



## 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.

## FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference.<sup>3</sup> The relevant facts are as follows.

On December 4, 2020 appellant, then a 48-year-old rural delivery specialist, filed an occupational disease claim (Form CA-2) alleging that he developed stiffness, pain, and limited mobility in his neck due to factors of his employment. He noted that he first became aware of his condition on November 13, 2019, and realized that his condition was caused or aggravated by his federal employment on November 4, 2020. Appellant stopped work on October 31, 2020. OWCP assigned the claim File No. xxxxxx583.<sup>4</sup>

In a September 22, 2020 report, Dr. Thomas L. Gritzka, a Board-certified orthopedic surgeon, performed an impairment examination. He provided a history of the December 23, 2016 accepted right shoulder injury and reviewed the medical evidence. Dr. Gritzka noted that appellant was using a right-hand drive vehicle for rural delivery. On physical examination, he found normal tone in the cervical paravertebral muscles and sternocleidomastoid muscle. Dr. Gritzka found that appellant had reached maximum medical improvement.

On November 2, 2020 Samantha Quilici, a physician assistant, found that appellant was totally disabled from work.

In a December 11, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim. In a separate development letter dated December 10, 2020, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

OWCP subsequently received additional evidence. Ms. Quilici completed additional notes on November 2 and 30, 2020 and a form report on December 11, 2020. Appellant also provided physical therapy notes.

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<sup>3</sup> *Order Remanding Case, J.M.*, Docket No. 22-0333 (issued July 1, 2022).

<sup>4</sup> Prior to the present claim, under OWCP File No. xxxxxx733, OWCP accepted that on December 23, 2016 appellant sustained right shoulder suprascapular neuropathy with partial denervation of the right supraspinatus muscle and right shoulder rotator cuff tear. He underwent an OWCP-authorized right shoulder arthroscopy with rotator cuff repair on June 19, 2017.

On December 17, 2020 Dr. Mark Peterson, a Board-certified orthopedic surgeon, completed cervical spine x-rays which he read as normal. He noted that appellant was experiencing neck pain and stiffness after prior shoulder surgery in 2017.

By decision dated January 29, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a November 19, 2020 note, Dr. Andrea Carrasco, a Board-certified family practitioner, recounted appellant's December 23, 2016 work-related right shoulder injury and resulting surgery. She further noted appellant's current symptoms of neck stiffness. On physical examination, Dr. Carrasco found significant spasm of the left trapezius and sternocleidomastoid muscle with limited range of motion of the neck secondary to pain. Dr. Carrasco diagnosed cervicalgia/muscle spasm.

On January 14, 2021 appellant underwent a magnetic resonance imaging (MRI) scan which demonstrated facet arthropathy in the left C3-4 and C4-5 facet joints. Kara Berent, a physician assistant, completed a January 19, 2021 note in which she diagnosed disorder of thyroid and recommended physical therapy.

On February 26, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on May 27, 2021.

OWCP continued to receive medical evidence. Dr. Patricia Ann Waring, a Board-certified family practitioner, completed June 14 and 24, 2021 notes and described appellant's previous December 23, 2016 employment injury, resulting surgery, and his current work duties. She noted that he experienced left-sided neck pain beginning in November 2019 and received facet injections on June 3, 2021. Dr. Waring diagnosed right shoulder rotator cuff tear, status-post arthroscopy and cervical facet arthritis. She noted that the etiology of appellant's arthritis and degenerative changes was difficult to establish as "being solely related to his employment." Dr. Waring completed a June 24, 2024 duty status report repeating her diagnosis.

By decision dated August 3, 2021, OWCP's hearing representative modified the January 29, 2021 decision to find that the medical evidence of record was sufficient to establish a medical diagnosis in connection with the accepted employment factors. However, the claim remained as the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical condition and the accepted employment factors.

