



## **FACTUAL HISTORY**

On September 10, 2012 appellant, then a 60-year-old heavy mobile equipment mechanic, filed an occupational disease claim alleging that he was assigned the job of installing RPG nets on MRAP vehicles since June 7, 2012, and that he began to notice onset of joint pain in hands and shoulder around July 7, 2012. He listed the location where he was injured as Kanhahar, Afghanistan. The employing establishment controverted appellant's claim.

In response to a request for further development from OWCP, appellant indicated in a document signed on October 3, 2012 that he performed RPG nets installation, that this required a lot of grasping and pulling with his hands and arms and lifting heavy frames that also affected his back. He noted that he had performed this position for about 10 weeks, but that his usual job was heavy mobile equipment mechanic. Appellant alleged that he was assigned the new job in retaliation for protesting smoking in areas where it was prohibited by regulation.

By decision dated November 29, 2012, OWCP denied appellant's claim. It determined that although he submitted evidence sufficient to establish that he filed a timely claim and that the events occurred as alleged, his claim was denied because he had not submitted medical evidence in support of his claim.

On December 18, 2012 appellant requested reconsideration. In support of his claim, he submitted a July 7, 2012 report by Jason Cossey indicating that he saw appellant on July 7, 2012 for joint pain; that the pain started two weeks ago and was getting worse; and that appellant described long days of lifting nets at work. Mr. Cossey noted that appellant had upper extremity hand and joint stiffness and pain, that this was very likely arthritis that was exacerbated by his work schedule and repetitive motion with the hands and elbows. Appellant also submitted a December 18, 2012 certificate of medical examination which indicated that on that date appellant was examined and that appellant had a medical disorder or physical impairment that would interfere with the full performance of his duties.

By decision dated January 7, 2013, OWCP denied modification of its November 29, 2013 decision.

On February 28, 2013 appellant requested an oral hearing before an OWCP hearing representative.

By decision dated April 8, 2013, OWCP denied appellant's request as he had previously requested reconsideration. It also denied his request under its discretion and further denied it as the case could equally well be addressed if he requested reconsideration.

## **LEGAL PRECEDENT -- ISSUE 1**

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

Causal relationship is a medical issue<sup>5</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant experienced the employment factors as alleged. However, it denied his claim as it found that he failed to establish a causal relationship between these accepted employment factors and a diagnosed medical condition.

The Board finds that there is no rationalized medical evidence establishing that appellant sustained a diagnosed medical condition in the performance of his federal duties. The Board notes that there is no medical evidence signed by a physician in the record. There is a July 2, 2012 report signed by Mr. Cossey, but there is no indication in this report that he is a physician. The Board also is unable to determine that Mr. Cossey is a physician. The Board notes that reports of physician's assistants and nurses are not competent to render a medical opinion under FECA.<sup>9</sup> The record also contains a December 18, 2012 certificate of medical examination,

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<sup>2</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodham*, 41 ECAB 345 (1989).

<sup>4</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

however this report is insufficient as it is vague and does not contain a diagnosis or any medical rationale; the author of the report merely checked a box indicating that appellant had a physical impairment that would interfere with the full performance of his duties. There is no indication as to what the medical disorder or impairment is or how appellant acquired this impairment. Furthermore, the signature is illegible. As the Board cannot determine who signed this report, it lacks probative medical value as the author(s) cannot be identified as a physician.<sup>10</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was caused by his employment is sufficient to establish causal relationship.<sup>11</sup> As appellant did not submit a rationalized medical opinion establishing a causal relationship between his accepted employment activities and a diagnosed medical condition, OWCP properly denied his claim.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of FECA provides that a claimant for compensation who is not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision and before review under section 8128(a), to a hearing on his claim before a representative of the Secretary.<sup>12</sup> Federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>13</sup> Although the claimant is no longer entitled to an oral hearing or review of the written record as a matter of right if the request is filed past the 30-day period or he previously requested reconsideration pursuant to section 8128(a), OWCP may within its discretionary powers grant or deny a claimant's request and must exercise that discretion.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

On February 28, 2013 appellant requested a hearing pursuant to OWCP's January 7, 2013 decision denying modification of the November 29, 2012 decision denying his claim. However he previously requested reconsideration on December 18, 2012. In fact, the January 7, 2013 decision was issued in response to appellant's request for reconsideration, and denied his request for modification of OWCP's November 29, 2012 decision denying his claim. Accordingly, as

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<sup>10</sup> See *W.C.*, Docket No. 13-675 (issued June 26, 2013).

<sup>11</sup> *Walter D. Morehead*, 31 ECAB 188 (1986).

<sup>12</sup> 5 U.S.C. § 8124(b)(1); *Peggy R. Lee*, 46 ECAB 527 (1995).

<sup>13</sup> 20 C.F.R. § 10.615.

<sup>14</sup> See *Eddie Franklin*, 51 ECAB 223 (1999); see also *C.H.*, Docket No. 11-1801 (issued September 17, 2012).

appellant previously requested reconsideration, the Board finds that he was not entitled to reconsideration as a matter of right.

OWCP then exercised its discretion and determined that appellant's request could equally well be addressed by requesting reconsideration and submitting additional evidence. The Board finds that there is no evidence of record that OWCP abused its discretion in denying his hearing request. Thus, the Board finds that OWCP's decision denying appellant's request for an oral hearing was proper under the facts and law of this case.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he suffered an injury causally related to his federal employment. The Board further finds that OWCP properly denied his request for an oral hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 8 and January 7, 2013 and November 29, 2012 are affirmed.

Issued: September 9, 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