United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 10-1102**
	)	**Issued: December 6, 2010**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Springfield, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2010 appellant timely appealed the December 17, 2009 merit decision of the Office of Workers' Compensation Programs, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on May 23, 2009.

[1] The record on appeal contains evidence received after the Office issued its December 17, 2009 decision. The Board may not consider evidence that was not in the case record when the Office rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2009).

FACTUAL HISTORY

On June 2, 2009 appellant, then a 33-year-old lead transportation security officer, filed a notice of recurrence (Form CA-2) alleging that she was injured on May 23, 2009 lifting and moving baggage. She did not specify the type of injury sustained, but reported that her symptoms were the same as the last several times this occurred. Appellant previously injured her right shoulder on April 6, 2005. The Office adjudicated her claim as a new traumatic injury.

Appellant was treated on May 31, 2009 for complaints of right shoulder and neck pain, reportedly due to moving a heavy object on May 23, 2009.[2]

On June 2, 2009 Dr. Jasper N. Wakeman, Jr., a Board-certified orthopedic surgeon, diagnosed shoulder/upper arm strain. He indicated that appellant could return to work June 4, 2009 with restrictions of no reaching above the shoulders and limited use of her right arm.

Dr. Bradley H. Walz, a Board-certified orthopedic surgeon, examined appellant on June 15, 2009. Appellant's chief complaint was right shoulder pain and the reported date of injury was "'2005/May 23, 2009.'" She told Dr. Walz that she hurt her shoulder in 2005 working at the airport. At the time, appellant felt like she had a pulled muscle in her shoulder. A magnetic resonance imaging (MRI) scan was never obtained. After three months of physical therapy her condition reportedly did not get much better. Dr. Walz noted that appellant obtained an MRI scan 10 days prior, which showed a small incomplete tear of the articular surface of the distal supraspinatus tendon. The MRI scan also revealed impingement upon the supraspinatus tendon by the acromion. Dr. Walz diagnosed partial thickness rotator cuff tear and impingement syndrome of the right shoulder. He also noted possible cervical radiculopathy. Dr. Walz suspected that appellant had a superior labrum anterior and posterior (SLAP) injury to her shoulder based on noted popping and clicking. He administered a Depo-Medrol injection and advised her to follow up in four weeks. Dr. Walz noted that, if appellant's condition did not improve in the interim, he would recommend an MRI scan arthrogram of the shoulder, a cervical MRI scan and possible diagnostic arthroscopy. He released her to return to work with restrictions of no lifting overhead, no lifting over 20 pounds, no pushing and pulling and no work above shoulders.

On July 2, 2009 Dr. Walz reported that appellant was having more problems with her shoulder and her neck region. He diagnosed cervical radiculopathy, which he stated may be related to her shoulder injury. Dr. Walz recommended MRI scans of the right shoulder and cervical spine. He advised appellant to follow up after her MRI scans. Dr. Walz renewed her previous work restrictions, modified to restrict lifting to 10 pounds.

On August 19, 2009 Dr. Louis P. Krenn, Jr., a Board-certified family practitioner, advised that he had seen appellant in his office that day. He requested that she be excused from August 13 to 24, 2009 "due to a medical condition."

An October 7, 2009 right shoulder x-ray was negative. However, a right shoulder MRI scan arthrogram of October 7, 2009 revealed partial tearing of the rotator cuff, including the

[2] The form report is largely illegible and the physician's name is indecipherable.

articular surface of the supraspinatus and infraspinatus. Additionally, the right shoulder MRI scan showed a SLAP tear of the labrum. An October 7, 2009 cervical MRI scan revealed a grossly normal cervical spine.

Dr. Walz examined appellant on October 8, 2009 and reviewed the recent diagnostic studies. He diagnosed a right shoulder SLAP lesion and partial thickness rotator cuff tear. Dr. Walz discussed surgical options with appellant and she expressed a desire to proceed with a right shoulder arthroscopy. He reported hand numbness and tingling possibly due to carpal tunnel syndrome because it did not appear to be emanating from the cervical spine.

Appellant underwent right shoulder surgery on October 20, 2009; however, the operative report was not made part of the record in the current claim.[3] There was also a request for authorization for postoperative physical therapy.

On November 2, 2009 Dr. Walz noted that appellant was two weeks status post shoulder surgery. He reported that the requested physical therapy had not yet been approved. Dr. Walz expressed concern over the delay because appellant was starting to develop arthrofibrosis of the shoulder. He provided her with instructions on some home exercises she could perform while awaiting authorization and advised her to return in two weeks.

The Office wrote to appellant on November 13, 2009 requesting that she provide a more detailed account of the May 23, 2009 incident, in which she lifted and moved baggage. It also advised her that additional medical evidence was needed because the current record did not provide a diagnosis related to the alleged May 23, 2009 employment incident.

Appellant did not provide the requested statement regarding the May 23, 2009 incident, but the Office did receive additional medical evidence. A November 4, 2003 physical therapy initial evaluation and treatment plan included a diagnosis of rotator cuff tear and complete rotator cuff rupture with a May 23, 2009 onset date. The report also noted that appellant was referred to physical therapy following an October 20, 2009 right shoulder rotator cuff repair and biceps tendonesis. The treatment plan called for six weeks of therapy, three times a week. Dr. Walz signed/approved the physical therapy plan on November 19, 2009.

In a November 20, 2009 note, Dr. Walz advised that appellant was seen that day. He found that she could return to work immediately with a restriction of no use of the upper extremity.

By decision dated December 17, 2009, the Office denied appellant's May 23, 2009 injury claim. It found there was no medical evidence connecting appellant's right shoulder condition to the May 23, 2009 employment incident when she lifted and moved baggage.

[3] Appellant obtained authorization for surgery under her prior claim file number xxxxxx612.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

ANALYSIS

Appellant claimed that she was injured on May 23, 2009 while lifting and moving baggage. Although she received medical treatment on May 31, 2009, no specific diagnosis was provided at that time. When Dr. Wakeman examined appellant on June 2, 2009 he diagnosed shoulder/upper arm strain, but he did not identify either a date of injury or a cause of injury. The bulk of the remaining medical evidence consisted of treatment records from Dr. Walz. Other than noting a 2005/May 23, 2009 date of injury, he did not describe the employment activity or incident on May 23, 2009 or explain how it either caused or contributed to appellant's right shoulder rotator cuff tear and SLAP lesion. The October 7, 2009 right shoulder MRI scan arthrogram did not address the cause of her condition. Dr. Krenn excused appellant from August 13 to 24, 2009 due to an unspecified "medical condition."

The record is devoid of a rationalized medical opinion attributing appellant's right shoulder condition to the May 23, 2009 employment incident. Accordingly, the Office properly denied her traumatic injury claim.

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[4] 5 U.S.C. §§ 8101-8193 (2006).

[5] 20 C.F.R. § 10.115(e) (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

CONCLUSION

Appellant has not established that she sustained an injury in the performance of duty on May 23, 2009.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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