



On October 10, 2008 appellant filed a claim for recurrence of a medical condition that began on April 12, 2008. He stated that the original injury was on September 6, 2007. Appellant did not stop work. He indicated that the recurrence gradually happened and that he began to notice it in April 2008.

On October 16, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence. It requested that he submit a physician's report with an opinion on a diagnosed condition and whether it was caused or aggravated by his claimed injury.

Appellant submitted September 16, 2007 emergency treatment records that included nursing notes and discharge instructions. On September 16, 2007 Dr. Aida Kalley, an emergency medicine specialist, noted appellant's complaint of left shoulder pain that began a week prior to his visit after lifting heavy luggage from a compartment of an airplane. Appellant described a gradual onset of pain that increased with movement and became a localized, sharp constant pain. Dr. Kalley indicated that appellant's left shoulder was slightly tender and nonswollen. Appellant had a limited range of motion secondary to pain and no deformity. Dr. Kalley diagnosed left shoulder bursitis and discharged appellant in good condition. In a diagnostic report of the same date, Dr. Dana Twible, a Board-certified diagnostic radiologist, noted appellant's complaint of left shoulder pain and advised that x-rays showed soft tissue calcification suggesting calcific bursitis.

In a statement dated October 30, 2008, appellant's supervisor noted that he was traveling from Riga, Latvia to Washington, DC on September 6, 2007. Appellant was on official business representing the employing establishment at a meeting. He indicated that the incident was due to lifting baggage from an overhead compartment on an aircraft while returning home on an official matter.

In a decision dated November 19, 2008, the Office denied appellant's claim for compensation finding that the medical evidence did not establish that his left shoulder condition resulted from the accepted incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *S.P.*, 59 ECAB \_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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. 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.<sup>3</sup>

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 which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. 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 condition and the specific employment factors identified by the employee.<sup>4</sup>

### ANALYSIS

The record supports that on September 6, 2007 appellant was lifting luggage from an overhead compartment of an aircraft while he was in the performance of duty. However, the medical evidence does not establish that lifting luggage caused or aggravated his left shoulder condition.

In a September 16, 2007 report, Dr. Kalley noted appellant’s complaint of left shoulder pain that began a week prior to his visit after lifting heavy luggage on an airplane. She noted examination findings and diagnosed left shoulder bursitis. Dr. Kalley noted the history on onset of pain as related by appellant but she did not specifically address the cause of the diagnosed left shoulder bursitis. To the extent that her statement that appellant experienced pain upon lifting heavy luggage may be deemed as support for causal relationship, the physician did not provide medical rationale to explain how lifting luggage would cause or aggravate left shoulder bursitis. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>5</sup> The medical opinion to establish causal relation must be one of reasonable medical certainty.<sup>6</sup> As noted, generally rationalized medical opinion evidence is required to establish causal relationship. Consequently, this report is not sufficient to establish the claim.

Dr. Twible’s September 16, 2007 diagnostic report of appellant’s left shoulder found soft tissue calcification suggesting calcific bursitis. However, he did not address whether appellant’s left shoulder condition was sustained while lifting luggage. The Board has held that medical

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<sup>3</sup> *Id.*

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *See Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>6</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

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.<sup>7</sup>

The record also contains September 16, 2007 nursing notes. However, a nurse is not a physician as defined under the statute and therefore any report from such individual does not constitute competent medical evidence which, in general, can only be given by a qualified physician.<sup>8</sup>

The Office notified appellant of the type of evidence needed to establish his claim on October 16, 2008. Specifically, it advised him of the necessity to submit a physician's medical explanation of how the September 6, 2007 work incident contributed to his left shoulder condition. Appellant's burden of proof includes the submission of rationalized medical evidence addressing whether there is a causal relationship between his diagnosed condition and employment factors. However, he did not submit a reasoned medical opinion explaining how the work incident caused or aggravated the diagnosed bursitis. Consequently, the Board finds that the Office properly denied appellant's claim.

On appeal, appellant asserts that his claim should not have been denied as he was treated by an orthopedic surgeon who diagnosed rotator cuff strain. The Board notes that the evidence on appeal does not contain any documents from an orthopedic surgeon.<sup>9</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury on September 6, 2007 in the performance of duty.<sup>10</sup>

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<sup>7</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007).

<sup>8</sup> *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act). *See* 5 U.S.C. § 8101(2).

<sup>9</sup> The Board may only review evidence that was in the record at the time the Office issued its final decision. 20 C.F.R. § 501.2(c).

<sup>10</sup> As appellant's claimed condition has not been accepted, the Board need not address the issue of whether appellant sustained a recurrence of a medical condition. *See* 20 C.F.R. § 10.5(y); *Dennis E. Twardzik*, 34 ECAB 536 (1983) (where the Board found that a condition must be accepted by the Office as work-related in order to support a recurrence claim).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated November 19, 2008 is affirmed.

Issued: September 2, 2009  
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