

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CECELIA ANN BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 02-1074; Submitted on the Record;
Issued October 28, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a right upper extremity condition on September 12, 2000, causally related to factors of her federal employment.

On September 13, 2000 appellant, then a 39-year-old mail processor, filed an occupational injury claim alleging that she sustained an overuse syndrome involving her right upper extremity manifested by pain in her right shoulder and arm. Appellant stopped work on September 12, 2000, she sought medical treatment on September 13, 2000 and returned to limited duty on September 14, 2000.¹

By letter dated November 15, 2000, the Office of Workers' Compensation Programs requested further information including a physician's rationalized medical opinion supporting the causal relationship of her right upper extremity condition to her employment.

Appellant provided a written statement in which she described her duties and explained that, because of her physician's activity limitations with her left upper extremity, she worked with her right upper extremity. She claimed that her right shoulder hurt since she had to use her right hand exclusively to do her work. No medical evidence was submitted to the Office.

By decision dated January 5, 2001, the Office denied appellant's claim finding that fact of injury had not been established. The Office found that a medical condition was not established as having occurred due to her right arm employment activities.

On January 25, 2001 appellant requested an oral hearing before an Office hearing representative. She submitted several form reports dated from July to September 2000 from Dr. David E. Amos, a Board-certified family practitioner, who noted her present complaints,

¹ Appellant's limited duty restricted the use of her left arm. She also filed a claim for a recurrence of disability commencing September 12, 2000 claiming that, because she was working with her right arm, it caused a right arm overuse syndrome, which totally disabled her.

provided objective findings and diagnosed acute left shoulder sprain, acute right shoulder sprain, acute right shoulder pain possibly from overuse and acute low back sprain.

Appellant also submitted nursing progress notes, health unit statements signed by a nurse, a report about a February 9, 1998 shoulder and upper back injury and a February 15, 2001 statement from Dr. Amos, who noted:

“[Appellant] was examined by me and is still in pain with her left shoulder and lower back. These conditions are from injuries that she received while working at the [employing establishment]. There has been very little improvement in her condition since she received these injuries. I recommend that she do office work that does not require frequent standing and lifting weight. This condition is permanent.”

Dr. Amos provided a February 15, 2001 report noting that appellant’s medication could cause severe drowsiness and that she was having problems because of lack of sleep, which put her at risk of injuring herself. Dr. Amos completed a duty status report indicating that appellant had a 20 percent left sided permanent disability, that she could only work daytime hours and that she could not lift with her left hand and could lift only five pounds with her right hand.

A hearing was held on September 18, 2001 at which appellant testified. She submitted an October 8, 2000 statement from Dr. Amos, who noted appellant “was injured at work on September 12, 2000 after lifting heavy. [Appellant] was seen in my office the following day for severe pain. The injury sustained on September 12, 2000 was work related.” A September 13, 2000 authorization to return to work form from Dr. Amos listed appellant’s diagnosis as acute right shoulder sprain with chronic left shoulder sprain.

By decision dated December 12, 2001, the hearing representative affirmed the January 5, 2001 decision, finding that appellant had not met her burden of proof to establish fact of injury.

The Board finds that appellant has failed to establish that she sustained a right upper extremity condition on or about September 12, 2000, causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act² 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

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

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

In the instant case, appellant has established that she is an employee of the United States and that her claim was timely filed. However, she has not established that she sustained either a traumatic injury or an occupational illness in the performance of duty, as alleged.

Although Dr. Amos opined that appellant was traumatically injured at work on September 12, 2000 after heavy lifting,⁷ appellant did not allege that this had occurred. Rather, she claimed that she developed a right upper extremity overuse syndrome over time due to her left upper extremity activity restrictions, which culminated in disability on September 12, 2000. As Dr. Amos’s findings of a traumatically induced acute right upper extremity sprain on September 12, 2000 are not consistent with the facts and allegations made in this case, it does establish that a traumatic injury occurred as he opined.

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;⁸ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁹ 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.¹⁰ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a

⁵ *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant’s statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁷ Dr. Amos did not describe how or where such an injury occurred or explain the mechanism of injury or whether it involved one or both upper extremities, as he diagnosed acute right shoulder sprain with chronic left shoulder sprain, such that his opinion on causal relation is of diminished probative value.

⁸ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁹ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

¹⁰ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

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,¹¹ must be one of reasonable medical certainty¹² 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.¹³

In this case, appellant alleged that her right upper extremity condition resulted from overuse of her right upper extremity due to her activity limitations involving her left upper extremity. However, the medical evidence of record from Dr. Amos mentions only a specific heavy lifting incident on September 12, 2000 as the causative factor in appellant's right upper extremity condition. Therefore, the medical evidence does not support appellant's contentions of developing right upper extremity overuse syndrome over time. With regard to allegations of overuse, Dr. Amos diagnosed "acute right shoulder pain *possibly* from overuse. The Board notes that statements couched in speculative terms are of diminished probative value and are insufficient to establish causal relationship.¹⁴ Therefore, this statement from Dr. Amos regarding an overuse syndrome is speculative and does not establish appellant's claim. Dr. Amos' statement is unrationalized as it lacks sufficient medical rationale or explanation supporting causal relation.

Appellant has not provided medical evidence that establishes the presence or existence of a specific right upper extremity disease or condition for which compensation is claimed or medical evidence establishing that the employment factors identified by appellant were the proximate cause of the condition for which compensation is claimed. Appellant has failed to provide rationalized medical evidence that supports that she sustained a discreet right upper extremity overuse condition or injury causally related to factors of her federal employment.

¹¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹² *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹³ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁴ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996); *Brian E. Flescher*, 40 ECAB 532 (1989).

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 12, 2001 is hereby affirmed.

Dated, Washington, DC
October 28, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member