

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

hands and pain in his shoulders and neck due to standing, walking, twisting, pushing, pulling and lifting in the course of his federal employment. He also noted that he experienced an emotional condition due to his physical limitations and pain and stress at work. Appellant stopped work on December 2, 2009 and did not return.

Appellant submitted disability certificates and hospital reports relevant to his emotional condition claim, including reports from Dr. Raul Benitez, a psychiatrist. Regarding his claim for a physical condition, he submitted an October 8, 2010 magnetic resonance imaging (MRI) scan of the cervical spine that showed a small posterior disc protrusion at C4-5, a small central posterior disc protrusion at C3-4 causing mild impingement on the anterior thecal sac, and cervical disc desiccation. An October 8, 2010 MRI scan of the lumbar spine showed disc protrusions at L3-4 and L4-5 causing a mild impression on the anterior thecal sac and degenerative changes at L3-4 and L4-5. A bone scan dated October 22, 2010 showed osteoarthritis and degenerative arthritis. A November 3, 2010 MRI scan of the right shoulder showed supraspinatus tendinopathy and osteoarthritis.

In a statement dated November 2, 2010, appellant described his work duties and asserted that he sustained pain throughout his spine, shoulders, knees, legs, arms and hands due to his employment.

By letter dated February 14, 2011, OWCP requested that he submit additional factual and medical information.

In a letter dated March 10, 2011, appellant's attorney maintained that he had experienced physical pain in his "neck, shoulders, legs, arms, hands, knees, waist and lower back" from his work duties. Counsel reviewed the diagnostic studies submitted and described his job duties and the specific conditions arising from each duty.

On March 15, 2011 OWCP received a December 1, 2010 report from Dr. Melba Sotomayor, a Board-certified internist, prepared in connection with appellant's application for disability from the Social Security Administration. Dr. Sotomayor discussed appellant's history of major depressive disorder and back pain radiating into his legs, cervical pain radiating into his arms, bilateral shoulder pain and numbness in his elbows, wrists and hands. She diagnosed radiculopathy at L4, L5 and S1 secondary to a posterior disc protrusion, C3-4 and C4-5 disc protrusions, thoracic levoscoliosis, tendinitis of the shoulders with supraspinatus tendinopathy and osteoarthritis, osteoarthritis, severe bilateral median entrapment and neuropathy, plantar fasciitis, bilateral elbow epicondylitis, patella tendinitis, bilateral superficial venous insufficiency, left ankle swelling, atrial fibrillation and major depressive disorder. Dr. Sotomayor found that appellant was totally and permanently disabled from work.

By decision dated June 10, 2011, OWCP found that appellant did not establish that he sustained an emotional or physical condition in the performance of duty. It determined that he did not submit a clear statement identifying the work duties alleged to have caused his physical or emotional condition.

In a progress report dated October 5, 2010, received by OWCP on October 20, 2011, Dr. Sotomayor reviewed the results of diagnostic studies and diagnosed scoliosis and cervical radiculopathy. She further noted a history of back pain for 10 years.

A November 4, 2010 nerve condition study showed normal findings and an electromyogram (EMG) revealed bilateral median entrapment neuropathy and sensory motor polyneuropathy. On November 4, 2010 Dr. Sotomayor diagnosed bilateral carpal tunnel syndrome by EMG study.

On June 23, 2011 appellant requested a telephone hearing before an OWCP hearing representative. On July 5, 2011 his attorney reviewed his symptoms and described his work duties.<sup>2</sup> She generally maintained that the medical evidence established multiple physical conditions as a result of his employment.<sup>3</sup>

In a statement dated August 23, 2011, appellant described the work factors to which he attributed his emotional and physical conditions. On October 7, 2011 his attorney requested a review of the written record in lieu of a telephone hearing.<sup>4</sup>

In a decision dated February 2, 2012, OWCP's hearing representative affirmed the June 10, 2011 decision, as modified. She found that appellant had not established an employment-related emotional condition. The hearing representative determined, however, that he had identified the work duties to which he attributed his physical conditions. She remanded the case to OWCP to further develop the medical evidence by translating the treatment notes from Spanish to English.