On October 28, 2021 appellant, through counsel, requested reconsideration. In support thereof, he provided an August 9, 2021 report from Dr. Carrasco describing the December 23, 2016 right shoulder work-related injury under OWCP File No. xxxxxx733 and its resulting surgery. Dr. Carrasco found limited flexion, extension, and lateral rotation of his neck due to stiffness and pain. She noted that appellant was unable to comfortably deliver mail out of the right side of his vehicle following his accepted employment injury. Dr. Carrasco reported that he developed left-side neck pain to try to compensate for the right side. She diagnosed chronic arthropathy of the right shoulder region and cervical facet syndrome. Dr. Carrasco opined that appellant had a

chronic condition and that his current job would cause him to be in constant pain and maybe even make his condition worse.

By decision dated December 8, 2021, OWCP denied modification.

Appellant appealed to the Board. By order dated July 1, 2022, the Board set aside the December 8, 2021 decision and remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx583 and xxxxxx733 and, following any necessary further development, to issue a *de novo* decision.<sup>5</sup> On August 11, 2022 OWCP administratively combined OWCP File Nos. xxxxxx583 and xxxxxx733, with the latter designated as the master file.

By *de novo* decision dated September 12, 2022, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted work factors.

On September 21, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on February 9, 2023.

By decision dated April 26, 2023, OWCP's hearing representative set aside the September 12, 2022 decision, finding that Dr. Carrasco had provided a clear inference of a causal relationship. He remanded the case for development of a complete statement of accepted facts (SOAF) and referral to a second opinion physician to determine whether appellant's occupational disease claim filed under OWCP File No. xxxxxx583 should be accepted,<sup>6</sup> whether the acceptance of appellant's December 23, 2016 employment injury "should be expanded to include any additional work-related medical conditions" and "whether a consequential medical condition should be approved under either claim file."

On May 16, 2023 OWCP referred appellant, a SOAF, and a series of questions to Dr. James R. Schwartz, a Board-certified orthopedic surgeon, for a second opinion evaluation in accordance with the April 26, 2023 OWCP hearing decision.

On May 4 and 23, 2023 Dr. Sandy Christiansen, a Board-certified anesthesiologist, examined appellant due to neck and shoulder pain. She diagnosed cervical radiculopathy, fibromyalgia, and facet arthritis of the cervical region. Dr. Christiansen reviewed a May 14, 2023 cervical MRI scan, which demonstrated multilevel degenerative changes of the cervical spine with moderate-to-severe right neural foraminal narrowing at C4-5.

In a June 5, 2023 report, Dr. Schwartz reviewed the SOAF and medical treatment from December 23, 2016. He performed a physical examination and diagnosed cervical facet arthropathy and upper cervical radiculopathy, which he found were unrelated to employment.

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<sup>5</sup> *Id.*

<sup>6</sup> The hearing representative further ordered that OWCP develop whether the acceptance of appellant's December 23, 2016 employment injury under OWCP File No. xxxxxx733 should be expanded to include any additional work-related medical conditions and "whether a consequential medical condition should be approved under either claim file."

Dr. Schwartz recounted that appellant had last worked in 2020 and developed profound muscular weakness about his shoulder suggesting an upper-level cervical root compression. He noted a profound weakness of his right shoulder and a good history for a progressive shoulder upper cervical neuropathy developing over time following his work stoppage in October 2020. Dr. Schwartz determined that appellant had preexisting multilevel significant cervical discogenic disease as well as facet joint disease with significant neural foraminal narrowing at C4-5 resulting in a compression neuropathy. He opined that his history suggested progression of his cervical facet disease but found that there was no indication that this condition was causally related to his work injury as the progression was greater following his cessation of work. Dr. Schwartz found insufficient information to provide a firm diagnosis of the medical conditions affecting appellant's neck and his bilateral upper extremities. He reported that he could not clearly relate appellant's present problem with his shoulder, cervical radiculopathy, to his work activities. Dr. Schwartz determined that it was not appellant's shoulder pathology that produced the worsening of his cervical spondylosis and potential radiculopathy, since his shoulder surgery allowed his shoulder to work nearly normally, but that the progression of his cervical radiculopathy appeared to be more related to the degenerative processes in his neck and not related to work factors. He opined, "Thus, I cannot clearly relate his present problem with his shoulder (which is actually a cervical radiculopathy) to his work activity." Dr. Schwartz advised that he believed that his conclusion was that appellant had "an upper cervical radiculopathy that is related to progression of his underlying cervical spondylosis."

