



that she first became aware of her condition and that it was related to factors of her federal employment on April 27, 2020.

Appellant submitted treatment notes from Dr. Jerry M. Kenny, a chiropractor, dated from December 21, 2017. In a note dated April 30, 2020, Dr. Kenny related that x-rays taken that day of appellant's cervical spine revealed findings of degenerative disc disease at C5-C7, with loss of disc height, possible foramen stenosis at C5-C7 with loss of cervical curve. He also related that appellant's x-ray, subjective complaints, and examination results indicated repetitive lower cervical compression due to possible computer ergonomics and repetitive looking down. In addition, Dr. Kenny noted that appellant's right shoulder pain could possibly indicate a condition caused by repetitive computer use and improper ergonomics.

On May 5, 2020 Dr. Kenny completed a form report wherein he noted that repetitive work on a computer at home during COVID-19 increased appellant's pain from her right shoulder to her fingers due to improper ergonomics. He related a diagnosis of right sciatica.

In a development letter dated May 15, 2020, OWCP advised appellant that additional evidence was necessary to establish her claim. It indicated the type of factual and medical evidence needed. OWCP noted that a chiropractor did not qualify as a physician under FECA unless there was a diagnosed spinal subluxation based on x-ray evidence. It afforded appellant 30 days to submit the necessary evidence.

Appellant submitted an x-ray films dated May 21, 2020 of her collar bone and cervical spine.

OWCP received several notes from the chiropractor, Dr. Kenny which recommended that appellant be excused from work through July 28, 2020. In a May 5, 2020 note, Dr. Kenny's diagnoses included cervical subluxation based on x-rays.

By decision dated July 23, 2020, OWCP accepted that the employment factors occurred as alleged, but denied appellant's claim finding that she had not established a diagnosed medical condition causally related to the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant submitted a report dated July 29, 2020 from Zachary Symmes, a physician assistant. Mr. Symmes related that appellant was seen for right-sided neck pain radiating down her right upper extremity since April 2020. He also stated that he believed appellant had cervical radiculopathy.

OWCP received an imaging report dated August 7, 2020 from Dr. Brad Piatt, a Board-certified diagnostic radiologist. Dr. Piatt related that appellant experienced right upper extremity numbness and tingling. He found appellant had mild disc bulging at C5-C7, mild kyphosis, and a small lower cervical thoracic foraminal cyst.

OWCP received a note dated August 14, 2020 from Dr. Abid A. Qureshi, a Board-certified orthopedic surgeon. Dr. Qureshi noted appellant's complaints of neck and arm pain that started in April. He noted that appellant's August 7, 2020 MRI scan revealed visible mild-to-moderate

spondylosis. Dr. Qureshi indicated that appellant's lack of ergonomic equipment worsened her symptoms.

On September 1, 2020 appellant requested reconsideration and resubmitted evidence previously of record.

By decision dated September 4, 2020, OWCP denied modification of its July 23, 2019 decision, finding that appellant had not established fact of injury.

On September 15, 2020 appellant requested reconsideration and submitted a July 29, 2020 report wherein Mr. Symmes, a physician assistant, noted appellant's history of computer work for 17 years and her current complaints. He listed appellant's diagnoses as cervical C6-7 radiculopathy and cervicalgia. Mr. Symmes noted that appellant's condition "came about" from her stationary desk job.

By decision dated January 19, 2021, OWCP denied appellant's request for reconsideration.

On March 11, 2021 appellant again requested reconsideration.

In support of her reconsideration request, appellant submitted an undated treatment plan from Dr. Qureshi. Dr. Qureshi diagnosed cervical radiculopathy and stated that she has an element of tennis elbow. He concluded that "her symptoms were 100 percent work related."

Appellant submitted a medical report dated February 25, 2021 from Mr. Symmes. Mr. Symmes related that appellant's diagnoses were neck pain and cervical radiculopathy and that they were "100 percent work related" due to the poor ergonomics of her home office.

By decision dated April 12, 2021, OWCP modified its September 4, 2020 decision, finding that a diagnosis had been established, but affirmed the denial of the claim as the medical evidence of record was insufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</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

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<sup>2</sup> *Id.*

<sup>3</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).

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 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 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 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 claimant.<sup>8</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, is sufficient to establish causal relationship.<sup>9</sup>

### ANALYSIS

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

Appellant submitted an undated treatment plan from Dr. Qureshi which listed appellant's diagnosis of cervical radiculopathy and stated that her symptoms were 100 percent work related. OWCP also received a note dated August 14, 2020 from Dr. Qureshi related that appellant's August 7, 2020 MRI scan revealed mild-to-moderate spondylosis, and that appellant's lack of ergonomic equipment worsened her symptoms. While Dr. Qureshi provided an opinion on the causal relationship in both of these reports, he did not offer any rationale to explain how the accepted employment factors would have caused appellant's diagnosed condition.<sup>10</sup> The Board

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<sup>4</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>5</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).

<sup>6</sup> *See T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *J.F.*, Docket No. 18-0492 (issued January 16, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>8</sup> *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *E.W.*, Docket No. 19-1393 (issued January 29, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

has held that a report is conclusory and of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition was related to employment factors.<sup>11</sup> A medical opinion should offer a medically-sound explanation of how specific employment factors physiologically caused the diagnosed condition.<sup>12</sup> As Dr. Qureshi did not provide a rationalized medical opinion explaining how the factors of appellant's employment physiologically caused her diagnosed cervical conditions, his reports were insufficient to establish causal relationship.

OWCP received medical evidence from Dr. Kenny, a chiropractor. Under FECA, a chiropractor is considered a physician only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>13</sup> In his treatment notes dated December 21, 2017 through April 30, 2020, he did not diagnose a subluxation and is, therefore, not considered a physician with regard to those treatment notes. In a May 5, 2020 note, he diagnosed cervical subluxation based on x-rays. The Board thus finds that Dr. Kenny is a physician for purposes of FECA with regard to his May 5, 2020 note and form report. However, as Dr. Kenny did not provide an opinion on causal relationship, this evidence is of no probative value.<sup>14</sup>

OWCP received reports from Mr. Symmes, a physician assistant. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.<sup>15</sup> Consequently, Ms. Symmes' reports are insufficient to establish the claim.

Appellant submitted an imaging report dated August 7, 2020 from Dr. Piatt. OWCP also received x-ray films of her collar bone and cervical spine. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address

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<sup>11</sup> See *D.W.*, Docket No. 18-1139 (issued May 21, 2019) *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>12</sup> *Id.*; See also *H.T.*, Docket No. 20-1238 (issued July 12, 2021).

<sup>13</sup> FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners with the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. §8101(2). See also *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *P.R.*, Docket No 14-1007 (issued August 13, 2014); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>14</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>15</sup> 5 U.S.C. § 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law," 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); see also *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

the relationship between the accepted employment factors and a diagnosed condition.<sup>16</sup> For this reason, this evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted factors of her federal employment, the Board finds that she has not met her 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 her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 12, 2021 decision of the Workers' Compensation Programs is affirmed.

Issued: December 20, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> See *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).