

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANIS S. FOLSOM and DEPARTMENT OF THE ARMY,  
CORP OF ENGINEERS, Savannah, GA

*Docket No. 01-1070; Submitted on the Record;  
Issued July 9, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty.

The Board has duly reviewed the case on appeal and finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 and that the claim was filed within the applicable time limitations of the Act.<sup>2</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place, in the manner alleged,<sup>3</sup> that the injury was sustained while in the performance of duty,<sup>4</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>5</sup> 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.<sup>6</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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 245 (1989).

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, generally, is 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.<sup>7</sup>

In this case, on September 12, 2000<sup>8</sup> appellant, then a 51-year-old engineering technician, filed an occupational disease claim, stating that a new computer workstation was incorrectly set up causing her to lose mobility in her upper body (neck, arms and shoulders). The employing establishment stated that appellant did not stop work and continued performing her regular duties. The Office of Workers' Compensation Programs denied appellant's claim on December 26, 2000, finding that appellant failed to submit medical evidence to support the presence of a medical condition which was caused or aggravated by identified employment factors.

The medical evidence in support of appellant's claim consists of a May 26, 2000 physical therapy initial evaluation report by Dr. David Sauers, an osteopath, who gave a history of similar kinds of problems the year before and diagnosed headaches. Dr. Sauers recommended physical therapy for mobilization, posture and neck training and "to get involved with some aerobic exercises with regard to fibromyalgia." The report did not include a rationalized medical opinion that there was a causal connection between appellant's upper body condition and any specific workplace factors. For example, Dr. Sauers did not provide medical reasoning explaining how workplace factors caused a specific medical condition nor did he discuss what if any effect workplace factor had on fibromyalgia. The May 26, 2000 report is insufficient to establish appellant's occupational disease claim.

In a June 22, 2000 discharge report, Stuart Fife, a physical therapist, stated that appellant was seen four times for joint mobilization, subcranial cervical, postural education and stabilizing

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<sup>7</sup> *Id.*

<sup>8</sup> The record supports that appellant filed another CA-2 form. This claim (A06-2019571) was considered a duplicate of the claim filed on September 12, 2000 (A06-2019649). A06-2019571 was deleted and the contents of the record were merged with A06-2019649 on November 20, 2000. On appeal appellant stated that he thought his claim, A06-0722533 was combined with this claim. However, the old claim, A06-0722533 was not combined with this claim, A062019649 and is not part of the appeal presently before the Board.

exercises. A physical therapist is not a physician under the Federal Employees Compensation Act and his reports are not considered medical evidence.<sup>9</sup>

In a November 21, 2000 report, Dr. Sauers stated that appellant was referred to physical therapy mainly for headaches and chronic muscle pain. He stated that appellant received positional and ergonomic training and an exercise program. Dr. Sauer stated that he would be referring appellant to a Dr. Allcock, but did not state for what purpose. The November 21, 2000 report does not provide a rationalized medical opinion causally relating a diagnosed condition to the factors of employment identified by appellant. Therefore, the report is insufficient to establish appellant's claim. By letter dated October 30, 2000, the Office advised appellant of the specific evidence needed to establish her occupational disease claim, but such evidence was not submitted. Therefore, the Board finds that appellant has not met her burden of proof.

The decision dated December 26, 2000 of the Office of Workers' Compensation Programs is affirmed.<sup>10</sup>

Dated, Washington, DC  
July 9, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> 5 U.S.C. § 8101(2); *see Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>10</sup> The Board notes that appellant submitted factual and medical evidence after the Office issued its decision. Appellant may resubmit this evidence to the Office with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).