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| <b>VIRGINIA R. GARMAN, Appellant</b>     | ) |                                  |
|                                          | ) |                                  |
| <b>and</b>                               | ) | <b>Docket No. 05-1139</b>        |
|                                          | ) | <b>Issued: February 14, 2006</b> |
| <b>DEPARTMENT OF THE ARMY, SIERRA</b>    | ) |                                  |
| <b>ARMY DEPOT, Herlong, CA, Employer</b> | ) |                                  |
|                                          | ) |                                  |

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

On April 27, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 6 and March 23, 2005 merit denials of her claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established that she sustained an injury to her right shoulder while in the performance of duty in May 2004.

Appellant, a 51-year-old support helper stationed in Iraq, filed a traumatic injury claim on November 14, 2004, alleging that she injured her right shoulder in May 2004 when she lost her footing and attempted to grab the side of a truck. Appellant submitted treatment notes dated May 28, June 28 and September 20, 2004, in addition to a physical therapy report dated July 9, 2004. The reports, which are not signed by a physician, noted appellant's complaints of right shoulder pain and diagnosed right shoulder impingement and supraspinatus.

On December 2, 2004 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

By decision dated January 6, 2005, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim.

On February 17, 2005 appellant requested reconsideration. She submitted a January 28, 2005 radiology and magnetic resonance imaging (MRI) scan report from Banner Lassen Medical Center. The report indicated that appellant had a possible ligament tear and capsular laxity, with a bone bruise in the superior labrum. The report also contained a diagnosis of moderate subacromial/subdeltoid and glenohumeral joint effusions, with tendinosis of the distal rotator cuff without evidence of full thickness tear. There was also a diagnosis of mild to moderate degenerative changes at the acromioclavicular articulation and spurring of the distal acromion abutting the rotator cuff.

By decision dated March 23, 2005, the Office denied modification of the January 6, 2005 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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.<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 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.<sup>4</sup> 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.<sup>5</sup> The medical evidence required

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

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

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

to establish causal relationship is usually rationalized medical 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 relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

### ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.<sup>7</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident in May 2004 caused a personal injury and resultant disability.

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>8</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. The only medical documents appellant submitted were unsigned reports from medical clinics which noted findings on examination, indicated that appellant related complaints of right shoulder pain and diagnosed right shoulder impingement. These reports, however, were not signed by a physician and therefore do not constitute probative medical evidence.<sup>10</sup> Similarly, the July 9, 2004 physical therapy report does not constitute medical evidence pursuant to section 8101(2).<sup>11</sup> The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>12</sup> Although the reports submitted by appellant present a diagnosis, there is no evidence that a physician signed or authorized the documents. There is no indication in the

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<sup>6</sup> *Id.*

<sup>7</sup> *John J. Carlone, supra* note 4.

<sup>8</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *See Vickey C. Randall*, 51 ECAB 357 (2000). A physical therapist is not defined as a physician under the Act. *See James Robinson, Jr.*, 53 ECAB 417 (2002).

<sup>11</sup> 5 U.S.C. § 8101(2).

<sup>12</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

record, therefore, that the alleged injury was work related. As appellant failed to provide a rationalized, probative medical opinion relating her current condition to any factors of her employment, the Office properly denied her claim for a right shoulder injury in the performance of duty in its January 6, 2005 decision.

Following the January 6, 2005 decision, appellant submitted the January 28, 2005 radiology and MRI scan report from Banner Lassen Medical Center. This report contained additional findings of a possible ligament tear, capsular laxity of the right shoulder and a bone bruise in the superior labrum with moderate subacromial/subdeltoid and glenohumeral joint effusions and tendinosis of the distal rotator cuff. However, the reports do not contain a probative, rationalized medical opinion from a physician on the issue of causal relationship.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the May 2004 work accident would have caused the claimed injury. Accordingly, as appellant has failed to submit any probative medical evidence establishing that she sustained a right shoulder injury in the performance of duty, the Office properly denied appellant's claim for compensation in its January 6 and March 23, 2005 decisions.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained an injury to her right shoulder in the performance of duty in May 2004.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 23 and January 6, 2005 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: February 14, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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