By *de novo* decision dated July 6, 2023, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a medical condition causally related to the accepted work factors. It accorded the weight of the medical evidence to Dr. Schwartz' opinion.

On July 11, 2023 appellant, through counsel requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 6, 2023.

By decision dated December 15, 2023, OWCP's hearing representative affirmed the July 6, 2023 decision.<sup>7</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</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 filed within the applicable time limitation period of FECA,<sup>9</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to

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<sup>7</sup> The Board notes that OWCP has not issued a decision regarding expansion of the acceptance of the claim to include additional conditions or a consequential injury under OWCP File No. xxxxxx733.

<sup>8</sup> *Supra* note 2.

<sup>9</sup> *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.<sup>10</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>11</sup>

In an occupational disease claim, appellant's burden of proof requires submission of 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 employment factors identified by the employee.<sup>12</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>13</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>14</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

In denying appellant's occupational disease claim under OWCP File No. xxxxxx583, OWCP relied on the opinion of Dr. Schwartz, OWCP's second opinion examiner. In his June 5, 2023 report, Dr. Schwartz reviewed the SOAF and medical treatment from December 23, 2016. He performed a physical examination diagnosing cervical facet arthropathy, unrelated to employment, and upper cervical radiculopathy, unrelated to employment. Dr. Schwartz found that there was insufficient information to provide a firm diagnosis of the medical conditions affecting appellant's neck and his bilateral upper extremities. He reported that he could not clearly relate appellant's present problem with his shoulder and cervical radiculopathy, to his work activities. Dr. Schwartz determined that it was not his shoulder pathology that produced the worsening of his cervical spondylosis and potential radiculopathy, since his shoulder surgery allowed his shoulder to work nearly normally, but that the progression of his cervical radiculopathy appeared to be more related to the degenerative processes in his neck and not related to work factors.

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<sup>10</sup> *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>11</sup> *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *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).

<sup>12</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>13</sup> *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>14</sup> *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

The Board finds, however, that Dr. Schwartz did not provide sufficient medical rationale to support his opinion. He did not discuss whether appellant developed cervical conditions due to the accepted factors of his federal employment as a mail processing clerk. Dr. Schwartz opined that the progression of appellant's cervical radiculopathy appeared to be due to degenerative changes rather than the accepted work factors, but that he could be open to finding causal relationship with employment factors depending on the results of additional studies. As his opinion on causation is speculative and equivocal in nature, it is of diminished probative value.<sup>15</sup> The Board thus finds that Dr. Schwartz' opinion is insufficient to constitute the weight of the evidence.<sup>16</sup>

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.<sup>17</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>18</sup> Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>19</sup>

Therefore, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall refer appellant, along with a SOAF and the medical record, to a new second opinion physician in the appropriate field of medicine to resolve the issue of whether appellant developed a cervical condition causally related to the accepted factors of his federal employment. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>15</sup> See *K.A.*, Docket No. 23-0613 (issued April 22, 2024); *B.B.*, Docket No. 21-0284 (issued October 5, 2022); *J.W.*, Docket No. 18-0678 (issued March 3, 2020).

<sup>16</sup> See *C.S.*, *supra* note 12; *T.B.*, Docket No. 22-1170 (issued April 24, 2023); see also *M.W.*, Docket No. 21-1260 (issued September 9, 2022).

<sup>17</sup> *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

<sup>18</sup> *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>19</sup> *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 26, 2024  
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