

In support of her claim, appellant submitted a May 24, 2006 report from Dr. Scott H. Roby, an osteopath, who treated appellant for left upper thoracic and subscapular pain. She reported working as a postal carrier where she frequently used her left arm in her daily activities. Dr. Roby noted examination findings of left upper thoracic paravertebral muscle tenderness with palpation. He diagnosed left upper thoracic somatic dysfunction and recommended rest and medication. Appellant submitted reports from Dr. John A. Johnstone, an osteopath, dated February 1 to March 2007, who treated her for left shoulder pain. She reported that five months prior she had an onset of pain in the left shoulder and upper back but denied any trauma or injury. Appellant indicated that she worked at the employing establishment and believed her shoulder condition was caused by frequent carrying and lifting and got much worse during the busy holiday season. Dr. Johnstone noted findings of tenderness upon palpation of the left shoulder, left cervical paravert muscles, left trapezius and left upper thoracic paravert muscles, decreased cervical range of motion and decreased shoulder abduction anteriorly. He diagnosed rotator cuff syndrome and opined that appellant was totally disabled. In reports dated February 15 and March 9, 2007, Dr. Johnstone diagnosed rotator cuff syndrome and advised that appellant was undergoing physical therapy and was disabled. Appellant reported pain in the left shoulder but believed her condition improved since she had been off work. An x-ray of the thoracic spine dated February 1, 2007 revealed minimal scoliosis otherwise normal. A magnetic resonance imaging (MRI) scan of the lumbar spine dated February 21, 2007 revealed a partial tear or tendinosis due to distal supraspinous tendon.

Appellant was seen in consultation by Dr. Karyn L. Woelflern, a Board-certified physiatrist, on March 2, 2007 for progressive left shoulder pain and a rotator cuff tear. Dr. Woelflern noted that appellant was a rural carrier and her job required her to drive on the right side of the car using her left arm to steer while delivering mail. She indicated that appellant had shoulder pain on minimal flexion and abduction and tenderness over the acromioclavicular joint, subacromial spaces and parascapular musculature. Dr. Woelflern diagnosed left rotator cuff tear and recommended surgery. Appellant sought treatment from Dr. Stephen D. Katz, a Board-certified orthopedic surgeon, on March 6, 2007 for left shoulder pain which started in September 2006. Dr. Katz diagnosed multidirectional instability with secondary impingement of the left shoulder and advised that appellant was totally disabled. He recommended lidocaine injections, anti-inflammatory medication and physical therapy. On March 20, 2007 Dr. Katz determined that conservative treatment failed and he recommended arthroscopic surgery. In an April 20, 2007 operative report, he performed a left shoulder arthroscopy and arthroscopic capsular shift and diagnosed left shoulder pain with underlying multidirectional instability. In reports dated May 1 and June 5, 2007, Dr. Katz noted that appellant was progressing well postoperatively. On March 28, 2007 appellant was treated by Dr. John Knowles, a Board-certified otolaryngologist, for left shoulder pain. Dr. Knowles diagnosed left shoulder rotator cuff tear and prescribed pain medicine. Appellant submitted physical therapy notes from February 7 to July 30, 2007.

The employing establishment submitted an August 15, 2007 statement from Victoria L. Cloutier, supervisor of customer service, who noted that in January 2007 appellant requested a reduced schedule because she had started working another job. Ms. Cloutier indicated that appellant informed her that she sustained a nonwork-related rotator cuff injury in September and was unable to work starting in April 2007 because her physician restricted her from casing mail. She advised that appellant intended to resign from her position in July; however, she reported in

August and asserted that her shoulder condition was work related. Ms. Cloutier indicated that appellant requested to work parcel assistance at Christmas, but was informed that she either had to return to work or resign. She noted that appellant became upset and indicated that she was going to file a compensation claim for her shoulder. Ms. Cloutier indicated that she provided appellant a CA-1 form and initiated termination proceedings. Also submitted was a statement from David Wyman, a coworker, who noted that in May 2006 appellant indicated that she injured her back or shoulder in a softball game with her husband.

