

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

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**R.B., Appellant**

**and**

**U.S. POSTAL SERVICE, NORTH PARK  
ANNEX, Charlotte, NC, Employer**

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**Docket No. 08-1974  
Issued: April 9, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 8, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated March 3 and May 27, 2008 denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant has established that she sustained a right shoulder injury in the performance of duty, causally related to factors of her federal employment.

**FACTUAL HISTORY**

On April 26, 2006 appellant, then a 54-year-old clerk, filed an occupational disease claim alleging that on December 9, 2005 she first became aware of a right shoulder condition.<sup>1</sup> She indicated that on April 26, 2006 she first realized her right shoulder condition was employment

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<sup>1</sup> Appellant noted that she had filed a claim for a left shoulder condition which had been assigned claim number xxxxxx455.

related. The employing establishment controverted the claim noting that appellant had been working in light duty in an area designed to accommodate restrictions from a prior claim.

In support of her claim, appellant submitted medical evidence which included the following evidence relevant to her right shoulder condition: a March 6, 2006 right shoulder magnetic resonance imaging (MRI) scan; electromyography reports dated February 20 and March 24, 2006 by Dr. John A. Welshofer, an examining Board-certified physiatrist with a subspecialty in pain medicine; an April 18, 2006 clinic note by Dr. Martin M. Henegar, a treating Board-certified neurological surgeon; an April 7, 2006 office note; and an April 19, 2006 attending physician's report by Dr. Jerry L. Barron, an attending Board-certified orthopedic surgeon.

On February 20, 2006 Dr. Welshofer diagnosed probable right shoulder rotator cuff impingement; possible cervical radiculopathy versus double crush and/or carpal tunnel syndrome; L3-4, L4-5 and L5-S1 degenerative disc disease with disc protrusions and left sciatica. He related that appellant developed right shoulder blade pain since her employment back injury in June 2003. A physical examination revealed "pronounced crepitus in the shoulder on the right upper extremity," mildly positive impingement testing and external and internal rotation pain.

In an April 7, 2006 office note, Dr. Barron diagnosed bilateral shoulder and neck pain. In the April 19, 2006 attending physician's report, he diagnosed a right shoulder cuff tear, discogenic neck pain, myofascial neck and shoulder pain, sciatica and discogenic back pain. Dr. Barron checked "yes" to the question as to whether these conditions were employment related and noted that appellant had been injured on the job.

In the April 18, 2006 clinic note, Dr. Henegar reported decreased shoulder range of motion due to pain and diagnosed bilateral carpal tunnel syndrome.

In a letter dated May 17, 2006, the Office informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim. The Office requested that appellant submit the additional evidence within 30 days.

By decision dated July 14, 2006, the Office denied appellant's claim.

On August 9, 16 and 25, 2006 appellant requested reconsideration and submitted medical and factual evidence in support of her request. The new medical evidence relevant to her right shoulder condition includes an August 10, 2006 report by Dr. Welshofer and March 31, 2006 office notes by Dr. Barron.

In his March 31, 2006 office notes, Dr. Barron diagnosed right shoulder partial rotator cuff tear. A physical examination revealed limited and painful right shoulder range of motion as well as popping and crepitus on motion. In concluding, Dr. Barron opined that appellant's right shoulder injury had been caused or aggravated by her work duties. He also opined that appellant's right shoulder injury had occurred at the same time as her left shoulder injury.

On August 10, 2006 Dr. Welshofer noted that appellant continued to have shoulder and neck pain.

By decision dated December 26, 2006, the Office reviewed the merits of the case and denied modification. It found the medical evidence did not provide a rationalized medical opinion on the issue presented.

On December 11, 2007 appellant requested reconsideration and submitted an October 17, 2007 report by Dr. Barron in support of her request. On October 17, 2007 Dr. Barron diagnosed right shoulder impingement which he attributed to her lifting a heavy tub. He also opined that appellant developed an over use injury due to rehabilitation from left shoulder surgery. A physical examination revealed supraspinatus pain and weakness and pain with right shoulder impingement.

By decision dated March 3, 2008, the Office reviewed the merits of the case and denied modification.

On April 4 and 22, 2008 appellant requested reconsideration and submitted a March 18, 2008 report by Dr. John W. Ellis, an examining Board-certified family practitioner, in support of her request. Dr. Ellis diagnosed a right rotator cuff tear which he attributed to appellant lifting a heavy tub of mail at the same time she injured her left shoulder. He related that she sustained an injury to her left shoulder when she lifted a tub of mail weighing 25 to 30 pounds and that she also sustained a right shoulder injury at the same time. A physical examination revealed limited and painful right shoulder range of motion.

By decision dated May 27, 2008, the Office reviewed the merits of the case and denied modification.

### **LEGAL PRECEDENT**

An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, 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 employee.<sup>3</sup>

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<sup>2</sup> *Donald W. Wenzel*, 56 ECAB 390 (2005); *William Taylor*, 50 ECAB 234 (1999); *see also* 20 C.F.R. § 10.5(q).

<sup>3</sup> *D.D.*, 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>4</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.<sup>5</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.<sup>6</sup>

### ANALYSIS

The issue is whether appellant met her burden of proof in establishing that she sustained a right shoulder injury arising out of her repetitive work duties. The Board finds that she did not submit sufficient medical evidence to establish her claim.

