



rotator cuff tear, right shoulder bursitis, cervical strain and right elbow epicondylitis.<sup>1</sup> Appellant returned to limited duty on October 11, 2008.

On June 30, 2009 appellant filed a recurrence, alleging that she experienced an increase in arm and neck pain as a result of her ongoing limited-duty activities. Her arms had to hang at her sides all day because her work chair provided insufficient support for them. Appellant had to turn her head constantly while sitting in one position for hours at a time and assisting travelers.

Appellant submitted a May 26, 2009 report from Dr. Robert Marc Fumich, a Board-certified orthopedic surgeon, who treated her following right rotator cuff repair under a prior claim. On examination, Dr. Fumich found full active and passive range of motion (ROM) in the right shoulder. In a June 23, 2009 report, he stated that appellant appeared wearing a neck collar. Appellant described two weeks of recurrent severe neck symptoms, with numbness in the right arm. Examination revealed spasm with decreased motion and triceps were decreased. On June 24, 2009 Dr. Fumich recommended that appellant stop working as of June 25, 2009 until approximately August 1, 2009 due to severe neck and shoulder pain.

Appellant filed claims for compensation for total disability for the period beginning June 25, 2009. The record also contains a July 15, 2009 functional capacity evaluation.

In a July 23, 2009 statement, appellant noted that she missed work due to pain and numbness in her right arm and her inability to turn her head because of stiffness and pain in her neck. She described her daily work activities in her limited-duty job, which she alleged contributed to increased pain. Appellant was required to sit on a stool for hours at a time. Her arms hung down because the stool provided no support for them. Appellant also had to lean forward to rest her arms on a wooden podium, resulting in numbness in her arms and a stiff neck. She was required to use her arms and turn her head constantly to point or communicate with people of other languages and to direct travelers toward their luggage. In June, the pain allegedly became so severe that appellant was in tears most of the time.

On August 7, 2009 the Office determined that appellant's claim constituted an occupational disease claim, rather than a claim for a recurrence of disability, as she cited new work activities as the cause of her claimed arm and neck conditions. It opened a new file under the instant File No. xxxxxx920.

In an August 13, 2009 report, Dr. Fumich described the results of a cervical magnetic resonance imaging (MRI) scan, which demonstrated a bulging disc at C5-6. Appellant submitted a September 2, 2009 report from Dr. Jerome B. Yokiell, a Board-certified anesthesiologist. On examination, Dr. Yokiell found tenderness to palpation in the midline cervical region and pain with ROM of the cervical spine and right shoulder. He diagnosed shoulder sprain and dysfunction and cervical radiculopathy.

---

<sup>1</sup> The Office accepted appellant's January 19, 2003 claim for left lateral epicondylitis under File No. xxxxxx433. Appellant's April 29, 2003 traumatic injury claim was accepted for right shoulder strain under File No. xxxxxx524. On February 22, 2010 the Office consolidated case File Nos. xxxxxx524, xxxxxx468, xxxxxx433 and xxxxxx920 under master File No. xxxxxx433.

By letter dated August 19, 2009, the Office informed appellant that the information submitted was insufficient to establish her claim, noting that there was no medical evidence based upon a complete and accurate factual history that established a disabling condition resulting from factors of her federal employment. It informed her that she had 30 days to submit additional evidence to support her claim.

By decision dated September 22, 2009, the Office denied appellant's claim, finding that the medical evidence failed to demonstrate that the claimed arm and neck conditions were caused by the accepted work-related activities.

On September 24, 2009 appellant, through her representative, requested an oral hearing.

Appellant submitted a September 24, 2009 report from Dr. Fumich, who noted her continued right shoulder and cervical pain. Dr. Fumich advised that she had increased symptoms after returning to a new limited-duty job, which required repetitive ROM of the head, neck and shoulder. He stated that appellant's chair had no arms, placing her shoulder in a continual gravity traction position all day and she had to turn her head repeatedly.

On September 29, 2009 Dr. Fumich provided work restrictions, which included limited head turning and wearing a cervical collar. He recommended that appellant be restricted from repetitive movement of the wrist and elbow, pulling or lifting more than 10 pounds and pushing more than 20 pounds two to four hours a day.