In a decision dated May 24, 2012, OWCP denied appellant's claim after finding that the evidence was insufficient to establish that he sustained a physical condition causally related to the accepted work factors.

On June 18, 2012 appellant requested a telephone hearing. His attorney subsequently requested a review of the written record instead of a hearing. In a decision dated September 14, 2012, an OWCP hearing representative affirmed the May 24, 2012 decision.

On appeal appellant's attorney argues that the reports of Dr. Sotomayor and Dr. Benitez established that he sustained conditions causally related to factors of his federal employment.

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<sup>2</sup> On June 7, 2011 the Office of Personnel Management approved appellant's application for disability retirement.

<sup>3</sup> Appellant also submitted MRI scan studies of the cervical and lumbar spine dated February 24 and 25, 2010.

<sup>4</sup> The attorney again identified the work factors alleged to have caused each condition and generally asserted that the medical evidence supported appellant's claim.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</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>6</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>7</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;<sup>8</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>9</sup> and (3) medical evidence establishing 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.<sup>10</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>11</sup> must be one of reasonable medical certainty<sup>12</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>13</sup>

## **ANALYSIS**

Appellant attributed myriad physical conditions to standing, sitting, walking, twisting, heavy lifting, performing repetitive activities and operating a motor vehicle in the course of his federal employment. OWCP accepted the occurrence of the claimed employment factors. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the identified employment factors.

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

<sup>6</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>8</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

<sup>9</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>10</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>11</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>12</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>13</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

Appellant has not submitted any medical evidence showing a causal relationship between a diagnosed condition and his work duties. He submitted the results of numerous diagnostic studies; however, reports of MRI scan studies and other diagnostic tests which do not contain an opinion on causal relationship are of little probative value.<sup>14</sup>

On December 1, 2010 Dr. Sotomayor diagnosed radiculopathy at L4, L5 and S1 secondary to a posterior disc protrusion, C3-4 and C4-5 disc protrusions, thoracic levoscoliosis, tendinitis of the shoulders with supraspinatus tendinopathy and osteoarthritis, osteoarthritis, severe bilateral median entrapment and neuropathy, plantar fasciitis, bilateral elbow epicondylitis, patella tendinitis, bilateral superficial venous insufficiency, left ankle swelling, atrial fibrillation and major depressive disorder. She found that appellant was totally disabled from employment. Dr. Sotomayor did not, however, address the cause of any of the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>15</sup>

On October 5, 2011 Dr. Sotomayor noted that appellant had a history of back pain. She diagnosed scoliosis and cervical radiculopathy based on the results of diagnostic studies. Again, Dr. Sotomayor did not attribute any condition to appellant's work duties. Her opinion is insufficient to meet appellant's burden of proof.<sup>16</sup>

On appeal appellant's attorney argues that the reports of Dr. Benitez and Dr. Sotomayor establish that he experienced employment-related conditions. Dr. Benitez addressed his emotional condition claim, which is not before the Board at this time.<sup>17</sup> Dr. Sotomayor, as discussed, did not address causation and her reports are of little probative value. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.<sup>18</sup> Appellant must submit a physician's report in which the physician reviews those factors of employment identified by him as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>19</sup> He failed to submit such evidence and therefore failed to discharge his burden of proof.

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<sup>14</sup> See *L.G.*, Docket No. 11-142 (issued August 12, 2011).

<sup>15</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>16</sup> *Id.*

<sup>17</sup> The Board's jurisdiction is limited to reviewing final decisions of OWCP issued within 180 days of the date of the appeal. As the February 2, 2012 OWCP hearing representative's decision denying appellant's emotional condition claim was issued more than 180 days prior, the Board has no jurisdiction to review it. See 20 C.F.R. §§ 501.2(c) and 501.3.

<sup>18</sup> *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>19</sup> *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

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 and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not sustain a back, neck, or upper extremity condition causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 14 and May 24, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 6, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board