



## **FACTUAL HISTORY**

On January 25, 2010 appellant, then a 45-year-old transportation security officer screener, filed an occupational disease claim (Form CA-2) alleging that he developed a right elbow condition due to repetitive heavy lifting in his employment. He first became aware of his condition and of its relationship to his employment on January 22, 2010. Appellant notified his supervisor on January 25, 2010. The employing establishment controverted the claim stating that he had filed repeated claims that were denied by OWCP and only filed the present claim after being informed on January 21, 2010 that he would no longer have a light-duty assignment for impairment of his right elbow and left shoulder.<sup>2</sup>

By letter dated January 29, 2010, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

By decision dated March 5, 2010, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury. It found that the occupational exposure occurred as alleged; however, the medical evidence was not sufficient to relate his elbow condition to the accepted employment factors.

On March 25, 2010 appellant, through his attorney, requested reconsideration of the OWCP decision.

Appellant submitted medical reports dated between February 17, 2006 and January 26, 2010 from Dr. Sean Kaminsky, a Board-certified orthopedic surgeon, who detailed appellant's left shoulder injury and surgery, treatment post surgery and work restrictions. Dr. Kaminsky noted that appellant had complaints regarding his right elbow.<sup>3</sup>

On February 17, 2006 Dr. Kaminsky stated that appellant had complained of right elbow pain since November 20, 2005. Appellant reported that his pain might be a result of pulling heavy bags at work. Upon x-ray and physical examination, Dr. Kaminsky diagnosed appellant with right elbow lateral epicondylitis (tennis elbow).

In a March 14, 2006 medical report, Dr. Kaminsky reported that appellant was wearing a brace on his right elbow. In a May 5, 2006 medical report, he noted that appellant was still experiencing pain with his right elbow and that it was likely a work-related injury caused by his repetitive lifting activities.

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<sup>2</sup> The employing establishment referenced traumatic injury claim (Form CA-1) File No. xxxxxx915, CA-1 claim File No. xxxxxx447 and a recurrence of injury claim (Form CA-2a) File No. xxxxxx915.

<sup>3</sup> Appellant also submitted a March 20, 2006 arthrogram and magnetic resonance imaging scan report of his left shoulder from Dr. John Mazzella, Board-certified in neuroradiology, as well as numerous other medical reports from Dr. Kaminsky detailing his left shoulder injury. His left shoulder injury is not before the Board. Appellant has filed this occupational disease claim only for his right elbow. The medical evidence regarding his left shoulder is not relevant to this appeal.

In a February 17, 2008 medical report, Dr. Kaminsky noted that appellant had continued pain in his right anterolateral elbow which became worse with gripping, lifting and squeezing. He gave appellant an injection for his right elbow. On September 29, 2009 Dr. Kaminsky reported that appellant's right lateral epicondylitis had not improved despite injections.

In a May 19, 2009 medical note, Dr. Richard Pak, Board-certified in family medicine, reported that he had examined appellant since February 13, 2009 for tennis elbow. He opined that appellant's employment might have contributed to his injury because his job required heavy lifting on a daily basis.

By letter dated January 27, 2010, appellant requested an extension of his light-duty assignment which had expired on January 21, 2010. He reported that he was hired in 2005 and had experienced intermittent problems with his left shoulder and right elbow.

By letter dated February 16, 2010, appellant reported that he began working for the Transportation Security Administration (TSA) in 2005 and filed a workers' compensation claim in January 2006 for right tennis elbow, which was approved in September 2006. In December 2008, he filed a Form CA-2a for a recurrence of his right elbow injury. Appellant's recurrence claim was denied and he was informed by OWCP to file a new traumatic injury claim Form CA-1. He filed a Form CA-1 for an injury that occurred on December 12, 2008. The claim was subsequently denied by OWCP. Appellant was released to regular duty in June 2009 for his right elbow but continued with intermittent pain depending on his lifting activities. He then filed two occupational injury CA-2 forms, one for his left shoulder and one for the right elbow. Appellant submitted an official job description for a transportation security officer screener.

