

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

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**DEBRA WILLIAMS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Rochester, WA, Employer**

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**Docket No. 06-532  
Issued: May 9, 2006**

*Appearances:*  
*Debra Williams, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 6, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated May 6, 2005 denying her occupational disease claim, and nonmerit decisions dated August 11 and October 12, 2005 denying her requests for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a right shoulder condition in the performance of duty; and (2) whether the Office properly denied appellant's requests for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

Appellant, a 50-year-old rural mail carrier, filed an occupational disease claim on September 7, 2004 alleging that she experienced pain in her right shoulder, arm and hand, which she attributed to factors of her employment. She stated that she feared that her condition would lead to a torn rotator cuff.

Appellant submitted unsigned notes dated November 26, 2003 from Dr. Larry D. Hull, a Board-certified orthopedic surgeon, who stated that appellant had a history of “ongoing grief with this shoulder.” He diagnosed: overuse syndrome, left shoulder; partial rotator cuff tear, left shoulder; chronic bursitis/tendinitis, left shoulder; and vertebral border of scapula bursitis, left side. In unsigned notes dated February 17, 2004, Dr. Hull repeated his diagnosis and stated that appellant’s condition was “made worse with any activity, such as doing her mail route, etc.” Appellant submitted unsigned notes dated June 8, 2004 from Dr. Hull, who diagnosed: bursitis/tendinitis, left shoulder; partial tear of supraspinatus tendon, left shoulder; vertebral border bursitis, left shoulder; and early changes compatible with bursitis/tendinitis of the right shoulder.

By letter dated October 22, 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 details of employment events and/or factors that allegedly caused an injury, as well as 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 conditions were causally related to her federal employment.

Appellant submitted a September 23, 2004 attending physician’s report bearing an illegible signature. “History of injury” was described as “right shoulder pain.” “Findings” included “bursitis/tendinitis, right shoulder.” In response to the question as to whether or not the physician believed appellant’s condition was caused or aggravated by employment, the author of the report stated, “Not discussed with patient.”

By decision dated November 22, 2004, the Office denied appellant’s claim, finding that she had failed to submit sufficient medical evidence to establish that her claimed condition was related to an established work-related event.

Appellant submitted a narrative report dated November 22, 2004 alleging that repetitive motion of her “everyday work taxe[d] heavily on [her] body,” and that she had severe and persistent pain on both sides. She stated that she used her right arm daily to case mail, which involved putting mail in slots and lifting and delivering nearly 600 boxes.

Appellant submitted an unsigned report dated November 5, 2004 from Dr. Hull, who indicated that appellant had marked loss of motion of the left shoulder and diffuse tenderness about the rotator cuff. He also stated that bursitis and tendinitis in the right shoulder was progressive. Dr. Hull opined that “in [his] mind,” appellant’s symptoms were totally related to her industrial exposure. Appellant also submitted two notes dated November 24, 2004 from Dr. Hull reflecting that appellant was scheduled for surgery on December 15, 2004, pending

approval by workers' compensation and restricting her from working more than three days per week pending surgery.

On January 20, 2005 appellant requested review of the written record.

By decision dated May 6, 2005, the Office denied modification of its November 22, 2004 decision, finding that appellant failed to submit a rationalized opinion establishing a causal relationship between her right shoulder condition and factors of employment.

On June 21, 2005 appellant requested reconsideration, contending that she developed bursitis and tendinitis in her right shoulder as a result of overcompensating for her injured left shoulder. She stated that she had enclosed a copy of a November 2004 x-ray report; however, the report does not appear in the record.

By decision dated August 11, 2005, the Office denied appellant's request for reconsideration, finding that the evidence submitted was cumulative in nature.

On September 21, 2005 appellant again requested reconsideration. She submitted an unsigned report dated August 2, 2005 from Dr. Hull, who diagnosed: impingement syndrome, right shoulder; arthrosis acromioclavicular (AC) joint, right shoulder; and R/O rotator cuff tear, right shoulder. Dr. Hull did not provide an opinion regarding the cause of appellant's diagnosed conditions. Appellant also submitted an unsigned August 22, 2005 report of a magnetic resonance imaging (MRI) scan of the right shoulder from Dr. Jeffrey S. Miller. The report indicated that there was no evidence of rotator cuff tear, tendinitis or retraction, and that there was slight hypertrophy of the AC joint with Type II acromion.

By decision dated October 12, 2005, the Office denied appellant's request for reconsideration, finding the evidence to be cumulative in nature.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,<sup>2</sup> and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_\_ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

<sup>3</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

of the disease or condition for which compensation is claimed; (2) a factual statement identifying the 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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

Causal relationship is a medical issue, and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>5</sup>

Medical conclusions unsupported by rationale are of little probative value.<sup>6</sup> An award of compensation cannot be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>7</sup>

### **ANALYSIS – ISSUE 1**

The Board finds that appellant has failed to submit sufficient medical evidence containing a rationalized, probative opinion which relates her claimed right shoulder condition to factors of her employment. For this reason, she has not discharged her burden of proof to establish her claim that her diagnosed condition was sustained in the performance of duty.

