



internist, were found insufficient to establish causal relation. The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. Appellant, through his attorney, requested reconsideration before the Office. In a July 23, 2008 decision, the Office denied appellant's request finding it was not timely filed and did not establish clear evidence of error. Appellant appealed this decision to the Board.<sup>2</sup> In a June 22, 2009 order, the Board remanded the case to the Office finding that appellant's request was timely filed. The Office was directed to conduct a further review under the appropriate regulatory standard.<sup>3</sup>

Prior to the Board's remand, appellant submitted the February 25, 2008 treatment note of Dr. Walter Andrew Semkiw, Board-certified in occupational medicine at Kaiser Permanente. Dr. Semkiw provided a review of appellant's previous evaluation on November 22, 2006 and noted that right arthroscopy, decompression and possible rotator cuff repair had been considered. On April 9, 2008 he obtained a history that appellant injured his right shoulder while using an industrial floor buffer at work on August 17, 2006. Dr. Semkiw advised that appellant experienced intermittent pain in the shoulder and also had left shoulder pain with prolonged use. He noted that appellant had declined surgery and had injections into the right shoulder which were helpful. Dr. Semkiw listed range of motion findings and reviewed a January 20, 2007 magnetic resonance imaging scan of the right shoulder. He diagnosed a full thickness rotator cuff tear of the supraspinatus tendon, infraspinatus tendinopathy, undersurface spurring of the acromioclavicular (AC) joint and mildly increased fluid. Dr. Semkiw also diagnosed a left shoulder strain due to compensatory use and provided work restrictions.

On May 2, 2008 Dr. Semkiw reiterated the history of appellant injuring his right shoulder on August 17, 2006 while using a floor buffer at work. He noted that appellant also attributed his condition to cleaning, scrubbing, waxing, dusting and other activities starting in 2003. Dr. Semkiw stated: "It is my opinion that this patient's shoulder condition was caused by his work-related job duties that involve repetitive motion of the right arm. It is my opinion that his right shoulder condition is work related..." Dr. Semkiw noted that appellant also had left shoulder pain, which he attributed to cooking, housework and personal grooming with the left hand. He provided findings on examination of both shoulders and repeated the diagnostic studies from 2006 and 2007. Dr. Semkiw provided additional treatment records dated through December 18, 2008.

Appellant also submitted additional treatment notes from Dr. Pope. On February 2, 2007 Dr. Pope addressed a telephone call with appellant, noting that the compensation claim had been denied as Dr. Pope had filled out paperwork stating a left shoulder problem when the actual problems were on the right side. It was noted that appellant would continue physical therapy and follow up.

In a July 22, 2009 decision, the Office reviewed the merits of appellant's claim, but denied modification of its prior decisions. It noted that appellant had filed a separate traumatic injury claim for the August 17, 2006 incident, which had been denied as the employing

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<sup>2</sup> Docket No. 09-41 (issued June 22, 2009).

<sup>3</sup> See 20 C.F.R. § 10.606(b)(2).

establishment controverted injury as appellant was working that day as an acting supervisor and did not perform services such as buffing the floor.<sup>4</sup>

On October 15, 2009 appellant, through his attorney, requested reconsideration. He contended that the medical evidence was sufficient to establish injury to his right shoulder and that his left shoulder condition was consequential. In a treatment note of October 14, 2009, Dr. Semkiw noted that appellant returned with a letter that stated the physician did not explain how the job caused his shoulder injuries. He stated:

“To reiterate, [appellant] is a 49[-]year[-]old male, a USPS janitor, who injured his right shoulder while using an industrial floor buffer at work on August 17, 2006. Patient experienced a sudden, sharp pain in the right shoulder when moving the buffer from left to right. Causal relationship: moving the heavy floor buffer at work from side to side caused a rotator cuff tear in the right shoulder, which was demonstrated on MRI [scan]. The patient has performed repetitive tasks with the right arm in doing the duties of a janitor, including cleaning, scrubbing, waxing and polishing of floors, washing walls and ceilings, dusting furniture and fixtures, painting and doing gardening work. These activities which the patient started doing in 2003 contributed to the development of his right shoulder condition.”

