



his employment. He stated that he first became aware of his condition on January 23, 2012 and first realized that it was related to his employment on March 19, 2012.

By letter dated April 17, 2012, OWCP advised appellant that the documentation received to date was insufficient to establish his claim. Appellant was asked to describe in detail the employment activities he believed caused his condition. He was also informed that he should submit medical evidence in support of his claim, including a rationalized medical opinion from a physician, explaining the causal relationship between appellant's diagnosed condition and factors of his federal employment.

Appellant thereafter submitted an April 3, 2012 magnetic resonance imaging (MRI) scan report signed by Dr. Joan Frisoli, a Board-certified physician in diagnostic radiology. The report stated findings of degenerative changes at L4-5 and L5-S1 with moderate foraminal narrowing, which could be causing impingement of the exiting nerves.

OWCP also received a May 11, 2012 report from Dr. Patrick Wong, Board-certified in sports medicine, which related that appellant had undergone epidural steroid injections at L5 and S1.

On June 18, 2012 OWCP denied appellant's claim on the grounds that he had not established fact of injury.

Appellant requested a hearing before an OWCP hearing representative.

At the October 17, 2012 hearing, appellant testified that, as part of his normal employment duties, he was required to wear a duty belt which weighed 20 to 35 pounds. He stated that he had worn a belt since 1998, when he started working for Customs and that his job required him to both sit and stand with his gun belt on. Appellant testified that his belt contained his weapons, magazine, baton, handcuffs, pager, knife and flashlight. He also claimed that, as part of his duties, he must perform searches in warehouses and go through boxes and incoming shipments.

The hearing representative advised appellant that, in order to establish his claim, he had to submit a medical report which clearly diagnosed a medical condition and provided rationale that causally related the diagnosis to the claimed employment factors. Appellant was further advised that the opinion should be supported with examination findings and a review of test results.

The record was held open for 30 days after the hearing and no further evidence was received by OWCP.

In a December 14, 2012 decision, OWCP modified its prior decision to find that appellant had established factors of federal employment and denied his claim on the grounds that he failed to establish that his diagnosed condition was causally related to his employment.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</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 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 upon a traumatic injury or an occupational disease.<sup>4</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>5</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed conditions and her 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>6</sup>

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

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

<sup>6</sup> *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

### ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his diagnosed low back condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim.

While appellant submitted an April 3, 2012 MRI scan report from Dr. Frisoli, which diagnosed appellant's condition as "degenerative changes at L4-5 and L5-S1 with moderate right foraminal narrowing" causing impingement of the exiting nerves. This report offered no opinion as to the causal relationship of this condition to his employment. Without such medical causation the MRI scan report is of little probative value to establish causal relationship between the diagnosed conditions and the factors of appellant's employment. Likewise, the May 11, 2012 epidural injection operative report also adds little probative value to the causation issue. This report from Dr. Wong also did not address causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor is the belief that his condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.<sup>7</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 the claimed conditions were causally related to factors of 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 not met his burden of proof in establishing that he developed or sustained an occupational disease in the performance of his federal job duties.

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<sup>7</sup> See 5 U.S.C. § 8101(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 14, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees Compensation Appeals Board