

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

R.C., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
FAYETTEVILLE VA MEDICAL CENTER,)
Fayetteville, NC, Employer)

Docket No. 22-0426
Issued: July 22, 2022

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 28, 2022 appellant filed a timely appeal from a January 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted September 10, 2021 employment incident.

FACTUAL HISTORY

On December 6, 2021 appellant, then a 62-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 10, 2021 he sustained intense pain, weakness, and

¹ 5 U.S.C. § 8101 *et seq.*

numbness down the back of his left arm, wrist, and hand after using his knees to fold a large box into a small bundle for placement in the trash while in the performance of duty. He noted that he had aggravated an injury or strain to his neck and left scapula.

In a report dated September 14, 2021, Dr. Yongqin Wu, a Board-certified neurologist, examined appellant for complaints of chronic neck pain and left arm paresthesia. He noted that appellant had been treated with massage therapy for about five weeks for chronic pain. Appellant stated that as a result of bending to pick up a large box from the trash, he further aggravated his neck condition and could not lift his left arm, straighten his neck, or feel much on the left side of his left hand and wrist. Dr. Wu assessed appellant with chronic neck pain, complaints of worsening pain since massage therapy on September 9, 2021, consistent with cervical radiculopathy.

In a report dated October 8, 2021, Dr. Wu noted that appellant was last seen on September 14, 2021 for neck pain and left arm weakness/numbness after massage therapy. He diagnosed cervicgia, cervical radiculopathy due to cervical disc disorder, and foraminal stenosis.

In an after-visit summary dated December 8, 2021, Stephen Michael Scott, a nurse practitioner, indicated that appellant was seen for neck pain, left cervical radiculitis, hand paresthesia, and left ulnar nerve neuritis.

Diagnostic magnetic resonance imaging (MRI) scans obtained on July 30, 2021 indicated mild dextroscoliosis, multiple level degenerative disc disease and osteoarthritic change to the lumbar spine, including moderate-to-severe right neural foraminal narrowing at the L5-S1 levels and suspected impingement on the exiting right L5 nerve root.

In a development letter dated December 10, 2021, OWCP advised appellant of the type of factual and medical evidence required to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to submit the necessary evidence.

Appellant responded to OWCP's development letter on December 11, 2021. He again described transferring items to a new file cabinet on September 10, 2021, and then straining his neck while folding a large box from which he was transferring items. Appellant related that while he had a deep tissue massage on September 9, 2021, he had never previously been diagnosed with cervical radiculopathy or a pinched nerve. He also related that he had never experienced extreme neck pain and spasm until he folded the box on September 10, 2021.

A diagnostic electromyogram/nerve conduction velocity (EMG/NCV) study obtained on January 6, 2022 was abnormal, containing electrodiagnostic evidence of a subacute ulnar mononeuropathy at the elbow, consistent with the provided history of trauma in September 2021, as well as evidence of chronic multilevel cervical radiculopathy at the C7-T1 levels.

By decision dated January 21, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted September 10, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 limitation of FECA,³ 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.⁴ 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.⁵

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. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁶

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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 factors identified by the employee.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted September 10, 2021 employment incident.

² *Id.*

³ *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).

⁴ *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).

⁵ *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).

⁶ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *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).

⁸ *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).

In support of his traumatic injury claim of December 6, 2021, appellant submitted reports from Dr. Wu. In a report dated September 14, 2021, Dr. Wu noted that appellant had been treated with massage therapy for about five weeks for chronic pain. Appellant stated that as a result of bending to pick up a large box from the trash, he further aggravated his neck condition and could not lift his left arm, straighten his neck, or feel much on the left side of his left hand and wrist. Dr. Wu assessed chronic neck pain, complaining of worsening pain since massage therapy on September 9, 2021, consistent with cervical radiculopathy. In a report dated October 8, 2021, he noted that appellant was last seen on September 14, 2021 for neck pain and left arm weakness/numbness after massage therapy. Dr. Wu diagnosed cervicgia, cervical radiculopathy due to cervical disc disorder, and foraminal stenosis. While these reports reviewed appellant's history of injury and contained medical diagnoses, they did not provide a medical opinion regarding the cause of appellant's diagnosed 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.⁹

Appellant also submitted an after-visit summary signed by a nurse practitioner dated December 8, 2021. The Board has held that medical reports signed solely by a nurse practitioner or solely by a physical therapist are of no probative value, because nurse practitioners are not considered physicians as defined under FECA.¹⁰ As such, these reports are of no probative value.

The diagnostic reports dated July 30, 2021 and January 10, 2022 also do not constitute probative medical evidence. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship.¹¹

As appellant has not submitted rationalized medical evidence establishing a medical condition causally related to the accepted September 10, 2021 employment incident, the Board finds that 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.

⁹ *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See id.* at § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.J.*, Docket No. 19-1287 (issued January 13, 2020); *P.H.*, Docket No. 19-0119 (issued July 5, 2019); *T.K.*, Docket No. 19-0055 (issued May 2, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA).

¹¹ *See C.F.*, Docket No. 18-1156 (issued January 22, 2019); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted September 10, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board