

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VERLENE A. ROBINSON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Kansas City, MO

*Docket No. 99-1000; Submitted on the Record;  
Issued June 7, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an injury on March 6, 1996 causally related to factors of her federal employment.

On March 26, 1996 appellant, then a 46-year-old processing control clerk, filed a traumatic injury claim alleging that on March 6, 1996, while lifting a basket of work with one arm, she sustained an injury to her right shoulder, neck and back while in the performance of duty.<sup>1</sup> Appellant stopped work on August 30, 1996 and returned to work on January 26, 1997. Appellant related on her CA-1 form that she had only been working with one arm, and as she applied too much pressure to that arm by lifting the basket of work, she sustained the alleged injury.<sup>2</sup>

Appellant submitted a letter report dated March 7, 1996 from Dr. Melvin Karges, a Board-certified specialist in physical medicine and rehabilitation, which detailed his examination of appellant and noted his diagnosis of right upper trapezius and rhomboid myofascial pain, and possible early impingement syndrome of the right shoulder. Dr. Karges indicated that appellant had been referred to him by Dr. Larry Frevert, a Board-certified orthopedic surgeon, for reevaluation due to the development of right shoulder symptoms on March 1, 1996.

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<sup>1</sup> Appellant also filed a recurrence of disability claim on April 12, 1996; however, it does not appear that appellant intended to claim a recurrence of a prior injury, since she noted March 6, 1996 as the date of the original injury, which is the same date as the traumatic injury alleged on her CA-1 form filed March 26, 1996.

<sup>2</sup> Appellant had filed a previous claim for compensation for an injury, which occurred on March 10, 1995, when she tripped over a basket at work and fell. She was initially diagnosed with lower extremity contusion, and later with cervical and lumbar strains, shoulder pain, left shoulder impingement syndrome, rotator cuff tear and arthritis. The Office accepted the previous claim for leg contusion. The Office has not issued any decision as to whether appellant sustained a left shoulder condition as a result of the March 10, 1995 employment incident.

Appellant also submitted Dr. Karges' attending physician's report dated April 8, 1996 based on the March 7, 1996 examination, which further noted appellant's diagnosis and that she had overextended her arm while working with one arm. On the form report, Dr. Karges indicated by check mark that appellant's condition was caused or aggravated by her employment, and noted his reasoning that appellant had developed the symptoms after she returned to work.<sup>3</sup>

Appellant also submitted treatment notes from Dr. Frevert, dated from April 12, 1996 until February 27, 1997, which evidenced his continued treatment of appellant's left shoulder and Dr. Karges' treatment of her right shoulder.

By letter dated May 13, 1997, the Office informed appellant that it needed additional factual and medical evidence in order to make a determination in her case. In particular, the Office requested a physician's opinion supported by a medical examination as to how the reported work incident of lifting a basket at work caused or aggravated the claimed injury.

Appellant submitted a letter from Dr. Karges dated June 13, 1997, along with additional treatment notes, in which he wrote:

"It is my understanding that on March 10, 1995 she tripped over baskets of files on the floor, falling and striking a metal shelf on her right side and catching herself with the right arm and left shoulder. Prior to this she apparently was not having problems with the arm. Since the injury, any sudden movements or a fall could cause an injury to the rotator cuff itself. There could be other potential causes of the rotator cuff tear, but this is related specifically to the incident on March 10, 1995. A sudden fall is a common mechanism of a rotator cuff injury and tear. Therefore, I believe this is related specifically to her original injury."

Appellant also submitted a letter report, in response to the Office's request, from Dr. Terrence Pratt, an attending physician, dated August 19, 1997, which referred to appellant's social and family history and her vocational status, and summarized the medical findings of his examination.

By decision dated October 1, 1997, the Office denied appellant's claim on the grounds that he did not establish that her condition was caused by the injury on March 6, 1996. The Office found that the medical evidence of record was insufficient to establish her claim, and specifically that Dr. Frevert's June 13, 1996 letter report related appellant's right shoulder condition to her injury on March 10, 1995, and not the injury claimed on March 6, 1996.