In order to meet her burden of proof in establishing causation, appellant is required to provide rationalized medical opinion relating her right shoulder injury to her employment. She submitted a March 6, 2006 MRI scan report and reports by Drs. Barron, Ellis, Henegar and Welshofer in support of her claim. None of this evidence contains medical rationale explaining how appellant's right shoulder condition was caused or contributed to by her work duties.

The March 6, 2007 MRI scan report of appellant's right shoulder revealed abnormalities consistent with a partial tear of the supraspinatus tendon. However, as the purpose of the report is to establish a diagnosis, it does not address the cause of appellant's condition. Thus, it is not probative on the issue of causation.<sup>7</sup>

Appellant submitted office notes dated March 31 and April 7, 2006. In the April 19, 2006 attending physician's report, Dr. Barron diagnosed a right shoulder cuff tear among other conditions. He checked "yes" as to whether the conditions were employment related with a supporting explanation that appellant had been injured on the job. The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>8</sup> As Dr. Barron provided no supporting rationale beyond a checkmark and a statement that appellant was injured at work without any detail, this report is insufficient to meet appellant's burden of proof.

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<sup>4</sup> *David Apgar*, 57 ECAB 137 (2005).

<sup>5</sup> *G.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1564, issued February 27, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (Docket No. 05-269, issued August 18, 2005).

<sup>6</sup> *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-2094, issued January 30, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>7</sup> *See Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>8</sup> *D.D.*, 57 ECAB 734 (2006).

In the March 31, 2006 clinic note, Dr. Barron diagnosed right shoulder partial rotator cuff tear and provided physical findings. He then concluded that appellant's right shoulder condition had been caused or aggravated by her work duties. However, Dr. Barron did not identify which work activities aggravated her symptoms or how the injury which caused a left shoulder condition caused her right shoulder condition. Furthermore, he does not explain how her limited duties as a clerk caused or aggravated her conditions or how she injured her right shoulder at the same time as she injured her left shoulder. It is speculative to simply opine that work aggravated her symptoms.<sup>9</sup> The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>10</sup> As Dr. Barron's opinion is speculative in the March 31, 2006 clinic note, this report is insufficient to meet appellant's burden of proof.

Appellant also submitted an April 7, 2006 clinic note by Dr. Barron and an August 10, 2006 report by Dr. Welshofer. Dr. Barron, in the April 7, 2006 clinic note, diagnosed bilateral shoulder and neck pain with no opinion as to causation. In an August 10, 2006 medical report, Dr. Welshofer which diagnosed continued neck and shoulder pain. The Board has long held that 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.<sup>11</sup> Thus, the April 7, 2006 clinic note by Dr. Barron and the August 10, 2006 report by Dr. Welshofer are insufficient to meet appellant's burden of proof.

Appellant also submitted an April 18, 2006 clinic note by Dr. Henegar, who made a brief reference to decreased shoulder range of motion due to pain. The Board notes that Dr. Henegar's report does not provide a full medical history or detail findings on examination of the right shoulder. Dr. Henegar merely mentioned shoulder pain without noting which opinion. As he did not address the cause of appellant's shoulder condition or how it was related to her employment, this report does not constitute probative medical opinion on causal relationship.<sup>12</sup>

The record contains an October 17, 2007 report by Dr. Barron and a March 18, 2008 report by Dr. Ellis in which both physicians attributed appellant's right shoulder condition to appellant lifting a heavy tub of mail at the same time that she injured her left shoulder. At the time appellant filed her occupational disease claim for her right shoulder, she noted that she was not aware of her shoulder condition's relationship to her employment until March 24, 2006. She noted that she had filed a recurrence claim beginning December 9, 2005 and that was when she first became aware of her shoulder condition. However, neither Dr. Barron nor Dr. Ellis provided a specific and rationalized opinion regarding the causal relationship between appellant's right shoulder condition and the factors of employment believed to have caused or

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<sup>9</sup> *D.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-27, issued April 6, 2007) (reports that referred to appellant's condition as work related were insufficient because they did not offer further explanation or rationale to fortify the conclusions reached).

<sup>10</sup> *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>11</sup> *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006).

<sup>12</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

contributed to such condition. Both physicians attributed appellant's condition to lifting a heavy tub of mail with no mention as to the date of the injury. In addition, neither physician provided any supporting rationale explaining how lifting a heavy tub of mail would cause the diagnosed condition. The Board has long held that medical reports without medical rationale on causal relationship are of limited probative value.<sup>13</sup> Since neither Dr. Barron nor Dr. Ellis provided any medical rationale explaining how appellant's right shoulder condition was employment related, these report are insufficient to meet appellant's burden of proof.

The Board finds that appellant did not meet her burden of proof that she sustained a right shoulder injury in the performance of duty because she failed to provide medical evidence containing a rationalized explanation of how her shoulder condition was related to her employment factors.

### **CONCLUSION**

The Board finds that appellant did not establish that she sustained a right shoulder injury in the performance of duty, causally related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 27 and March 3, 2008 are affirmed.

Issued: April 9, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).