

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT P. SCHMITZ and DEPARTMENT OF AGRICULTURE,
Lexington, NE

*Docket No. 01-1682; Submitted on the Record;
Issued February 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury to his shoulder and arm causally related to his federal employment.

On July 27, 2000 appellant, then an inspector, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he injured his shoulder and arm muscles due to his federal employment. Specifically, he stated that "from June 9 to June 23, 2000 we were short of help making inspection work a heavier load. Since I was new worker this put more strain on my muscles." The claim was controverted by the employing establishment who noted that appellant only worked intermittently from May 21 to June 23, 2000 for a total of 104 hours. They noted that appellant was terminated on July 29, 2000.

By letter dated August 18, 2000, the Office requested that appellant provide further information. In response thereto, appellant submitted a letter wherein he indicated that the high stress and physical requirements of his work as a meat inspector, specifically using a knife for his work opening and inspecting lymph nodes, caused his injury.

Appellant also submitted an unsigned progress note from Dr. Mark K. McKenzie, a Board-certified orthopedic surgeon, dated September 28, 2000, wherein he opined that it was likely that appellant had rotator cuff tendinitis and that it was likely secondary to much of the cutting-type work that he does. In this report, Dr. McKenzie indicates that appellant "works as a meat inspector for the State of Nebraska." In a follow-up note dated October 18, 2000, Dr. McKenzie indicates that appellant "is not doing as much cutting as he was doing earlier," and that he is feeling better.

By decision dated November 8, 2000, the Office denied appellant's claim for compensation, as it found that appellant had not met the requirements for establishing that he sustained an injury as alleged.

The Board finds that appellant has not established that he sustained an injury due to his federal employment.

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 the 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.¹ The medical evidence required to establish a 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,² must be one of reasonable medical certainty³ 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.⁴ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁵

In the case at hand, appellant claims that he sustained his injury while doing cutting that was required in his position as a federal meat inspector. To support his allegation, he submitted unsigned progress notes by Dr. McKenzie. Furthermore, Dr. McKenzie's report would not be probative because it appears to be based on an inaccurate history. In his September 28, 2000 note, Dr. McKenzie indicates that appellant was working as a meat inspector. In his October 18, 2000 note, he indicates that appellant "is not doing as much cutting as he was doing earlier." However, pursuant to the controversion by the employing establishment on the reverse of appellant's claim form, appellant's last day of work was June 23, 2000, or three months before Dr. McKenzie's first report of record.

¹ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

³ *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁴ *William E. Enright*, 31 ECAB 426, 430 (1980).

⁵ *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

The decision of the Office of Workers' Compensation Programs dated November 8, 2000 is affirmed.

Dated, Washington, DC
February 7, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member