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

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| **STEVE E. DORMAN, Appellant** | ) | |
| **and** | ) | **Docket No. 06-194** |
| | ) | **Issued: February 14, 2006** |
| **FEDERAL JUDICIARY, U.S. PROBATION AGENCY, Atlanta, GA, Employer** | ) | |

*Appearances:*
*Steve E. Dorman, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On November 1, 2005 appellant filed at timely appeal from a decision of the Office of Workers' Compensation Programs dated October 4, 2005, which denied his traumatic injury claim. Pursuant to 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 sustained a traumatic injury in the performance of duty.

### ***FACTUAL HISTORY***

On June 7, 2005 appellant, a 47-year-old probation officer, filed a traumatic injury claim alleging that on May 9, 2005 he injured his right shoulder while taking a safety training course. In a witness statement on the form, Sandra S. Glover stated that she heard appellant "complain about pain in his shoulder and lack of movement while participating in safety training."

In a May 9, 2005 report, Mary S. Dickerson, a registered occupational therapist, diagnosed right shoulder impingement and noted that appellant related injuring his right shoulder

on May 9, 2005 while in an employment-related self-defense class. A physical examination revealed a "[p]alpable 'click' at acromioclavicular joint upon shoulder flexion and shoulder abduction." Range of motion included 140 degrees flexion, 40 degrees extension, 140 degrees abduction and "internal and external rotation less than 20 degrees."

In a report dated June 24, 2005, Dr. Michael V. Cushing, a treating Board-certified orthopedic surgeon, diagnosed right shoulder impingement and noted that appellant had been "doing some defensive tactic training about six weeks ago and injured his shoulder." Appellant recalled no specific injury, "but the shoulder just started hurting him at that time." An x-ray interpretation revealed "some AC [acromioclavicular] arthrosis and some moderate subacromial spurring." In a July 21, 2005 status report, Dr. Cushing diagnosed right shoulder impingement. A progress note from Dr. Cushing diagnoses "[r]ight shoulder possible SLAP tear." Upon physical examination "shoulder shows that he has mildly positive Neer and Hawkings. O'Briens' test is markedly positive."

In an August 8, 2005 magnetic resonance imaging scan, Dr. David R. Marcantonio, a Board-certified diagnostic radiologist, found "no evidence of acute internal derangement about the shoulder" and acromioclavicular joint osteoarthritis.

An August 8, 2005 right shoulder arthrogram by Dr. Darin M. Brummett, a Board-certified diagnostic radiologist, found "no extravasation of contrast into the subacromial/ subdeltoid bursa."

In a letter dated August 30, 2005, the Office informed appellant that the evidence submitted was insufficient to establish his claim. The Office advised him about the medical and factual evidence he need to submit, including a detailed medical report from his attending physician that provided a history to the injury given by appellant to the physician.

On September 26, 2005 the Office received a May 23, 2005 treatment note by Dr. Andrew T. McDonald, a Board-certified internist, who related that appellant stated that he began having right shoulder pain eight to nine days previously "after having some defense training at work." A physical examination revealed "limited range of motion due to pain as described" in the shoulder.

In a statement dated September 21, 2005, appellant related that he attended a defensive tactics training on May 10, 2005. He noted that he "felt a sharp pain shoot through my shoulder" after performing a forward roll. Appellant stated that he thought he had pulled a muscle and continued the training.

By decision dated October 4, 2005, the Office denied appellant's claim on the grounds that the evidence failed to establish that his right shoulder impingement resulted from the defense tactics appellant engaged in on May 9, 2005.[1]

[1] On appeal appellant submitted new evidence. However, the Board cannot consider new evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. §§ 10.606-10.607.

## ***LEGAL PRECEDENT***

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers compensation laws, namely, arising out of and in the course of employment.[4]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of his 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 or specific condition for which compensation is claimed is causally related to the employment injury.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7]

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[8]

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[2] 5 U.S.C. § 8101 *et seq*.

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers compensation law. *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Paul Foster*, 56 ECAB ___ (Docket No. 04-1943, issued December 21, 2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[8] *John W. Montoya*, 54 ECAB 306 (2003).

## ***ANALYSIS***

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a traumatic injury to his right shoulder on May 9, 2005.

There is no dispute that appellant engaged in defense tactics on May 9, 2005, as alleged. The incident has been accepted by the Office.

However, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury causally related to the accepted employment incident. Dr. Cushing diagnosed right shoulder impingement, but provided no explanation as to how this condition was caused or aggravated by appellant engaging in defensive training in May 2005. Dr. Cushing provided no opinion as to the cause of the condition beyond noting that appellant related he had been "doing some defensive training" and then injured his shoulder. Similarly, Dr. McDonald recounted appellant's account of the May 9, 2005 employment incident and the pain he experienced. However, the physician did not provide an opinion on causal relationship. As the Board has held, appellant's unsupported assertion of causal relationship is not proof of the fact.[9]

Appellant submitted reports from Ms. Dickerson, a physical therapist, who listed a right shoulder impingement. This does not constitute probative medical evidence as a physical therapist is not considered a physician under the Act.[10]

As there is no rationalized medical evidence of record establishing that appellant sustained a shoulder injury while in the performance of duty as alleged, the Board finds that he has failed to meet his burden of proof.

## ***CONCLUSION***

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury caused by the May 9, 2005 employment incident.

[9] *See Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

[10] 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357 (2000) (a physical therapist is not a physician under the Act).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 4, 2005 is affirmed.

Issued: February 14, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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