

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

M.S., Appellant)

and)

SOCIAL SECURITY ADMINISTRATION,)
OFFICE OF DISABILITY ADJUDICATION &)
REVIEW, Downey, CA, Employer)

Docket No. 08-730
Issued: August 5, 2008

Appearances:
Appellant, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 14, 2008 appellant filed a timely appeal from an October 10, 2007 decision of the Office of Workers' Compensation Programs that denied her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On November 14, 2006 appellant, then a 61-year-old case technician, filed an occupational disease claim alleging that she developed a left shoulder rotator cuff injury in the performance of duty. She stated that she first realized her condition and related it to her employment on June 1, 2006. Appellant attributed her claimed injury to performing repetitive

movements including reaching, heavy lifting, computer input and inputting mail in files, on the job. She did not stop work.

In support of her claim, appellant provided an undated position description for a case assistant. The description noted that the incumbent performed most work while sitting but occasionally was required to walk, stand, bend, and carry files, records and books. It indicated that some movement was required for retrieving records and files, visiting other offices and visiting other buildings.

By correspondence dated January 22, 2007, the Office requested additional information concerning appellant's claim.

By decision dated February 27, 2007, the Office denied appellant's occupational disease claim on the grounds that the evidence submitted was insufficient to support that the events occurred as alleged.

Following the Office's February 7, 2007 decision, appellant submitted additional evidence in support of her claim. In an October 18, 2006 report, concerning an x-ray of appellant's lumbosacral spine, Dr. Jacques Andre Blanc, a Board-certified diagnostic radiologist, noted no evidence of fracture or lytic or blastic bony lesion. He found some mild degenerative changes at the L4-5 disc of appellant's lumbosacral spine. In a January 2, 2007 report, concerning a magnetic resonance imaging (MRI) scan of appellant's left shoulder, Dr. Marwan Hassan Saab, a Board-certified diagnostic radiologist, diagnosed small focus of tendinitis or partial tear in the supraspinatus tendon.

In an August 2, 2006 report, Dr. David Chiu, a Board-certified internist, noted appellant's complaints of persistent shoulder pain which she stated that she started to experience in May 2006, during work. He explained that appellant reported that her job involved repetitive tasks. Dr. Chiu found good range of motion, no palpable tenderness and some discomfort with passive resistance during abduction of the left shoulder. He diagnosed left shoulder strain and noted that other diagnoses included rotator cuff injury, strain and trauma. On September 27, 2006 Dr. Julian Paul Ballesteros, an orthopedist, noted appellant's complaints of left shoulder pain and weakness. On physical examination, he found no atrophy or winging but some tenderness to palpation of the left shoulder. Dr. Ballesteros diagnosed left shoulder impingement syndrome and rotator cuff tear. On May 11, 2007 he noted that a left shoulder MRI scan revealed evidence of a supraspinatus tear and acromioclavicular degenerative joint disease. Dr. Ballesteros diagnosed left shoulder impingement syndrome and rotator cuff tear.

By correspondence dated July 2, 2007, appellant requested reconsideration. In support of her request, she provided an August 1, 2006 x-ray of her left shoulder from Dr. Blanc, who noted no significant abnormality.

By decision dated October 10, 2007, the Office modified its February 27, 2007 decision finding that the evidence was established that appellant performed repetitive tasks at work but found that the medical evidence was insufficient to show a causal relationship between appellant's diagnosed left shoulder condition and her employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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, 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² 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.³

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.⁴ The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant must submit: "(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant."⁵

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.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant⁷ and must be one of reasonable medical certainty⁸ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁴ *D.D.*, 57 ECAB 734 (2006).

⁵ *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), citing *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

⁶ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

⁹ *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS

The evidence establishes that appellant performed repetitive tasks as part of her work duties. However, the Board finds that the medical evidence is not sufficient to establish that particular duties caused or aggravated appellant's claimed left shoulder rotator cuff injury.

Appellant submitted several diagnostic testing reports, including Dr. Blanc's August 1, 2006 x-ray of her shoulder and October 18, 2006 x-ray of her lumbosacral spine and Dr. Saab's January 2, 2007 MRI scan of her left shoulder. However, Dr. Blanc's and Dr. Saab's reports are diagnostic in nature and do not proffer an opinion on causal relationship. The Board has previously held that a medical report which does not include an opinion on causal relationship is not probative on that issue.¹⁰ Accordingly, Dr. Blanc's and Dr. Saab's reports do not establish that appellant's diagnosed left shoulder condition was caused by her claimed repetitive activities at work. Similarly, Dr. Ballesteros's September 27, 2006 and May 11, 2007 reports do not establish that appellant's diagnosed left shoulder condition is causally related to her employment because they do not address causal relationship, identify and discuss appellant's claimed employment factors, or offer an opinion on causation.

In an August 2, 2006 report, Dr. Chiu addressed causal relationship in relating appellant's complaints, noting that appellant reported that she first experienced pain at work and that she engaged in repetitive activities on the job. However, he did not provide any additional details or his own opinion in support of causation. The Board has held that, when a medical opinion consists only of restating appellant's complaints, it is insufficient to establish causal relationship.¹¹ Dr. Chiu did not provide a rationalized opinion, based on a complete factual and medical history and supported by examination findings, explaining how appellant's work duties caused or contributed to her diagnosed condition. Consequently, his report is not sufficient to establish appellant's claim.

Accordingly, the Board finds that the medical evidence of record does not establish that particular employment activities caused or aggravated appellant's claimed left shoulder condition.¹²

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed an occupational disease in the performance of duty.

¹⁰ See *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ *William A. Archer*, 55 ECAB 674 (2004); see also *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² On appeal, appellant submitted a January 3, 2008 report from Dr. Chiu. However, the Board cannot consider new evidence on appeal as the Board's review is limited to the evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the October 10, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board