

**United States Department of Labor  
Employees' Compensation Appeals Board**

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M.S., Appellant

and

**DEPARTMENT OF THE INTERIOR,  
NATIONAL PARK SERVICE, Estes Park, CO,  
Employer**

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**Docket No. 15-1674  
Issued: February 5, 2016**

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**Before:**

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 31, 2015 appellant filed a timely appeal from a February 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish an injury causally related to his employment duties.

**FACTUAL HISTORY**

On August 19, 2014 appellant, then a 58-year-old animal packer, filed an occupational disease claim (Form CA-2) alleging that he sustained pain in his hands and shoulders while using

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

his arms, shoulders, and legs to control livestock by tugging and tying on loads with rope in the performance of duty. He indicated that he became aware of the disease or illness on August 13, 2014. Appellant did not initially stop work.

By letters dated September 4, 2014, OWCP informed appellant and the employing establishment of the type of evidence needed to support his claim and requested that he submit such evidence within 30 days. It specifically requested that he have his physician provide an opinion, supported by a medical explanation, as to how work activities caused or aggravated his claimed condition.

In a September 8, 2014 letter, Kevin J. Soviak, an employing establishment program supervisor, confirmed appellant's statements and advised that the physical nature of the position had taken its toll on appellant. He noted that appellant had worked for the employing establishment for 25 years and explained the job duties were "very physical in nature requiring [appellant] to load and secure panniers of equipment/supplies up to 100 pounds on to a mule."

In a September 10, 2014 statement, appellant described his duties as an animal packer. The duties included constantly using his hands to halter and tie livestock, roping and pulling on ties and securing saddles and pack saddles for each animal for an average of five to seven times per day, and gathering and lifting equipment onto animals and loading the animals onto trailers. Appellant also indicated that he drove to job locations at various distances and maneuvered the trailers shifting gears on a repetitive basis over extended periods of time. He explained that he believed that his duties at work contributed to the pain he was experiencing in his muscles and tendons in his legs, hands, arms, and shoulders. Appellant indicated that he also had prior work injuries including: a severe twisted sprained ankle in August 1998, a knee injury involving a tear of the manicular tissue after being kicked off a mule at work, two work-related carpal tunnel surgeries on each of his hands, a left shoulder injury from being bucked off a horse at work with a torn shoulder labrum muscle and surgical repair, and another injury which required another surgery to the same shoulder from a mule sliding onto him on a trail. He indicated that his activities of daily living were affected and limited as it was difficult to tie his shoes, tuck in his shirt, reach for his wallet, put on his belt, or reach into the refrigerator. Appellant also explained that he had to apply warm rice bags to the affected areas of his body and use ibuprofen. He noted that he soaked in hot baths with Epsom salts.

In an August 25, 2014 report, Dr. Dale R. Martin, a Board-certified orthopedic surgeon, noted that appellant had returned complaining of bilateral shoulder pain. He had treated appellant over the years for shoulder issues and other upper extremity problems. Dr. Martin related that appellant's job duties included tending to pack animals and packing for extended back country trips for rangers, etc. He reported that appellant had known shoulder difficulties after his most recent left shoulder operation performed on October 29, 2009. Dr. Martin explained that the surgery demonstrated high-grade cartilage loss in the humeral head and glenoid in addition to degenerative labral tearing. He explained that appellant tried to continue to work at this high level of activity and the heavy load required of the shoulders in his current job, but the pain had recurred. Dr. Martin explained that appellant had marked loss of motion of the shoulders, with left shoulder flexion of 120 degrees, abduction 113 degrees, external rotation of 46 degrees, and internal rotation of 30 degrees. He also noted findings for the right shoulder to include flexion of 130 degrees, abduction of 126 degrees, external rotation of 80 degrees, and

internal rotation of 42 degrees. Dr. Martin determined that crepitus was present and he could not effect any additional range of motion passing. He found no evidence of adhesive capsulitis and the shoulders did not show any evidence of atrophy. Dr. Martin diagnosed bilateral shoulder osteoarthritis, more advanced on the left than the right. He explained that the degenerative process was progressive and would not tolerate the stresses placed on appellant's body by the heavy loading, lifting, and repetitive nature of his work. Dr. Martin advised that appellant discontinue the type of work he was doing as he would not be able to control the pain and recommended another less physical type of work. He explained that the pain would return once he started his repetitive and heavy lifting duties at work.

