

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

KATIE A. MARSHALL, Appellant

and

**DEPARTMENT OF LABOR, JOB CORPS
CENTER, Astoria, OR, Employer**

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**Docket No. 05-1778
Issued: January 5, 2006**

Appearances:
Katie A. Marshall, pro se
Office of the 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 August 25, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated February 23, 2005. 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 an injury to her right shoulder in the performance of duty on March 17, 2003.

FACTUAL HISTORY

Appellant, a 19-year-old student volunteer worker, filed a traumatic injury claim on March 17, 2003, alleging that she injured her right shoulder when she slipped and fell on a wet floor.

On December 11, 2003 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office 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 condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted a November 13, 2003 arthrogram report, which stated: “Negative right shoulder arthrogram.”

By decision dated January 20, 2004, the Office denied the claim, finding that appellant failed to submit sufficient medical evidence in support of her claim. The Office determined that she failed to submit medical evidence providing a diagnosis resulting from the March 17, 2003 work incident.

On May 10, 2004 appellant requested reconsideration. Appellant submitted several treatment reports from April to December 2003, from Dr. Douglas B. McMahan, an osteopath. He indicated that appellant had sustained a right shoulder injury on March 20, 2003. He noted persistent, severe shoulder pain, diagnosed right shoulder bursitis/tendinitis, right shoulder sprain and cervical strain with radiculopathy.

In a report dated March 18, 2004, Dr. Alan J. Webb, a Board-certified orthopedic surgeon, stated findings on examination and noted the results of a November 13, 2003 magnetic resonance imaging (MRI) scan, which indicated evidence of mild subdeltoid and subacromial bursitis, with some mild sloping of the acromion and mild narrowing in the subacromial space. He stated that there was some mild posterior subluxation of the humeral head with respect to the glenoid. Dr. Webb further stated that there was some moderate redundancy of the anterior and inferior joint capsule with medial attachment of the joint capsule. He advised that appellant might require surgery following consultation with an upper extremity specialist, although he currently recommended against surgery. Dr. Webb did not submit an opinion as to whether appellant’s right shoulder symptoms were causally related to the March 17, 2003 work incident.

By decision dated February 23, 2005, the Office affirmed the denial of appellant’s claim, finding that the medical evidence was not sufficient to establish that she sustained a right shoulder injury in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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.² These are the essential

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. 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.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ 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.⁶

ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.⁷ Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on May 17, 2003 caused a personal injury and resultant disability.

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 her employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. The only medical documents appellant submitted were the reports from Drs. Webb and McMahon, who stated findings on examination and indicated that appellant had right shoulder bursitis/tendinitis a right shoulder sprain and cervical strain with radiculopathy. However, the physicians did not relate these diagnoses to the March 17, 2003 work incident. 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

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury”; see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ *John J. Carlone*, *supra* note 4.

⁸ *Id.*

care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁹ Although Dr. McMahon did present several diagnoses, he did not indicate whether these conditions were causally related to the March 17, 2003 employment incident. Dr. McMahon failed to provide a rationalized, probative medical opinion relating appellant's current condition to any factors of her employment. Furthermore, the March 18, 2004 form report from Dr. Webb merely stated findings on examination and noted the results from a November 13, 2003 MRI scan. He did not provide a medical opinion addressing how appellant's shoulder symptomatology was causally related to her March 17, 2003 work incident.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the March 17, 2003 work accident would have caused the claimed injury. Accordingly, as appellant has failed to submit any probative medical evidence establishing that she sustained a right shoulder injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed buttocks, arm and right shoulder injuries were sustained in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 5, 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

⁹ See *Anna C. Leanza*, 48 ECAB 115 (1996).