

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

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<b>R.O., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1243</b>
	)	<b>Issued: May 28, 2021</b>
<b>DEPARTMENT OF THE ARMY, BLUE GRASS</b>	)	
<b>ARMY DEPOT, Richmond, KY, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 4, 2020 appellant filed a timely appeal from an April 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a cervical condition causally related to the accepted August 21, 2019 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the April 23, 2020 decision, OWCP received additional evidence. 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.*

## **FACTUAL HISTORY**

On August 21, 2019 appellant, then a 52-year-old security guard, filed a traumatic injury claim (Form CA-1) alleging that on that date he developed neck pain when he struck his head on a ladder that was protruding from a truck he was inspecting while in the performance of duty. He did not stop work.

An August 28, 2019 magnetic resonance imaging (MRI) scan of appellant's cervical spine revealed C4-7 broad-based disc bulges, and degenerative change in the mid and lower cervical spine producing mild bilateral neural foraminal narrowing at the C5-6 level.

In progress notes dated September 10, 2019, Dr. James R. Bean, a Board-certified neurosurgeon, diagnosed cervical sprain and chronic moderate C5-6, mild C4-5, and mild C6-7 degenerative disc disease. He reported that on August 21, 2019, while at work, appellant hit his head on a ladder protruding from a vehicle. Dr. Bean also noted that appellant had a history of intermittent neck pain since 1994, and that he had sustained a neck injury at work the prior month when he hit his head on a vehicle ceiling. Diagnostic testing was reviewed and examination findings were detailed.

In a duty status report (Form CA-17) of even date, Dr. Bean noted clinical findings of neck pain and diagnosed neck sprain. He released appellant to return to work full time with restrictions.

Appellant attended physical therapy from September 13 through November 12, 2019.

Appellant was seen by Dr. Bean on October 8, 2019 for a follow-up of neck pain complaints. Dr. Bean reiterated appellant's history of injury. A neurological examination of appellant's neck revealed limited mild cervical range of motion to the right and intact neurological examination. Dr. Bean diagnosed cervical sprain injury. Appellant was released to return to regular work.

In a development letter dated March 11, 2020, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. Appellant did not respond.

By decision dated April 23, 2020, OWCP accepted that the August 21, 2019 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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

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<sup>3</sup> *Supra* note 1.

limitation of FECA,<sup>4</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>5</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>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>7</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment incidents identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a cervical condition causally related to the accepted August 21, 2019 employment incident.

The record contains reports dated September 10 and October 8, 2019 from Dr. Bean diagnosing cervical sprain and chronic moderate C5-6, mild C4-5, and mild C6-7 degenerative disc disease. However, Dr. Bean offered no opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>10</sup> Therefore, these reports are insufficient to establish appellant's claim.

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<sup>4</sup> *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *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>5</sup> *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *V.L.*, *supra* note 4; *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>7</sup> *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *C.H.*, *supra* note 5; *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *V.L.*, *supra* note 4; *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *See V.L.*, *supra* note 4; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Appellant submitted physical therapy reports dated September 13 through November 12, 2019. However, certain healthcare providers such as physician assistants, nurses, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.<sup>11</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>12</sup>

Appellant also submitted an MRI scan of his cervical spine. However, the Board has explained that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>13</sup>

As the medical evidence of record does not contain rationalized medical evidence establishing that appellant’s cervical condition was causally related to the accepted August 21, 2019 employment incident, 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 August 21, 2019 employment incident.

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<sup>11</sup> Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Procedure Manual, *id* at Chapter 2.805.3a(1) (January 2013); *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); *J.R.*, Docket No. 20-0496 (issued August 13, 2020) (physical therapists are not considered physicians under FECA).

<sup>12</sup> *Id.*

<sup>13</sup> *V.L.*, *supra* note 4; *R.C.*, Docket No. 19-0376 (issued July 15, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 23, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 28, 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