



engaging in a running exercise, during which he was carrying an “additional 35 pounds of equipment, I fell to the ground ... using my left elbow, causing pain in my left shoulder.”

By letter dated August 24, 2009, the Office notified appellant that the evidence of record was insufficient to support his claim and that he needed to submit additional evidence. The Office provided guidance concerning the type and form of evidence required.

Appellant submitted a September 9, 2009 report in which Dr. Raj Desai, a radiologist, reported findings following x-rays of appellant’s left shoulder and diagnosed a “very small partial thickness tear suspected in the deep fibers of [the] anterior supraspinatus with small joint effusion.” Dr. Desai noted that appellant “[f]ell back on shoulder and having constant pain.”

By decision dated October 8, 2009, the Office denied the claim because the evidence of record did not demonstrate an employment incident caused a medically-diagnosed condition.<sup>1</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>3</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>4</sup> As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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>7</sup> Second, the employee must submit

---

<sup>1</sup> Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1898, issued January 7, 2008) (holding the Board’s jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *J.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.*; *Nancy G. O’Meara*, 12 ECAB 67, 71 (1960).

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</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, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>9</sup>

### ANALYSIS

Appellant attributed his condition to a July 28, 2009 incident when, while engaging in a running exercise, during which he was carrying an "additional 35 pounds of equipment" he fell "to the ground ... using [his] left elbow, causing pain in [his] left shoulder." The Office has accepted appellant's assertion that this incident occurred in the performance of duty as alleged. Appellant's burden is to demonstrate that the established employment incident caused a medically-diagnosed condition. This is a medical issue that can only be proven by probative medical opinion evidence. Appellant has not submitted sufficient medical opinion evidence supporting his claim and, accordingly, the Board finds that appellant has not established he sustained an injury in the performance of duty on July 28, 2009 causally related to his employment.

The only medical opinion evidence of record consists of Dr. Desai's September 9, 2009 report,<sup>10</sup> but his report has little probative value on the issue of causal relationship because it lacks an opinion explaining how the established employment incident caused the condition he diagnosed. While Dr. Desai noted that appellant "[f]ell back on shoulder and having constant pain," this is not sufficient to establish the required causal relationship because he does not explain how this fall caused appellant's condition and pain is a symptom, not a compensable medical diagnosis.<sup>11</sup> Further, Dr. Desai is merely repeating appellant's allegations concerning his injury and provides no probative medical reasoning. Finally, Dr. Desai diagnosed "very small partial thickness tear suspected in the deep fibers of [the] anterior supraspinatus with small joint effusion." Use of the word "suspected" indicates that Dr. Desai's opinion is speculative and has little probative value.<sup>12</sup>

---

<sup>8</sup> *T.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>9</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *See supra* note 1.

<sup>11</sup> *Robert Broome*, 55 ECAB 339, 342, (2004).

<sup>12</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *Leslie C. Moore*, 52 ECAB 132 (2000).

An award of compensation may not be based on surmise, conjecture or speculation.<sup>13</sup> Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>14</sup> The fact that a condition manifests itself or worsens during a period of employment<sup>15</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>16</sup> does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the established employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds that appellant has not established the essential element of causal relationship.

### **CONCLUSION**

The Board finds that appellant has not established he sustained an injury in the performance of duty on July 28, 2009 causally related to his employment.

---

<sup>13</sup> *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

<sup>14</sup> *D.I.*, 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>15</sup> *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

<sup>16</sup> *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 8, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 20, 2010  
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