

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

C.C., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTICS AGENCY, Fort Belvoir, VA,
Employer**

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**Docket No. 09-1042
Issued: November 10, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 12, 2009 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated July 11, 2008 and February 5, 2009. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a right shoulder condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 48-year-old packer, filed a claim for benefits on May 22, 2008, alleging that she developed a right shoulder condition caused by continuous heavy lifting, hammering and packing.¹

¹ Appellant filed a Form CA-1 based on traumatic injury. However, since she stated on the form that she had a right shoulder condition which developed over a period of time, the Office adjudicated the claim as one based on an occupational condition.

In a Form CA-20 dated May 18, 2008, Dr. Scott King, an osteopath, stated that appellant had experienced an insidious onset of right shoulder pain since October 31, 2007 due to continuous heavy lifting and packing; this resulted in a torn rotator cuff. He checked a box which indicated that appellant's condition was caused or aggravated by employment activity.

By letter dated June 9, 2008, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It 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 conditions were causally related to her federal employment.

On June 12, 2008 Dr. King diagnosed a torn right rotator cuff, right shoulder impingement syndrome and synovitis of the right shoulder. He performed arthroscopic surgery on June 12, 2008; the procedures entailed right rotator cuff repair and open subacromial decompression of the right shoulder.

In a statement dated June 26, 2008, appellant responded to the Office questionnaire and indicated that her right shoulder condition developed due to her work activities of lifting heavy steel, pulling heavy wire and hammering and banding. She did not submit any additional medical evidence.

By decision dated July 11, 2008, the Office denied appellant's claim, finding that she failed to submit medical evidence sufficient to establish that she sustained a right shoulder condition in the performance of duty.

By letter dated July 23, 2008, appellant's attorney requested an oral hearing, which was held on November 13, 2008.

In a report dated August 20, 2008, Dr. King stated that appellant had been undergoing physical therapy since her June 2008 surgery but had experienced continued problems with right shoulder pain. He diagnosed postoperative/traumatic adhesive capsulitis of the right shoulder. In a November 5, 2008 report, Dr. King stated that appellant still had some postoperative adhesive capsulitis in her right shoulder but was doing well otherwise. He noted no numbness or tingling on examination and related that she believed she was capable of performing most of her usual activities.

At the November 2008 hearing, appellant testified that her shoulder pain had developed over a period of time due to continually cutting heavy wire, mixing steel, repetitive hammering and using bolt cutters. She stated that she was diagnosed with right shoulder arthritis in October 2007 and related that her pain continued to worsen until April 2008, when she realized that her condition was more serious. Appellant secured a second opinion and was diagnosed with a right rotator cuff tear, for which she underwent surgery in June 2008.

Appellant submitted a December 2, 2008 report from Sandra Halbruner, a certified nurse practitioner, who reviewed the history of injury and opined that appellant's physically demanding job working with steel probably contributed to her right shoulder injury.

By decision dated February 5, 2009, an Office hearing representative affirmed the July 11, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ 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.⁴

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) a 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 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 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.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed right shoulder condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁶

ANALYSIS

In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report 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 this condition was sustained in the performance of duty.

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).

⁵ *Id.*

⁶ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

Appellant submitted three reports from Dr. King, who related findings of right shoulder pain on examination, diagnosed torn right rotator cuff, right shoulder impingement syndrome, and synovitis of the right shoulder. In addition, Dr. King performed arthroscopic surgery on appellant's right shoulder on June 12, 2008. However, he did not provide a probative, rationalized medical opinion that the claimed condition or disability was causally related to employment factors. In Dr. King's August 20 and November 5, 2008 postoperative reports, he noted that appellant underwent physical therapy and diagnosed postoperative/traumatic adhesive capsulitis of the right shoulder. In his November 5, 2008 report, he advised that appellant's adhesive capsulitis had greatly improved and noted that appellant had regained her ability to perform most of her customary activities. Dr. King's opinion is of limited probative value as it does not contain any medical rationale explaining how or why appellant's claimed right shoulder condition was currently affected by or related to factors of employment.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of 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.⁸ Dr. King did not sufficiently describe appellant's job duties or explain the medical process through which such duties would have been competent to cause the claimed condition. His reports, the only evidence appellant submitted in support of her claim,⁹ did not constitute sufficient medical evidence to establish that appellant's claimed right shoulder condition was causally related to her employment.¹⁰

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 his employment is sufficient to establish causal relationship.¹¹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof in establishing that her claimed right shoulder condition was causally related to her employment.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that her claimed right shoulder condition was sustained in the performance of duty.

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ The December 2008 report from a registered nurse does not constitute medical evidence pursuant to section 8101(2).

¹⁰ The May 18, 2008 form report from Dr. King that supported causal relationship with a checkmark is insufficient to establish the claim. The Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2008 and February 5, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 10, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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