and related it to factors of his federal employment on September 18, 2018. On the reverse side of the claim form, appellant's supervisor indicated that he was last exposed to the conditions that he alleged to have caused his injuries on October 1, 2018 and provided that he was now working as a painter, and he did not require a helmet to perform these duties.

In an October 1, 2018 medical note, Donald Griffin, a physician assistant, noted that appellant's private doctor provided restrictions of no sandblasting or wearing personal protective equipment (PPE) headgear for 60 days.

In a December 3, 2018 medical note, Dr. James Yates, Board-certified in internal medicine, diagnosed degenerative disc disease of the cervical spine and recommended that appellant not perform any work that required heavy headgear.

In a December 4, 2018 medical note, Christy Myrick, a nurse practitioner, noted the work restrictions provided by Dr. Yates on December 3, 2018 and also provided additional restrictions, including no climbing, working at higher elevations or operating government vehicles while taking muscle relaxers.

In a December 5, 2018 medical report, Dr. Timothy Tabor, a Board-certified diagnostic radiologist, interpreted a magnetic resonance imaging (MRI) scan of appellant's cervical spine. He diagnosed moderate degenerative disc disease at C6-7 with osteophyte disc complex resulting in mild central stenosis and mild-to-moderate foraminal encroachment bilaterally, as well as straightening of the cervical lordosis.

On January 2, 2019 appellant provided a position description which detailed his responsibilities as a sandblaster.

By development letter dated January 3, 2019, OWCP advised appellant of the factual and medical deficiencies of his claim. It provided a questionnaire for his completion to establish the employment factors alleged to have caused or contributed to his medical condition and requested a medical report from his attending physician explaining how and why his federal work activities caused, contributed to, or aggravated his medical condition. OWCP afforded appellant 30 days to submit the requested information.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's occupational disease claim, including comments from a knowledgeable supervisor regarding the accuracy of appellant's

statements, a description of the tasks appellant performed which required physical exertion, and a description of precautions taken to minimize effects of the employment activities. It afforded the employing establishment 30 days to submit the requested information.

Appellant provided partially legible progress notes dated from September 18 to December 3, 2018 with no signature. The progress notes referenced appellant's cervical, neck and right shoulder pain related to his conditions and provided that appellant's work conditions contributed to his symptoms. The progress notes also indicated that appellant received epidural injections to treat his pain with no improvement.

In medical reports dated September 27 and November 28, 2018, Dr. Hubert Rodriguez, a Board-certified anesthesiologist, noted that appellant had received cervical epidural steroid injections to treat his conditions.

In an undated response to OWCP's questionnaire, appellant replied that he worked as a sandblaster for 10 years and was required to wear PPE headgear weighing approximately five to seven pounds. He noted that wearing the PPE headgear over a period of time caused his conditions. Appellant's supervisor, D.D., also signed the statement and indicated that he agreed with appellant's statement and noted that he performed his sandblasting duties for four hours per day.

By decision dated February 13, 2019, OWCP denied appellant's claim, finding that the evidence submitted was insufficient to establish that his diagnosed conditions were causally related to the accepted factors of his federal employment.

### **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 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 period 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>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *S.C.*, *id.*; *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>7</sup> *S.C.*, *id.*; *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).

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 claimant.<sup>8</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 identified by the employee.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

### ANALYSIS

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

Dr. Rodriguez reported in his September 27 and November 28, 2018 medical notes that appellant received cervical epidural steroid injections to treat his conditions. However, he offered no opinion regarding the cause of appellant's medical conditions. 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>12</sup>

Similarly, in Dr. Yates' December 3, 2018 medical note, he indicated that appellant continued to have symptoms of cervical disc disease, despite treatment, and therefore, should not be in a job that requires using heavy headgear. However, he did not provide an opinion as to the cause of appellant's condition or how wearing heavy headgear caused or aggravated his condition. As such, Dr. Yates' note is also of no probative value.<sup>13</sup>

Appellant also submitted a December 5, 2018 MRI scan of his cervical spine. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and the diagnosed conditions.<sup>14</sup> Accordingly, the December 5, 2018 MRI scan is insufficient to establish appellant's claim.

Appellant also submitted an October 1, 2018 medical report from Donald Griffin, a physician assistant, and a December 4, 2018 medical note from Ms. Myrick, a nurse practitioner.

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<sup>8</sup> *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>9</sup> *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *A.M.*, Docket No. 18-0685 (issued October 26, 2018).

<sup>10</sup> *E.V.*, *id.*

<sup>11</sup> *B.J.*, Docket No. 19-0417 (issued July 11, 2019).

<sup>12</sup> *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

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

<sup>14</sup> *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.<sup>15</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>16</sup>

Finally, appellant submitted progress notes dated from September 18 to December 3, 2018 that did not contain a legible signature. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.<sup>17</sup> Therefore, this evidence is also of no probative value.

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated his conditions, he has not met his burden of proof to establish that his conditions are causally related to the accepted factors of his federal employment.

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 cervical degenerative disc disease causally related to the accepted factors of his federal employment.

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<sup>15</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>16</sup> See *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

<sup>17</sup> *J.P.*, Docket No. 19-0197 (issued June 21, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2020  
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