Dr. Semkiw also noted that repetitive tasks performed with the right hand at work caused tendinitis in the right shoulder, which predisposed appellant to the development of a rotator cuff tear.

By decision dated January 13, 2010, the Office denied modification of its prior decisions. It found that the medical evidence from Dr. Semkiw was not based on an accurate factual history, as the only duties accepted were overhead dusting, mopping and sweeping. It was found that appellant did not perform all the duties as described in the physician’s report. Further, it was not adequately explained how the accepted duties performed since 2003 caused or contributed to the right shoulder condition.

### **LEGAL PRECEDENT**

The Office’s regulations define an occupational disease as “a condition produced by the work environment over a period longer than a single workday or shift.”<sup>5</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors

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<sup>4</sup> Appellant filed an occupational disease claim under File No. xxxxxx280 attributing his right shoulder condition to a work incident on August 17, 2006 while using a floor buffer. The Office adjudicated this aspect of the claim as one for traumatic injury which was denied in a September 13, 2007 decision.

<sup>5</sup> 20 C.F.R. § 10.5(q).

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 employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>6</sup>

### ANALYSIS

As noted in the Board's prior decision, appellant's claim in this case is premised on his November 1, 2006 occupational disease claim for a right shoulder condition he attributed to work duties performed since 2003. Appellant's claim pertaining to a shoulder injury arising from an August 17, 2006 traumatic incident at work was denied by the Office on September 17, 2007 and is not before the Board in the present appeal.<sup>7</sup>

In support of his claim, appellant submitted treatment notes from Dr. Semkiw, associated with Kaiser Permanente. He provided a review of appellant's prior treatment at the health facility in 2006, and reported that appellant also reported injuring his right shoulder at work on August 17, 2006 while using an industrial floor buffer. The 2008 treatment records from Dr. Semkiw initially addressed the traumatic incident alleged by appellant, but not accepted by the Office as factually established. On May 2, 2008 he noted that appellant also attributed his condition to cleaning, scrubbing, waxing, dusting and other work activities in 2003, stating his opinion that appellant's right shoulder condition was caused by repetitive motion of the right arm. This stated conclusion on causal relationship was not otherwise explained by the physician. It does not appear that Dr. Semkiw was provided an accurate history of the nature of the job duties appellant performed for his employer. It has been accepted that appellant performed mopping, sweeping and overhead dusting, but Dr. Semkiw did not explain how such repetitive work activities would be competent to cause impingement to the shoulder or result in the rotator cuff tear diagnosed on MRI scan in 2007.

These deficiencies were not cured by the physician's October 14, 2009 treatment notes. Again, Dr. Semkiw addressed causal relation in terms of the August 17, 2006 traumatic incident alleged in appellant's other claim. He noted that appellant performed other repetitive tasks with the right arm in his duties as a janitor in 2003 which "contributed to the development of his right shoulder condition." In assessing the weight of medical opinion, the Board considers the opportunity for and thoroughness of the physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the rationale expressed in support of the physician's opinion on causal relation.<sup>8</sup> In addressing causal relationship and contribution, Dr. Semkiw provided a conclusion without sufficient explanation of the nature of the repetitive motions involved in the accepted job duties or why,

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<sup>6</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>7</sup> *See* 20 C.F.R. § 501.2(c).

<sup>8</sup> *See Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

over a period of time, such work activities would produce impingement of the shoulder, a full thickness tear of the rotator cuff or contribute to any tendinopathy of the shoulder joint. The opinion provided by the physician is not sufficient to establish appellant's claim due to occupational factors in his federal employment. The treatment record from Dr. Pope did not further address the issue of causal relation; rather the physician noted that appellant's left shoulder had been erroneously identified as that injured in his employment.

On appeal, counsel contends that the medical evidence is sufficient to establish appellant's claim. As discussed, the Board finds that the medical evidence from Dr. Semkiw is not sufficiently detailed or well reasoned to meet appellant's burden of proof.

### **CONCLUSION**

The Board finds that appellant has not submitted sufficient medical evidence to establish his claim of an occupational disease to his right shoulder.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2010 decision of Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2010  
Washington, DC

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

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

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