



## **FACTUAL HISTORY**

On June 25, 2012 appellant, then a 56-year-old nurse, filed a traumatic injury claim alleging that on June 16, 2012 he injured both shoulders and lower back due to transferring a patient from a commode to a gerichair.

In support of his claim, appellant submitted a June 17, 2012 emergency room report from Dr. Noah E. Gutierrez, a treating emergency room physician, who noted that appellant was seen that day for shoulder and lower back pain. Appellant related that he was injured while “trying to lift a patient from the commode.” A physical examination revealed trapezius and lumbar paraspinal muscle tenderness.

In a July 18, 2012 progress note, Dr. Syed Ashfaq Hasan, a treating Board-certified orthopedic surgeon, diagnosed left shoulder injury, which he attributed to a June 16, 2012 employment incident which occurred when appellant was helping to transfer a heavy patient. He reported a past surgical history of L5-S1 microdiscectomy in 2012. A physical examination revealed positive impingement signs and good neck range of motion with negative Spurling’s and Lhermitte’s.

On August 7, 2012 OWCP received a July 5, 2012 progress report from Dr. Steven Ludwig, a treating Board-certified orthopedic surgeon, noting that appellant related sustaining an employment injury on June 17, 2012. Appellant informed that he has had worsening left upper extremity, shoulder and neck pain since his employment injury. A physical examination revealed positive Spurling’s maneuver and positive drop arm test. Dr. Ludwig noted that appellant was “[s]tatus post motor vehicle collision as well as a work-related injury on June 17, 2012, with left upper extremity possible radiculopathy.”

In an August 17, 2012 letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required to support his claim. In addition, OWCP also requested additional information on the prior motor vehicle accident mentioned by Dr. Ludwig and the 2012 L5-S1 microdiscectomy mentioned by Dr. Hasan.

In response to OWCP’s request appellant submitted medical and factual information. In the August 1, 2012 report, Dr. Hasan diagnosed a left shoulder rotator cuff tendinitis. He provided physical examination findings. A review of a magnetic resonance imaging (MRI) scan revealed mild acromioclavicular joint hypertrophic changes. Dr. Hasan, in reports dated September 1, 5 and 10, 2012 diagnosed left shoulder rotator cuff tendinitis and small labral tear. Work restrictions were provided for appellant by Dr. Hasan in the September 1 and 10, 2012 reports.

By decision dated September 21, 2012, OWCP denied appellant’s claim. It found the medical evidence insufficient to establish that the claimed medical condition was causally related to the June 16, 2012 employment incident.

Subsequent to the denial of his claim, OWCP received an August 13, 2012 duty status report (Form CA-17) from Dr. Hasan diagnosing left shoulder rotator cuff tendinitis and

providing work restrictions. Under a description of the injury, he noted that appellant injured both shoulders on June 16, 2012 while transferring a patient from a commode to a gerichair. OWCP also received a September 12, 2012 report from Dr. Hasan providing physical examination findings and diagnosing labral shoulder tear left shoulder rotator cuff tendinitis. He stated that it appeared that appellant's rotator cuff tendinitis and small labral tear were due to moving a patient at work.

On October 2, 2012 appellant requested a review of the written record by an OWCP hearing representative.

In an October 22, 2012 progress note, Dr. Ludwig noted that appellant was seen on October 18, 2012 and diagnosed multilevel spondylotic radiculopathy. He attributed appellant's condition and symptoms to the June 16, 2012 employment incident which involved lifting a patient. In support of this conclusion, Dr. Ludwig noted that prior to the incident appellant had no neck symptoms and subsequent to the incident developed severe bilateral upper extremity and neck pain and radiculopathy. A physical examination revealed a positive Spurling's maneuver and an MRI scan showed mild to moderate degenerative changes at C4-7 with severe forminal stenosis.

By decision dated January 23, 2013, OWCP's hearing representative affirmed the September 21, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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>3</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>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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>5</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>6</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>9</sup> 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 the specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

OWCP accepted that the June 16, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused or aggravated shoulder and lower back conditions. The Board finds that he failed to submit sufficient medical evidence supporting that his bilateral shoulder and lower back conditions were caused or aggravated by the June 16, 2012 employment incident.<sup>11</sup>

In a progress note dated July 5, 2012, Dr. Ludwig diagnosed left upper extremity possible radiculopathy and referenced a motor vehicle accident and the June 16, 2012 employment incident. In an October 22, 2012 progress note, he diagnosed multilevel spondylotic radiculopathy which he attributed to the June 16, 2012 employment involving incident of lifting a heavy patient. In support of this conclusion, Dr. Ludwig noted that prior to the incident appellant had no neck symptoms and subsequent to the incident developed severe bilateral upper extremity and neck pain and radiculopathy. He offered no rationale in either his July 5 or October 22, 2012 progression note explaining how the accepted June 16, 2012 employment incident caused or aggravated appellant's bilateral shoulder and lower back conditions. Medical reports consisting solely of conclusory statements without supporting rationale are of little

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<sup>6</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>7</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>8</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</sup> *See Robert Broome*, 55 ECAB 339 (2004).

probative value.<sup>12</sup> Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>13</sup> In view of the lack of any rationale provided by Dr. Ludwig, the Board finds that his opinion fails to establish that appellant's bilateral shoulder and lower back conditions resulted from the June 16, 2012 employment incident. Moreover, he failed to address how or whether the nonemployment motor vehicle accident affected appellant's conditions.

On July 18, 2012 Dr. Hasan described the June 16, 2012 employment incident. He diagnosed a left shoulder injury which he attributed to the June 16, 2012 employment incident. In subsequent reports in August and September 2012, Dr. Hasan's diagnoses included left shoulder rotator cuff tendinitis and small labral tear. In a September 12, 2012 report, he attributed appellant's condition to the June 16, 2012 employment incident. Dr. Hasan offered no rationale in either his August 7 or October 22, 2012 progression note explaining how the accepted June 16, 2012 employment incident caused or aggravated appellant's left shoulder rotator cuff tendinitis and small labral tear. As noted above, medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.<sup>14</sup> The Board finds that his opinion fails to establish that appellant's left shoulder rotator cuff tendinitis and small labral tear were caused by the June 16, 2012 employment incident. In addition, Dr. Hasan failed to discuss how appellant's 2012 L5-S1 microdiscectomy impacted the accepted June 16, 2012 employment incident.

On June 17, 2012 Dr. Gutierrez noted that appellant was seen that day for shoulder and lower back pain and diagnosed trapezius and lumbar paraspinal muscle tenderness. He listed a history that showed appellant was injured while lifting a patient from a commode. Medical evidence that offers no opinion regarding the cause of an employee's condition is of diminished probative and insufficient to meet appellant's burden of proof on causal relationship.<sup>15</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 condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>16</sup> Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the

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<sup>12</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>13</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *William C. Thomas*, *supra* note 12.

<sup>14</sup> See *supra* note 12.

<sup>15</sup> *A.F.*, 59 ECAB 714 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>16</sup> See *D.U.*, *supra* note 13; *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, *supra* note 11; *Anna C. Leanza*, 48 ECAB 115 (1996).

physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed bilateral shoulder and lower back conditions were caused or aggravated by the June 16, 2012 employment incident, and no evidence regarding the effect the prior surgery or nonwork-related motor vehicle accident had on his condition. Appellant has not met his burden of proof to establish an injury in the performance of duty.

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 not established that he sustained left shoulder and back conditions in the performance of duty on June 16, 2012, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2013 is affirmed.

Issued: December 3, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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