On October 15, 2009 Dr. Fumich informed the Office that his recommended restrictions were in place because of appellant's multiple recognized orthopedic problems due to work-related injuries including the shoulder, neck and elbows, coupled with the C5-6 disc bulge. He stated that the restrictions were for prevention of future injuries and to decrease symptomatology to the involved areas so that she could remain functional with activities of daily living. In a November 18, 2009 work capacity evaluation, Dr. Fumich stated that his restrictions were permanent.

On December 7, 2009 the Office informed the employing establishment that it intended to obtain a second opinion evaluation in order to evaluate whether appellant's work restrictions were adequate and to establish the current status of her accepted conditions.

During a January 7, 2009 telephonic hearing, appellant repeated her description of her limited-duty activities, which included constant turning and moving of her head, neck, shoulders and arms. Due to the repetitive movement required by her employment, the pain increased to a point such that she was unable to turn her head or move her arm.

By decision dated March 26, 2010, an Office hearing representative affirmed the September 22, 2009 decision, finding that the evidence of record was insufficient to establish that appellant sustained a new injury related to her employment duties leading to a need for disability from work. He stated that Dr. Fumich's act of releasing appellant to restricted duty "would belie the notion that [she] was actually disabled from the work in question or that any new medical condition occurred." Noting that the underlying cervical condition was not an accepted condition in appellant's prior claims, the hearing representative and Dr. Fumich did not

provide evidence as to whether and how appellant's underlying condition was actually changed by her work activity.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> 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.<sup>4</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 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 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. 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.<sup>5</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

Dr. Fumich's reports generally support appellant's claim for a new injury. On June 23, 2009 he noted that she had experienced two weeks of recurrent severe neck symptoms, with numbness in the right arm. Examination revealed spasm with decreased motion and triceps were decreased. On August 13, 2009 Dr. Fumich reviewed an MRI scan which showed evidence of a

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

bulging disc at C5-6, representing a worsening in appellant's condition due to her repetitive job activities. On September 24, 2009 he provided an accurate history of appellant's condition and injury consistent with that reported by her and noted that she had increased symptoms after returning to a new limited-duty job, which required repetitive motion of the head, neck and shoulder. Dr. Fumich stated that appellant's chair had no arms, placing her shoulder in a continual gravity traction position all day and she had to turn her head repeatedly. His reports reflect an understanding of appellant's light-duty job requirements and the nature of her job duties. While Dr. Fumich's reports do not contain a detailed explanation as to how appellant's employment activities in her light-duty job were causally related to her claimed conditions; they suggest, however, that her cervical and right shoulder conditions were at least aggravated by the required repetitive duties.

On September 2, 2009 Dr. Yokiell provided examination findings and diagnosed shoulder sprain and dysfunction and cervical radiculopathy. While his report does not contain an opinion as to the cause of appellant's diagnosed conditions, it is consistent with appellant's claim and Dr. Fumich's reports.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.<sup>6</sup> However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>7</sup>

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in describing that she sustained an exacerbation of an employment-related cervical and right shoulder condition and are not contradicted by any substantial medical or factual evidence of record. The Office found that her physicians did not seem to have a clear understanding of her work duties or her physical restrictions; but the Office did not provide her physicians with a statement of accepted facts which delineated her job functions and restrictions over the course of her employment. While the reports are not

---

<sup>6</sup> See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>7</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 6; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her claimed conditions and the identified employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.<sup>8</sup>

The hearing representative noted that appellant's underlying cervical condition was not an accepted condition in her prior claims, as represented by Dr. Fumich. As noted, however, the Office accepted her claim under File No. xxxxxx486 for cervical strain, among other conditions. Dr. Fumich's reports were based upon a proper factual background.

On remand, the Office should prepare a statement of accepted facts which includes a description of appellant's employment history, positions held and functions performed by her in each position. It should submit the statement of accepted facts to her treating physician, or to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment.

### CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

---

<sup>8</sup> See *Virginia Richard*, *supra* note 6; see also *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that in File No. xxxxxx468, the Office informed the employing establishment that it intended to obtain a second opinion evaluation in order to evaluate whether appellant's work restrictions were adequate and to establish the current status of her accepted conditions. The record does not reflect that the second opinion evaluation was ever performed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further development consistent with this decision.

Issued: March 11, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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