OWCP received a position description of the animal packer position and nurses' notes and physical therapy reports relating to appellant's treatment.

By decision dated February 9, 2015, OWCP denied appellant's claim. It found that the medical evidence failed to establish that the claimed medical condition was causally related to work duties.

### **LEGAL PRECEDENT**

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 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>2</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>3</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, 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

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

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

## ANALYSIS

Appellant alleged that he developed pain in his hands, arms, shoulders, and legs while performing his work duties as an animal packer. The evidence supports that he engaged in work activities that included using his hands to halter and tie livestock, securing saddles and pack saddles, and gathering and lifting equipment and saddles onto animals, and onto trailers. However, the Board finds that appellant submitted insufficient medical evidence to establish that his conditions were caused or aggravated by these activities or any other specific factors of his federal employment.

The record contains an August 25, 2014 report from Dr. Martin. He advised that appellant had bilateral shoulder pain and explained that appellant was well known to him as he had treated him over the years for shoulder issues and other upper extremity problems. Dr. Martin described appellant's job duties and his medical history which included known shoulder difficulties and a recent left shoulder operation performed on October 29, 2009. He explained that the most recent 2009 shoulder surgery demonstrated high-grade cartilage loss in the humeral head and glenoid in addition to degenerative labral tearing. Dr. Martin related that appellant tried to continue working in his current job, but the pain had recurred. He diagnosed bilateral shoulder osteoarthritis, more advanced on the left than the right. Dr. Martin explained that the degenerative process was progressive and appellant would not tolerate the stresses placed on his body by the heavy loading, lifting, and repetitive nature of his work. He recommended that appellant discontinue the type of work he was doing and recommended a less physical type of work. Dr. Martin explained that the pain would return once he started his repetitive and heavy lifting duties at work. The Board notes that he accurately described appellant's duties and suggested that appellant could not tolerate the stresses placed on his body, but he does not sufficiently explain how any diagnosed conditions were actually caused by his work activities. As noted above, part of appellant's burden of proof includes the submission of a rationalized medical opinion addressing whether there is a causal relationship between the claimant's diagnosed conditions and the implicated employment factors.<sup>5</sup> The Board finds that this report is insufficiently rationalized and is of limited probative value with regard to causal relationship.

The record also contains physical therapy reports and nurses' notes. Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrist, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.<sup>6</sup> Physical therapists are not considered physicians as defined

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<sup>4</sup> *Id.*

<sup>5</sup> *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>6</sup> 5 U.S.C. § 8101(2).

under FECA and thus their reports do not constitute competent medical evidence.<sup>7</sup> Additionally, health care providers such as nurses, are not physicians under FECA. Thus, a nurse is not competent to provide a medical opinion.<sup>8</sup> These reports are therefore of no probative medical value with regard to causal relationship.

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.<sup>9</sup> 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.<sup>10</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a medical condition involving his hands, arms, shoulders, and legs, he has not met his burden of proof to establish that he sustained a medical condition causally related to factors of his employment.

On appeal, appellant argues that his work duties contributed to his condition. However, the claim is denied based upon the lack of reasoned medical evidence explaining how his employment duties as an animal packer caused or aggravated a medical condition involving his hands, arms, shoulders, and legs. The Board notes that there is no dispute as to appellant's work duties.

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 to establish an injury causally related to his employment duties.

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<sup>7</sup> *Id.; J.M.*, 58 ECAB 448 (2007); *G.G.*, 58 ECAB 389 (2007); *David P. Sawchuck*, 57 ECAB 316 (2006); *Allen C. Hundley*, 53 ECAB 551 (2002).

<sup>8</sup> See *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>9</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 9, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board