

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

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**H.E., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Detroit, MI, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-1129**  
**Issued: December 16, 2022**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 18, 2022 appellant filed a timely appeal from a May 31, 2022 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 factors of his federal employment.

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

<sup>2</sup> The Board notes that following the May 31, 2022 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 evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On December 3, 2021 appellant, then a 54-year-old postal rural carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a herniated disc, spondylosis, and radiculopathy of the neck with numbness of the hand due to factors of his federal employment, including 30 years of repetitive twisting, turning his neck, bending, and looking into a back seat to find and lift parcels and mail. He noted that he first became aware of his conditions and their relationship to his federal employment on July 1, 2021. Appellant did not stop work.

In support of his claim, appellant submitted medical evidence.

In an October 24, 2021 cervical spine magnetic resonance imaging (MRI) scan report, Dr. Mohammad Asad, a Board-certified diagnostic radiologist, provided an impression of multilevel degenerative changes most prominent at C5-6 with large left placental disc herniation with mild superior migration causing severe left lateral recess narrowing and medial left foraminal encroachment with probable impingement of left C6 nerve root. He also provided an impression of severe left C3-4, moderate severe right C4-5, and mild bilateral C6-7 foraminal encroachment.

In a November 8, 2021 progress note, Dr. Douglas F. Geiger, an attending Board-certified orthopedic surgeon, noted appellant's history of injury, reviewed medical records, discussed his findings on physical examination, and reviewed diagnostic tests. He provided an assessment of cervical spondylosis with left upper extremity radiculopathy. Dr. Geiger recommended that appellant undergo an anterior cervical discectomy and fusion at C5-6 and C6-7.

In a work status form also dated November 8, 2021, Dr. Geiger opined that appellant's cervical spine spondylosis and radiculopathy were caused by his job, which involved cumulative and repetitive microtrauma to the cervical spine.

OWCP, by development letter dated December 13, 2021, advised appellant of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. By separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding his allegations. OWCP afforded both parties 30 days to respond.

In a December 21, 2021 e-mail, the employing establishment concurred with appellant's description of his work duties. It related that his repetitive motions at work could have caused his neck, back, and shoulder conditions, and need for surgery.

In response to OWCP's development letter, appellant submitted medical evidence.

In a September 30, 2021 cervical spine MRI scan report, Dr. Asad provided impressions of no acute cervical spine abnormality; degenerative disc disease at C5-6 and C6-7; and severe right C4-5 and severe left C3-4 foraminal encroachment.

In a December 21, 2021 letter, Danielle Berthold, a nurse practitioner, noted that appellant underwent cervical spine fusion on that day, and advised that he would be off work for three months and return to work on or around March 21, 2022.

By decision dated March 2, 2022, OWCP denied appellant's occupational disease claim, finding that he had not submitted rationalized medical evidence establishing causal relationship between his diagnosed medical conditions and the accepted factors of his federal employment.

On March 15, 2022 appellant requested reconsideration and submitted additional medical evidence from Dr. Geiger. In a January 31, 2022 letter, Dr. Geiger reiterated appellant's history of injury, reported his findings on physical examination, and reviewed diagnostic tests. He again diagnosed cervical spondylosis with left upper extremity radiculopathy. Dr. Geiger opined that appellant's symptoms, diagnosis, and need for cervical spine surgery on December 21, 2021, were a direct result of his mail carrier occupation.

By decision dated May 31, 2022, OWCP denied modification of its March 2, 2022 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related 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 on 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;<sup>6</sup> (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>7</sup> and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>8</sup>

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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>9</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>8</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>9</sup> *See J.R.*, Docket No. 17-1781 (issued January 16, 2018); *I.J.*, 59 ECAB 408 (2008).

## 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.

In support of his claim, appellant submitted a series of reports from Dr. Geiger dated November 8, 2021 through January 31, 2022. In these reports, although Dr. Geiger supported causal relationship between factors of appellant's employment and his diagnosed conditions, he did not provide medical rationale in support of his opinion that appellant's cervical spondylosis and radiculopathy were causally related to the accepted employment factors. The Board has previously held that mere conclusory statements, not fortified by explanation, are insufficient to establish causal relationship between employment factors and diagnosed conditions.<sup>10</sup> Without further explanation as to how, physiologically, the movements involved in appellant's employment duties caused or contributed to the diagnosed cervical conditions, his opinion on causal relationship is of limited probative value.<sup>11</sup> As such, Dr. Geiger's reports are insufficient to establish the claim.<sup>12</sup>

Appellant also submitted Dr. Asad's September 30 and October 24, 2021 MRI scans of the cervical spine. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment factors caused the diagnosed conditions.<sup>13</sup>

The record also contains a December 21, 2021 letter from nurse practitioner, Ms. Berthold. This letter does not constitute competent medical evidence because nurse practitioners are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.<sup>14</sup>

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<sup>10</sup> *S.G.*, Docket No. 20-1179 (issued May 3, 2022); *N.M.*, Docket No. 19-0258 (issued May 8, 2020); *A.W.*, Docket No. 19-1277 (issued January 3, 2020); *V.S.*, Docket No. 19-0936 (issued October 7, 2019); *M.S.*, Docket No. 19-0587 (issued July 22, 2019); *B.C.*, Docket No. 18-1735 (issued April 23, 2019); *N.M.*, Docket No. 10-0283 (issued August 19, 2010).

<sup>11</sup> *Id.*

<sup>12</sup> *S.G.*; *N.M.*; *A.W.*, *id.*; *J.H.*, Docket No. 19-0838 (issued October 1, 2019); *D.M.*, Docket No. 19-0389 (issued July 16, 2019).

<sup>13</sup> *M.S.*, Docket No. 22-0586 (issued July 12, 2022); *M.T.*, Docket No. 20-0184 (issued June 24, 2022); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *see A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>14</sup> Section 8101(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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see also S.R.*, Docket No. 22-0245 (issued July 18, 2022) (nurse practitioners are not considered physicians as defined under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

As appellant has not submitted rationalized medical evidence to establish a cervical condition causally related to the accepted employment factors, he 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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 31, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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