At the July 19, 2010 hearing, appellant testified that, while working for TSA in 2005, he sustained his right elbow epicondylitis, claim File No. xxxxxx915. He stated that he never had surgery on his elbow but that it never completely healed. Appellant wore a right arm brace but noted that heavy lifting at work increased his symptoms. His attorney argued that appellant had a preexisting condition which was aggravated by his employment. Counsel further noted that appellant initially filed a Form CA-2a but was told that he needed to file a new occupational injury claim instead.<sup>4</sup>

In medical reports dated February 13 to April 22, 2009, Dr. Pak reported that appellant complained of tennis elbow and wore a right arm brace. He also noted that appellant worked at the airport and constantly lifted luggage. Dr. Pak diagnosed lateral epicondylitis and opined that it was likely to be caused or aggravated by appellant's employment.

By decision dated September 3, 2010, OWCP's hearing representative affirmed the July 8, 2009 decision, finding that the medical evidence of record failed to establish the causal relationship between appellant's right tennis elbow and his employment factors.

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<sup>4</sup> Appellant's prior claim File No. xxxxxx915 is not explained or developed in the record before the Board in this appeal. Further, in this claim, he does not allege that his right elbow lateral epicondylitis was a recurrence of any prior injury. If appellant is claiming a recurrence, then he should file for recurrence of injury in another claim.

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; 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 or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>6</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.<sup>8</sup> 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>9</sup>

## ANALYSIS

OWCP accepted that appellant engaged in repetitive lifting in his employment activities as a transportation security officer screener. It denied his claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and his right elbow epicondylitis. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained right elbow epicondylitis causally related to factors of his employment as a transportation security officer screener.

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<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>6</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

In medical reports dated February 17, 2006 to January 26, 2010, Dr. Kaminsky reported that he had been treating appellant for right elbow pain since November 2005. He diagnosed right elbow lateral epicondylitis and treated appellant with an arm brace and injections. Dr. Kaminsky noted that the right anterolateral elbow pain was worse with gripping, lifting and squeezing. He opined that it was likely work related because of appellant's repetitive lifting.

The Board finds that the opinion of Dr. Kaminsky is not well rationalized. Though Dr. Kaminsky diagnosed appellant's injury, he failed to explain how appellant's employment activities contributed to or caused the right elbow lateral epicondylitis. His broad statement that appellant's injury was likely work related does not offer meaningful support to the conclusion that the employment exposure caused an injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.<sup>10</sup> The opinion of a physician supporting causal relationship must be based on a complete factual and medical background with affirmative evidence. The opinion must address the specific factual and medical evidence of record and explain the relationship between the diagnosed condition and the established incident or factor of employment.<sup>11</sup> Without medical reasoning explaining how appellant's employment duties caused the right elbow lateral epicondylitis, Dr. Kaminsky's reports are insufficient to meet appellant's burden of proof.<sup>12</sup>

In medical reports dated February 13 to May 19, 2009, Dr. Pak diagnosed appellant with tennis elbow. In a May 19, 2009 medical report, he opined that appellant's employment might have contributed to his injury because his job required excessive heavy lifting on a daily basis. Dr. Pak noted that he agreed with Dr. Kaminsky and that the injury was likely caused or aggravated by work.

Dr. Pak had no contact with appellant prior to February 13, 2009. His reports failed to address appellant's prior medical history and did not describe or explain appellant's medical condition except for relating the condition as told to him by appellant. While Dr. Pak stated that appellant's employment may have contributed to his injury because his job entailed excessive heavy lifting on a daily basis, Dr. Pak did not conclusively determine that appellant's diagnosed condition was work related and did not offer a detailed, rationalized opinion explaining the causal relationship between his condition and his employment factors.<sup>13</sup> Without medical reasoning supported by facts, his report is insufficient to meet appellant's burden of proof.<sup>14</sup>

While Dr. Kaminsky and Dr. Pak named some of appellant's work duties, mainly heavy lifting, they both failed to specify or consider how long appellant worked for the TSA, how many hours he lifted heavy luggage in a day, the periods and the frequency of other physical

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<sup>10</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>11</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996); *Robert Broome*, 55 ECAB 399 (2004).

<sup>12</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>13</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>14</sup> *Supra* note 12.

movements and tasks and the amount of time he took off. The physicians failed to explain how the work duties caused or aggravated appellant's medical condition. In a claim alleging an occupational disease based on repetitive trauma, the frequency and duration of the various activities is vital information.

Appellant's honest belief that work caused his medical problem is not in question but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the accepted factors of employment and appellant's right elbow lateral epicondylitis. Appellant has failed to meet his burden of proof.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his right elbow lateral epicondylitis is causally related to factors of his employment as a transportation security officer screener.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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