On August 30, 2007 the Office advised appellant of the type of factual and medical evidence needed to establish her claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a statement noting that she worked as a rural carrier approximately three days per week starting in April 2006 and her duties included sorting and casing mail, placing mail in appropriate containers and mail delivery. She indicated that, while delivering mail, she would sit in the passenger seat and use the brake, gas and steering wheel which required extensive stretching and reaching into the back seat. Appellant asserted that she had not participated in sports in over 10 years. She submitted statements from her mother, Susan B. Gorsuch-Metivier, and two friends, Tammy Clark and Shannakay Boykin Watson, who indicated that appellant did not sustain a shoulder injury while playing softball, rather, she injured her shoulder while working at the employing establishment.

In a decision dated November 26, 2007, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by her employment duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 the 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. 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.²

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) 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

¹ 5 U.S.C. §§ 8101-8193.

² Gary J. Watling, 52 ECAB 357 (2001).

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 is generally 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 relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

ANALYSIS

It is not disputed that appellant's duties as a rural carrier included repetitively sorting and casing mail and stretching and reaching while delivering mail in her car. It is also not disputed that appellant has been diagnosed with left rotator cuff tear and impingement syndrome. However, appellant has not submitted sufficient medical evidence to support the left rotator cuff tear and impingement syndrome is causally related to specific employment factors or conditions. On August 30, 2007 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant submitted a report from Dr. Roby dated May 24, 2006 who treated appellant for left upper thoracic and subscapular pain and diagnosed left upper thoracic somatic dysfunction. She reported working as a postal carrier where she frequently used her left arm in her daily activities. However, Dr. Roby failed to provide a specific and rationalized opinion regarding the causal relationship between appellant's left upper thoracic somatic and the factors of employment believed to have caused or contributed to such condition.⁴ For example, he did not explain the process by which repetitive activities involving appellant's left arm would cause the diagnosed condition and why such condition would not be due to nonwork factors. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant also submitted medical reports from Dr. Johnstone dated February 1 to March 9, 2007, who treated appellant for a left shoulder and back pain which began five months prior. Dr. Johnstone diagnosed rotator cuff syndrome. Appellant reported that she worked at the employing establishment and believed her shoulder condition was caused from frequent carrying and lifting and became worse during the busy holiday season. Dr. Johnstone's reports are insufficient to establish the claim as the doctor appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

condition was work related.⁵ To the extent that the doctor is providing his own opinion, the doctor failed to provide a rationalized opinion regarding the causal relationship between appellant's condition and the factors of employment believed to have caused or contributed to such condition.⁶

Appellant submitted a March 2, 2007 report from Dr. Woelflern who treated appellant for progressive left shoulder pain and a rotator cuff tear. Dr. Woelflern noted appellant was a rural carrier and her job required her to drive on the right hand side of the car using her left arm to steer when delivering mail. She diagnosed left rotator cuff tear and opined that appellant would need surgery. However, Dr. Woelflern failed to provide a specific and rationalized opinion regarding the causal relationship as her report did not explain the processes by which specific employment duties caused or aggravated a diagnosed left rotator cuff tear.⁷ Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Katz dated March 6 to June 5, 2007 noted appellant's complaints of left shoulder pain which started in September 2006. Dr. Katz diagnosed multidirectional instability with secondary impingement of the left shoulder and performed arthroscopic surgery on April 20, 2007. Likewise, a March 28, 2007 report from Dr. Knowles noted appellant's treatment for left shoulder pain and diagnosed left shoulder rotator cuff tear. However, Drs. Katz and Knowles failed to provide a history of injury⁸ and they did not provide a specific opinion on the causal relationship between appellant's job and her diagnosed left shoulder condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.⁹ Therefore, these reports are insufficient to meet appellant's burden of proof.

Also submitted were physical therapy notes from February 7 to July 30, 2007. The Board has held that treatment notes signed by a physical therapist are not considered medical evidence as a physical therapist is not a physician under the Act.¹⁰ Therefore, these notes are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including an x-ray of the thoracic spine and a MRI scan of the lumbar spine fail to provide an opinion on the causal relationship between

⁵ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁶ *Jimmie H. Duckett*, *supra* note 4.

⁷ *Id.*

⁸ *See Frank Luis Rembisz*, *supra* note 5.

⁹ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (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).

¹⁰ *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Jane A. White*, 34 ECAB 515 (1983) (a physical therapist is not a "physician" within the meaning of the Act and therefore not competent to give a medical opinion)).

appellant's job and her diagnosed left rotator cuff tear and impingement syndrome. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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 his condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹¹ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed an employment-related injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 26, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹¹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).