

cervical grinding in his neck. He was first aware of his condition and its relation to his work on November 15, 2006. Appellant did not stop work.

By letter dated March 19, 2007, the Office advised appellant that additional factual and medical evidence was needed to support his claim. Appellant was requested to describe the work factors that caused his conditions and to submit records from a physician which included dates of examination and treatment, a history of injury, a detailed description of findings, the results of all x-rays and laboratory tests, a diagnosis, prognosis and course of treatment. The Office explained that a physician's opinion on causal relation was crucial to his claim and allotted 30 days to submit the requested information.

Appellant then submitted a March 18, 2007 statement describing his employment activities. His pain began on November 15, 2006 as a debilitating pain to his left shoulder. Appellant noted that it was not due to any specific incident, but rather brought on by the intense physical activities typical of his job. He described a March 2006 incident, which involved his boat capsizing and injuries to his shoulder, neck and back.

In March 15, 2007 diagnostic reports, Dr. Jennifer Kottra, a Board-certified diagnostic radiologist, found mild degenerative disc disease within the thoracic spine, minimal levoconvex rotatory scoliosis, nonspecific widening of the left acromioclavicular joint which was postsurgical or post-traumatic and a possible small loose body within the left elbow joint. Appellant submitted March 15 to May 7, 2007 reports from a physician's assistant and a physical therapist. The physician's assistant diagnosed left shoulder tendinitis, noting that appellant had slept on his left side and woke up with left shoulder, back and neck pain. The physician's assistant noted left shoulder and left elbow tendinitis and paresthesias of the left arm.

By decision dated May 18, 2007, the Office denied appellant's claim, finding that the medical evidence was insufficient to establish that he sustained an injury.

On November 10, 2007 appellant requested reconsideration. He submitted additional reports from the physician's assistant and physical therapist dated March 15 to July 26, 2007. Appellant also submitted copies of diagnostic reports from Dr. Kottra.

In a July 29, 2007 report, Dr. Thomas Meyers, Board-certified in internal medicine, noted that he initially saw appellant for upper extremity, neck and back pain on March 15, 2007. He examined appellant in conjunction with the physician's assistant during his first visit for his upper extremity neck and back pain. Dr. Meyers opined that appellant had "symptoms of an acute and chronic overuse syndrome unquestionably related to repetitive, strenuous upper body labor activities." He stated that "a possible cervical spine radiculopathy from a discogenic was considered part of the differential." Dr. Meyers opined that the connection to his work and his previous condition was "unequivocal."

By decision dated February 1, 2008, the Office accepted the condition of left shoulder tendinitis. The Office found that the evidence was insufficient to accept his claim for an elbow, back or neck condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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 causally related to the employment injury.² 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.³

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, generally, is rationalized medical opinion 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.⁴

ANALYSIS

Appellant's work duties as a river ranger are not in dispute and the Office accepted that these duties caused left shoulder tendinitis. However, the Office denied that appellant's work activities caused or contributed to other physical conditions. The Board finds that appellant has submitted insufficient medical evidence to establish that his elbow, back or neck conditions were caused or aggravated by his duties as a river ranger.

Appellant's burden of proof includes the submission of rationalized medical opinion evidence addressing causal relationship. He has not submitted sufficient evidence in support of his claim for elbow, back or neck conditions. There is no explanation by a physician how factors of appellant's employment caused or contributed to his elbow, back and neck conditions or

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

aggravated a preexisting medical condition. The record contains no rationalized medical opinion explaining how the implicated employment factors caused appellant's elbow, back and neck conditions.

In a July 29, 2007 report, Dr. Meyers noted that he saw appellant for upper extremity, neck and back pain on March 15, 2007. He stated that the connection of appellant's symptoms to his daily work activities was "unequivocal." Dr. Meyers indicated that appellant was "likely suffering from symptoms of an acute and chronic overuse syndrome unquestionably related to repetitive, strenuous upper body labor activities." He added that a "possible cervical spine radiculopathy from a discogenic was considered part of the differential." While Dr. Meyers used words such as "unquestionably" and "unequivocal" to support causal relationship, he couched his opinion in speculative terms noting that appellant "likely" had symptoms due to his work and that he had a "possible" cervical spine problem. His opinion is too speculative to establish that appellant's elbow, back or neck conditions are employment related. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁵ Dr. Meyers did not provide an opinion of sufficient certainty and reasoning supporting that appellant sustained an elbow, back or neck condition as a result of the aforementioned employment factors. His July 29, 2007 report also approved the findings and diagnosis of his physician's assistant set forth on March 15, 2007. Thus, these form reports are considered to be medical evidence.⁶ However, the diagnosed left shoulder tendinitis condition noted in the March 15, 2007 reports of the physician's assistant was accepted by the Office and these reports contain no medical rationale explaining how any other condition was caused or aggravated by employment factors. Consequently, these reports are insufficient to establish that appellant sustained an elbow, back or neck conditions causally related to employment factors.

The record contains reports from a physician's assistant and physical therapy reports. However, these reports have no weight or probative value as medical evidence as they have not been signed or approved by a physician.⁷ Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law.⁸

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ Cf. *Lyle E. Dayberry*, 49 ECAB 369 (1998) (a report of a physician's assistant countersigned by a physician is constituted medical evidence). In this case, Dr. Meyers noted treating appellant on March 15, 2007 in consultation with the physician's assistant and indicated his agreement with the findings of the physician's assistant. Dr. Meyers did not certify or otherwise note agreement for findings of the physician's assistant on any other date.

⁷ See *Dayberry*, *supra* note 6; *Jane A. White*, 34 ECAB 515, 518 (1983).

⁸ 5 U.S.C. § 8101(2). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

Appellant also submitted several diagnostic reports. However, these reports are insufficient because they did not contain any opinion on causal relationship. Therefore, these reports have no probative value in establishing causal relationship.⁹

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁰ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is insufficient medical evidence addressing how appellant's elbow, back or neck conditions were caused or aggravated by factors of his employment. Appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an elbow, back or neck condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2008 is affirmed.

Issued: September 17, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁹ See *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹¹ *Id.*