



## **FACTUAL HISTORY**

On March 5, 2014 appellant, then a 51-year-old mail processing clerk, filed an occupational disease claim alleging that on November 1, 2013 he first became aware of his impingement syndrome and rotator cuff injury of the left arm and shoulder. He further alleged that on November 6, 2013 he first realized that his conditions were caused or aggravated by his federal employment. Appellant stated that he was unable to raise his arm above his head and felt pain in his left arm and shoulder. He stopped work on November 6, 2013.<sup>3</sup>

In a November 15, 2013 medical report, Dr. William Chollak, a Board-certified orthopedic surgeon, provided a history of injury, and appellant's social and medical background. Dr. Chollak noted that appellant had to do a lot of stacking of trays. On physical examination he found that appellant was not able to hold his arm up against resistance. Appellant's motor, sensory, and reflexes were intact. Dr. Chollak stated that appellant understood that he could get some tearing in the rotator cuff causing him pain and severe impingement or tendinitis. He advised that appellant could not work unless desk work was available. In a December 9, 2013 report, Dr. Chollak noted that appellant's medical treatment, which included an injection, that had helped him. Appellant had also been trying gentle stretching and altering his activity. On physical examination Dr. Chollak found a positive impingement sign at 90 degrees of abduction which was not as severe as on appellant's last visit. Appellant had mild limitation in motion and weakness when trying to hold the arm up against resistance. Dr. Chollak addressed appellant's treatment which included physical therapy. He advised that appellant could work with restrictions.

By letter dated May 14, 2014, OWCP advised appellant that it had reviewed his occupational disease claim and the evidence submitted was insufficient to establish his claim. It requested factual and medical evidence, including a physician's opinion as to how his work activities caused, contributed to, or aggravated his medical condition. OWCP also requested that the employing establishment respond to appellant's allegations and submit evidence regarding his work duties and any medical evidence, if he had been treated at its medical facility.

In a November 15, 2013 duty status report (Form CA-17), Dr. Michael F. Cavanaugh, a Board-certified orthopedic surgeon, noted appellant's history of injury. He diagnosed acute left shoulder tendinitis and impingement and advised that the diagnosed conditions were caused by appellant's claimed November 6, 2013 injury. He stated that appellant had not been advised to resume work, noting that he could not perform work with his left arm.

An unsigned November 8, 2013 x-ray report of the left humerus and shoulder contained the printed name of Dr. Esther M. Kim, a radiologist, and revealed an impression of mild degenerative changes of the left shoulder and small lateral calcified loose body adjacent to the humeral head. No fracture or dislocation was identified.

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<sup>3</sup> On March 4, 2014 appellant filed a traumatic injury claim alleging that on November 6, 2013 he sustained a left arm injury due to pushing, pulling, feeding, and sweeping at work. OWCP has not issued a final decision relative to this claim. Thus, it is not before the Board at this time. *See* 20 C.F.R. § 501.2(c).

In a December 5, 2013 report, Dr. Chollak noted that appellant was seen in his office on November 15, 2013 and that he had been out of work since November 6, 2013 to the present date. He related that it was unknown when appellant would return to work.

In a May 30, 2014 report, Mary Verderame, a certified registered nurse practitioner, stated that appellant stopped work in November 2013 when he injured his shoulder at work. Subsequently, appellant had a lumbar injury, sciatica, several episodes of gout, and depression. Ms. Verderame stated that he was not able to work at that time and requested that he be excused from work.

In a June 12, 2014 decision, OWCP denied appellant's occupational disease claim. It found that the medical evidence was insufficient to establish that the claimed medical condition was causally related to the accepted work event(s).

On July 11, 2014 appellant requested a review of the written record by an OWCP hearing representative. In a July 11, 2014 letter, he described his work duties. Appellant worked on a delivery bar code sorter machine, which required him to lift, push, pull, sweep, bend, turn his body down, pick up, step, and rotate his body up using his arm, back, legs, hands, feet, and knee.

In a December 22, 2014 decision, an OWCP hearing representative affirmed the June 12, 2014 decision. The hearing representative found that the medical evidence submitted failed to provide a rationalized opinion relating appellant's diagnosed conditions to his established work activities.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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>6</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.

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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>7</sup> Neither the fact that appellant's condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant performed work duties which included pushing, pulling, feeding, and sweeping. The Board finds that the medical evidence of record is insufficient to establish that he sustained a left arm injury caused or aggravated by the accepted work factors.

Dr. Cavanaugh's November 15, 2013 Form CA-17 report found that appellant had acute left shoulder tendinitis and impingement due to his claimed November 6, 2013 injury. He stated that appellant had not been advised to resume work, noting that his incapacity to perform any work with his left arm. However, Dr. Cavanaugh did not provide an opinion explaining how the accepted employment factors caused or aggravated the diagnosed condition and disability.<sup>9</sup>

Dr. Chollak's reports found that appellant could develop tearing in the rotator cuff, severe impingement, or tendinitis of the left shoulder. He noted that appellant had been off work since November 6, 2013 and advised that it was unknown when he could return to work. Dr. Chollak failed to provide a firm diagnosis or specifically attribute any condition and disability to the accepted employment factors. Without a firm diagnosis supported by medical rationale, his opinion is of little probative value.<sup>10</sup>

The May 30, 2014 report of Ms. Verderame, a certified registered nurse practitioner, has no probative medical value in establishing appellant's claim. The Board has held that a nurse practitioner is not a physician as defined under FECA.<sup>11</sup>

The unsigned November 8, 2013 x-ray report which contained the printed name of Dr. Kim is insufficient to establish appellant's claim. A report that is unsigned or bears an

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<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

<sup>8</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>9</sup> *See S.S.*, 59 ECAB 315 (2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

<sup>10</sup> *See Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

<sup>11</sup> The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *L.D.*, 59 ECAB 648 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005).

illegible signature lacks proper identification and cannot be considered probative medical evidence.<sup>12</sup>

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left arm injury causally related to the accepted employment factors. Appellant did not meet his burden of proof.

**CONCLUSION**

The Board finds that appellant has failed to establish a left arm injury causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).