In a letter postmarked October 20, 1997, appellant requested a hearing before an Office hearing representative.

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<sup>3</sup> The Board notes that when Dr. Karges referred to appellant's symptoms having developed after she returned to work, he was most likely referring to her return from her prior injury of March 10, 1995. The record has established that appellant lost time from work after her rotator cup surgery in August 1995.

By decision dated October 28, 1998, the hearing representative affirmed the Office's October 1, 1997 decision after finding that appellant had failed to submit rationalized medical opinion evidence establishing a causal relationship between her diagnosed condition and the March 6, 1996 employment incident. The hearing representative found that the evidence, including an August 18, 1998 letter report by Dr. Theodore Foster, an osteopath, submitted at the hearing, mostly referred to her prior injury of the left shoulder on March 10, 1995 and not to the injury in question on March 6, 1996. The hearing representative further found that evidence submitted which referred to her right shoulder injury, the injury alleged in the instant claim, was deficient as it did not provide a rationalized medical opinion on causal relationship between her claimed injury and the work incident on March 6, 1996.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on March 6, 1996 causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury."<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>5</sup>

The Office, in determining whether an employee actually sustained an injury in the performance of duty, first analyzes whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. In this case, the Office accepted that the first component, the employment incident, occurred as alleged.<sup>6</sup> The second component is whether the employment incident caused a personal injury and this generally can only be established 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>7</sup>

In the instant case, appellant submitted a letter and attending physician's report dated March 7 and April 8, 1996, from Dr. Karges which diagnosed her condition as right upper trapezius and rhomboid myofascial pain, and possible early impingement syndrome of the right shoulder. In the form report, Dr. Karges further related that appellant had overextended her arm while working with one arm. He indicated by check mark that appellant's condition was caused or aggravated by her employment and noted appellant had developed the symptoms after she

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>6</sup> *Elaine Pendleton*, *supra* note 4.

<sup>7</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

returned to work. These two reports, however, do not support that an employment incident on March 6, 1996 caused appellant's right shoulder injury. Further, they are deficient of rationalized medical opinion on the issue of causal relation. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value.<sup>8</sup> Although Dr. Karges explained that appellant's activity of reaching overhead caused her condition and reasoned that there was a connection between the two because her symptoms developed after she returned to work, his explanation was insufficient to establish causal relationship. The Board has often stated that an award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's belief of causal relation.<sup>9</sup> To be of probative value a physician must address the specific facts and medical condition applicable to appellant's case and support his or her findings with sound medical reasoning.<sup>10</sup>

Appellant also submitted treatment notes from April 12, 1996 until April 24, 1997 by Dr. Karges and Dr. Frevert, and a separate letter report from Dr. Frevert dated June 13, 1997, in support of her claim. In the medical notes, neither doctor stated how the diagnosed condition was causally related to the March 6, 1996 employment incident and, in fact, neither made any reference at all to the incident. In Dr. Frevert's letter report, he discussed appellant's left shoulder injury on March 10, 1995, and recited the facts of that incident as alleged by appellant, and specifically related her injured rotator cuff to the March 10, 1995 incident; however, he never mentioned how her injury related to the incident on March 6, 1996. Thus, these medical documents are insufficient to meet appellant's burden of proof.

The remaining reports of record, from Dr. Pratt and Dr. Foster, do not relate any medical condition to the March 6, 1996 employment incident and thus are also insufficient to meet appellant's burden of proof. Dr. Pratt's report noted appellant's history and symptoms; however, it too did not refer at all to the employment incident in question or establish a causal relationship. Dr. Foster's August 18, 1998 report focused again, on the facts of the March 1995 incident and the injury sustained at that time, but never related her diagnosed condition to the March 6, 1996 incident.

To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated the diagnosed condition.<sup>11</sup> Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

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<sup>8</sup> *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>9</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537 (1953).

<sup>10</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated October 28, 1998 is affirmed.

Dated, Washington, D.C.  
June 7, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member