

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

submit medical evidence sufficient to establish that he sustained the claimed conditions in the performance of duty. By letter dated September 25, 2008, appellant's attorney requested an oral hearing, which was held on January 13, 2009.

In an April 24, 2008 report, Dr. Steven A. Norris, a specialist in internal medicine, noted that appellant had initially sustained a work-related injury in 1984. He advised that appellant had been experiencing increased neck pain and bilateral leg pain with pain down the legs and right hip pain, with possible bursitis. Dr. Norris stated that he had been treating appellant for cervical radiculopathy, occipital neuralgia, enthesopathy, thoracic pain, sciatica, sacroiliitis, lumbar radiculopathy, restless legs syndrome, ulnar neuropathy elbow, bilateral carpal tunnel syndrome, and neck pain. He stated that appellant had responded to injections for the neck and back and might also have bursitis as well. Dr. Norris noted that appellant chose to continue with conservative care; he recommended that he be referred to an orthopedist for his right hip pain, in addition to acupuncture and orthotics for his back.

In a report dated August 26, 2008, Dr. Norris advised that appellant was experiencing a worsening of occipital neuralgia, sciatica and sacroiliitis. He stated that appellant had responded to injections, but opined that the numbness in the legs may not improve. Dr. Norris also noted severe worsening of his neck and low back pain in addition to bilateral arm pain.

By decision dated April 7, 2009, an OWCP hearing representative affirmed the September 15, 2008 decision.

In a May 21, 2010 decision,<sup>2</sup> the Board set aside OWCP's April 7, 2009 decision, finding that the hearing representative erred by failing to consider the medical reports from Dr. Norris. The Board remanded to OWCP for consideration of Dr. Norris' reports and a redetermination of whether appellant's claimed neck, low back, bilateral lower extremity and bilateral arm conditions were sustained in the performance of duty. The complete facts of this case are set forth in the Board's May 21, 2010 decision and are herein incorporated by reference.

By decision dated June 21, 2010, an Office hearing representative denied the claim. She found that appellant failed to submit medical evidence sufficient to establish that his claimed neck, low back, bilateral lower extremity and bilateral arm conditions were sustained in the performance of duty.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing that 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are

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<sup>2</sup> Docket No. 09-2177 (issued May 21, 2010).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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 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) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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>6</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed neck, low back, bilateral lower extremity and bilateral arm conditions and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>7</sup>

### ANALYSIS

The Board finds that appellant failed to submit sufficient medical evidence to establish that his claimed sustained neck, low back, bilateral lower extremity and bilateral arm conditions were related to factors of his employment. For this reason, he has not discharged his burden of proof.

In support of his claimed conditions appellant submitted reports from Dr. Norris, who stated in his April 24, 2008 report that he had initially sustained a work-related injury in 1984. He advised that he had been treating appellant for cervical radiculopathy, occipital neuralgia, enthesopathy, thoracic pain, sciatica, sacroiliitis, lumbar radiculopathy, restless legs syndrome, ulnar neuropathy elbow, bilateral carpal tunnel syndrome, and neck pain. Dr. Norris opined that

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<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

appellant had been experiencing increased neck pain and bilateral leg pain with pain down the legs and right hip pain, with possible bursitis. Appellant's conditions were treated conservatively. In his August 26, 2008 report Dr. Norris asserted that he had experienced a worsening of his neck and low back pain in addition to bilateral arm pain occipital neuralgia, sciatica and sacroiliitis conditions. While appellant's back condition was ameliorated by injections, he asserted that the numbness in his legs might not improve.

None of the reports submitted by Dr. Norris provided rationalized medical opinion addressing how the claimed conditions or disability was causally related to his employment duties. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>8</sup> Dr. Norris did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed conditions. Accordingly, his reports did not sufficiently explain how appellant's diagnosed conditions resulted from factors of his employment. Dr. Norris did not address appellant's preexisting conditions in any detail or how appellant's work duties were competent to cause these conditions.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his conditions were caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that his claimed neck, low back, bilateral lower extremity and bilateral arm conditions were causally related to his employment.

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 failed to meet his burden of proof in establish that his claimed neck, low back, bilateral lower extremity and bilateral arm conditions were sustained in the performance of duty.

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<sup>8</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>9</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>10</sup> See *Anna C. Leanza*, *supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 27, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board