Medical evidence submitted in support of appellant's claim included unsigned notes from Dr. Hull dated November 26, 2003 and February 17, June 8, November 5 and 24, 2004. Appellant also submitted a September 23, 2004 attending physician's report bearing an illegible signature. None of the reports submitted constitutes relevant probative medical evidence. The physicians' reports that cannot be verified, either because the signature on the document is missing or illegible and cannot be considered as probative evidence.<sup>8</sup> None of the reports provide a rationalized opinion explaining the cause of appellant's condition. In February 17, 2004 report, Dr. Hull stated that appellant's condition was "made worse with any activity, such as doing her mail route, etc." However, Dr. Hull did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause or aggravate the claimed condition. Medical conclusions unsupported by rationale are of

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<sup>4</sup> *Michael R. Shaffer*, 55 ECAB \_\_\_\_ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

<sup>5</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>6</sup> *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004).

<sup>7</sup> *John D. Jackson*, 55 ECAB \_\_\_\_ (Docket No. 03-2281, issued April 8, 2004); *see also Michael E. Smith*, 50 ECAB 313, 317 (1999).

<sup>8</sup> *Mertin J. Sills*, 39 ECAB 572.

little probative value.<sup>9</sup> Moreover, his opinion was vague and was not rendered to a reasonable degree of medical certainty.<sup>10</sup> On November 5, 2004 he stated that “in [his] mind,” appellant’s symptoms were totally related to her industrial exposure. But he again failed to provide any rationale for his stated conclusion. His remaining reports did not contain any opinion on the cause of appellant’s condition. The Board has long held that medical evidence which 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>11</sup> Accordingly, Dr. Hull’s reports, the only medical evidence appellant submitted in support of her claim, did not constitute sufficient medical evidence to establish that appellant’s claimed shoulder condition was causally related to her employment.

Appellant attributed her condition to her repetitive job duties. However, standing alone, the belief that her condition was caused, precipitated or aggravated by her employment is not sufficient to establish causal relationship.<sup>12</sup> Causal relationship must be established by rationalized medical opinion evidence, and appellant failed to submit such evidence.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and doctor’s opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office’s request. As there is no probative, rationalized medical evidence addressing how appellant’s claimed right shoulder condition was caused or aggravated by her employment, appellant has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of employment. The Board, therefore, affirms the Office’s May 6, 2005 decision denying benefits for appellant’s claimed right shoulder condition.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>13</sup> To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>14</sup> the Office’s regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.<sup>15</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

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<sup>9</sup> *Willa M. Frazier*, *supra* note 6.

<sup>10</sup> *See Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>11</sup> *Dennis M. Mascarenas*, *supra* note 3.

<sup>12</sup> *Ricky S. Storms*, *supra* note 10.

<sup>13</sup> 5 U.S.C. § 8128(a).

<sup>14</sup> *Id.*

<sup>15</sup> 20 C.F.R. § 10.606(b)(2).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

In her June 21, 2005 request for reconsideration, appellant did not make any argument that the Office erroneously applied or interpreted a specific point of law or advance a legal argument not previously considered by the Office, nor did she submit any relevant and pertinent new evidence not previously reviewed by the Office. Rather, she merely stated her belief that her right shoulder bursitis/tendinitis had developed as a result of overcompensating for her injured left shoulder. Appellant's belief that her condition was caused, precipitated or aggravated by her employment is insufficient to establish causal relationship.<sup>17</sup> The Board finds that appellant's June 21, 2005 request for reconsideration failed to meet any of the statutory requirements warranting a merit review.

In support of her September 21, 2005 request for reconsideration, appellant submitted an unsigned report from Dr. Hull dated August 2, 2005 and an unsigned report of an MRI scan of the right shoulder dated August 22, 2005.<sup>18</sup> The Board has consistently held that unsigned physicians' reports cannot be considered as probative evidence.<sup>19</sup> These reports are cumulative in nature and fail to address the cause of appellant's diagnosed condition.<sup>20</sup> Accordingly, the Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously reviewed by the Office.

The Board finds that the Office, in its August 5 and October 12, 2005 decisions, properly refused to reopen appellant's claim for review on the merits.

### **CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish that her claimed shoulder condition was sustained in the performance of duty. The Board further finds that the Office properly denied appellant's June 21 and September 21, 2005 requests for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>16</sup> 20 C.F.R. § 10.608(b).

<sup>17</sup> *Id.*

<sup>18</sup> The Board notes that the August 22, 2005 MRI scan report has a notation that it was electronically signed. However, no signature appears on the document.

<sup>19</sup> *Mertin J. Sills, supra* note 8.

<sup>20</sup> *Freddie Mosley*, 54 ECAB 255 (2002) (evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 12, August 11 and May 6, 2005 are affirmed.

Issued: May 9, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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