



## **FACTUAL HISTORY**

On May 23, 2011 appellant, then a 56-year-old crew leader assistant, filed an occupational disease claim (Form CA-2) alleging that he developed pain in the upper right back and right shoulder due to factors of his federal employment, including working on a computer. He first became aware of his condition on March 17, 2011 and realized it was caused by his employment that same day. Appellant did not stop work.

Appellant submitted a March 22, 2011 report by Dr. Delbert L. Opie, a chiropractor, who diagnosed brachial neuritis/radiculitis, not otherwise specified (NOS)/cervical radiculitis, cervicobachial syndrome (diffuse), nonallopathic lesions of cervical region, myalgia and myositis. Dr. Opie opined that appellant sustained these conditions while performing his work duties for the employing establishment.

By letter dated June 13, 2011, OWCP requested additional evidence to support appellant's claim and allotted 30 days for submission. Appellant was advised as to the limitation on chiropractors qualifying as a physician under FECA.

Subsequently, appellant submitted a March 22, 2011 x-ray report, which revealed moderate degenerative joint disease and degenerative disc disease in the cervical and thoracic spine.

On March 24, 2011 appellant filed a notice of traumatic injury (Form CA-1) alleging that he sustained a pinched nerve in his right shoulder and neck due to over-use of a computer while in the performance of duty on March 17, 2011.

Appellant submitted narrative statements dated March 28 to June 27, 2011 reiterating that he conducted extensive work on a computer for 6 to 8 hours a day during the week of March 13 to 18, 2011.

In a June 24, 2011 report, Dr. Opie advised that as of April 10, 2011 appellant was able to do the same type of work he performed at the time of injury.

On June 27, 2011 Dr. Tyrone Hanks, an osteopath specializing in family medicine, diagnosed neuralgia/myalgia.

Appellant submitted a July 13, 2011 report by Kurt Giles, a physician's assistant, which provided notes from an initial evaluation.

A July 15, 2011 x-ray of the right shoulder showed no fracture or subluxation and mild degenerative changes in the acromioclavicular joint.

A July 15, 2011 x-ray of the thoracic spine revealed no compression fracture and mild degenerative changes in the mid and lower thoracic spine.

A July 15, 2011 x-ray of the cervical spine showed no fracture or subluxation, mild degenerative disease at C5-6 and C6-7 and mild degenerative facet disease at C3-7.

Appellant also submitted physical therapy notes dated July 15 and 25, 2011.

In an August 18, 2011 report, Dr. Brian D. Belnap, an osteopath Board-certified in pain medicine and physical medicine and rehabilitation, opined that appellant's electromyogram (EMG) and nerve conduction studies were abnormal. He stated that there was electrodiagnostic evidence of a mild-to-moderate right demyelinating sensory and motor median neuropathy across the wrist or carpal tunnel syndrome. There was no evidence of radiculopathy or polyneuropathy. Dr. Belnap reported that clinically it appeared that appellant may have some radiculitis in his right lower cervical nerve roots and trigger points to the right rhomboids. He stated that appellant's neck pain with right radicular arm pain began while doing several hours of computer work at his job approximately five months prior.

By decision dated August 29, 2011, OWCP acknowledged appellant's notices of occupational disease and traumatic injury and accepted them as a single occupational disease claim. It denied the claim on the grounds that the medical evidence submitted was not sufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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 timely filed within the applicable time limitation period of FECA and that an injury<sup>4</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that, an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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 implicated

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>5</sup> See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

employment factors.<sup>7</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>8</sup>

### ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he developed an occupational disease in the performance of duty. The record reflects that he has right shoulder, cervical and thoracic conditions. Further, appellant's federal employment requires extensive use of a computer. However, he did not establish that his conditions are causally related to the factors of his federal employment.

Appellant submitted a June 27, 2011 report by Dr. Hanks, who diagnosed neuralgia and myalgia. Dr. Hanks failed to directly address the issue of causal relationship as he did not provide a rationalized medical opinion explaining how factors of appellant's federal employment, such as computer usage, caused or aggravated her neuralgia and myalgia. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> Lacking thorough medical rationale on the issue of causal relationship, the medical report of Dr. Hanks is insufficient to establish that appellant sustained an employment-related injury.

On August 18, 2011 Dr. Belnap opined that appellant's EMG and nerve conduction studies were abnormal. He noted that there was electrodiagnostic evidence of a mild-to-moderate right demyelinating sensory and motor median neuropathy across the wrist or carpal tunnel syndrome. Dr. Belnap reported that clinically it appeared that appellant may have some radiculitis in his right lower cervical nerve roots and trigger points to the right rhomboids. He stated that appellant's neck pain with right radicular arm pain began while doing several hours of computer work at his job approximately five months prior. Dr. Belnap failed to directly address the issue of causal relationship. He did not provide a rationalized medical opinion explaining how factors of appellant's federal employment, such as computer usage, caused or aggravated the conditions found in diagnostic testing. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between his condition and his employment factors.<sup>10</sup> Lacking thorough medical rationale on the issue of causal relationship, the medical reports of Dr. Belnap are insufficient to establish that appellant sustained an employment-related injury.

The reports of Dr. Opie, a chiropractor, are of no probative medical value. Under FECA a chiropractor is a physician to the extent that the reimbursable services are limited to treatment

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<sup>7</sup> See *D.N.*, Docket No. 10-1762 (issued May 10, 2011).

<sup>8</sup> See *D.E.*, Docket No. 07-27 (issued April 6, 2007). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.<sup>11</sup> There is no indication from the reports of Dr. Opie that he diagnosed a subluxation as demonstrated by x-ray to exist. He is not a physician as defined under FECA and thus his reports do not constitute competent medical opinion evidence.

The physical therapy notes dated July 15 and 25, 2011 are similarly of no probative value as physical therapists are not physicians under FECA.<sup>12</sup> The July 13, 2011 report by Mr. Giles is of no probative value as physician's assistants are not physicians under FECA.<sup>13</sup> As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a 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.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he developed upper right back, neck and right shoulder conditions in the performance of duty causally related to factors of his federal employment.

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<sup>11</sup> 20 C.F.R. § 10.311(a). *Cf.*, *D.S.*, Docket No. 09-860 (issued November 2, 2009).

<sup>12</sup> 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See also Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>13</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 29, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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