

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTOINETTE M. ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 00-2145; Submitted on the Record;
Issued January 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an emotional condition or hypertension causally related to her federal employment; (2) whether appellant sustained a right shoulder injury tear while in the performance of duty.

On December 20, 1996 appellant, then a 31-year-old mailhandler, filed a traumatic injury claim alleging that on November 7, 1996 she injured her right shoulder and tore her right rotator cuff while lifting and pushing heavy equipment and sacks of mail.¹

On December 20, 1996 appellant filed a traumatic injury claim alleging that her hypertension was due to being under stress from personnel and management on September 30, 1995.²

A November 7, 1996 magnetic resonance imaging (MRI) scan revealed a partial right rotator cuff tear.

In a December 18, 1996 report, Dr. R. Joseph Tamimie, an attending physician Board-certified in occupational medicine, noted a history of a partial right shoulder tear as diagnosed by MRI scan. He noted that appellant attributed this injury to her work duties although she had "no specific incident or injury at work."

By letter dated March 20, 1997, the Office of Workers' Compensation Programs informed appellant that the evidence was insufficient on her alleged shoulder injury and advised her as to the type of medical and factual evidence required. The Office gave her 20 days to submit the required information.

¹ This was assigned claim number A16-0290467.

² This was assigned claim number A16-0290464.

In a letter dated April 10, 1997, the Office informed appellant that the evidence was insufficient on her hypertension/stress claim and advised her as to the type of medical and factual evidence required. The Office gave her 20 days to submit the required information.

By decision dated April 30, 1997, the Office denied appellant's claim that she sustained an injury on November 7, 1996 on the basis that she failed to establish fact of injury. The Office found the evidence insufficient to establish that the claimed incident occurred at the time, place and in the manner alleged.

By decision dated April 30, 1997, the Office also denied appellant's stress claim on the basis that she failed to establish fact of injury.

Appellant requested an oral hearing on the denial of her shoulder claim by letter dated May 3, 1997. At the hearing on January 14, 1998, appellant testified that her hypertension was due to being required to work in the AFS dock in early September 1996 and that this work was contrary to her medical restrictions due to a military-connected knee condition. She also testified that on September 30, 1996 her supervisor required her to work full duty which included lifting up to 70 pounds when she was on light duty due to restrictions indicated by her physician. Lastly, appellant indicated that her treating physician mistakenly stated that she was first diagnosed with hypertension in 1994 when the correct date was in 1996.

In a January 7, 1998 report, Dr. Vidyullatha Reddy-Sadda, an attending physician, diagnosed hypertension and partial rotator cuff tear as diagnosed by a November 1996 MRI scan. He noted appellant "came in complaining of right shoulder pain after carrying postal sacks in November 1996."

By decisions dated February 23, 1998, the hearing representative affirmed the April 30, 1996 decisions finding that appellant failed to establish fact of injury in both her claims. Regarding her shoulder injury claim, the hearing representative found that her claim was actually an occupational claim that she failed to establish medical evidence to support that her condition was related to factors of her employment. The hearing representative further found that appellant had failed to establish any compensable factor in her stress and hypertension claim as well as failing to submit any supporting medical evidence.

In a letter dated May 1, 1998, appellant requested reconsideration of the denial of her claims.

By decision dated April 28, 1999, the Board granted appellant's request to dismiss her appeal.³

In a June 10, 1999 report, Dr. Reddy-Sadda diagnosed partial rotator cuff tear which he opined was "probably secondary to carrying postal sacs (sic) in November 1996."

Appellant requested reconsideration by letter dated October 25, 1999.

³ Docket No. 98-1893.

In a March 16, 2000 merit decision, the Office denied appellant's reconsideration request on the basis that evidence was insufficient to warrant modification of its February 23, 1998 hearing representative's decision.⁴

The Board finds appellant has not sustained an emotional condition or hypertension causally related to compensable work factors.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁷ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of

⁴ On June 13, 2000 appellant appealed to the Board. By decision dated September 14, 2000, the Office denied modification of its prior decisions. The Office's September 14, 2000 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. 20 C.F.R. § 501.2(c); *Douglas E. Billings*, 41 ECAB 880 (1990).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁰

In this case, appellant alleged that she sustained hypertension as a result of being required to work outside her restrictions and to work full duty on September 30, 1996.

The Board has held that being required to work beyond one's physical limitations could constitute a compensable employment factor if such activity is substantiated by the record.¹¹ However, appellant has failed to submit any documentation to support that she was required to work outside her physical restrictions or full duty when she was on light duty based on restrictions detailed by her physician.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.¹²

Next, the Board finds that appellant has not sustained an injury in the performance duty.

An employee seeking benefits under the 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 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.¹³ 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.¹⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.¹⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence.

¹⁰ *Id.*

¹¹ *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

¹² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

¹³ *Elaine Pendleton* 40 ECAB 1143, 1145 (1989).

¹⁴ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

¹⁵ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

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.¹⁷

Although appellant filed a traumatic injury claim, she noted that over a period of time she had been complaining of pain in her shoulder due to lifting the overload tubs and trays at work. Since appellant had cited work factors over a period of time as the cause of her condition, her claim is more accurately categorized as an occupational disease claim instead of a traumatic injury claim.¹⁸

The medical evidence of record consists, in its entirety, of a November 7, 1996 MRI scan diagnosing a right rotator cuff tear, a December 18, 1996 report by Dr. R. Joseph Tamimie and reports dated January 7, 1998 and June 10, 1999 by Dr. Reddy-Sadda, who diagnosed a torn rotator cuff of the right. Dr. Tamimie noted a history of rotator cuff tear in the right shoulder he indicated appellant believed was employment related. He diagnosed a partial rotator cuff tear and noted that appellant complained of right shoulder pain in November 1996 after carrying postal sacks. In a June 10, 1999 report, Dr. Reddy-Sadda concluded appellant's right rotator cuff tear was "probably secondary to carry postal sacs (sic) in November 1996."

While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such opinion be speculative or equivocal.¹⁹ The fact that the etiology of a disease or condition is unknown or obscure does not shift the burden of proof to the Office to disprove an employment relationship. Neither does the absence of a known etiology relieve appellant of the burden of establishing a causal relationship, by the weight of the evidence, which includes an affirmative medical opinion based on the material facts with supporting rationale.²⁰

In support of her claim, appellant submitted reports by Dr. Reddy-Sadda, Dr. Tamimie and a November 7, 1996 MRI scan diagnosing a right rotator cuff tear. Dr. Reddy-Sadda's reports dated January 7, 1998 and June 10, 1999 note appellant's right rotator cuff tear, but fail to include a rationalized medical opinion relating appellant's condition to her employment. In his June 10, 1999 report, Dr. Reddy-Sadda opined that appellant's rotator cuff tear probably was caused by her carrying mail sacks while in his January 7, 1998 report, he noted that appellant sought medical treatment for her complaints of right shoulder pain in November 1996 after

¹⁷ *Id.*

¹⁸ The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift, *see* 20 C.F.R. § 10.5(a)(14-16); 20 C.F.R. § 10.20.

¹⁹ *Judith L. Montage*, 48 ECAB 292, 294 (1997).

²⁰ *Id.*

carrying postal sacks. Dr. Tamimie's December 18, 1996 diagnosed a right rotator cuff tear which he indicated appellant attributed to her employment.

The Board finds that the reports of Drs. Reddy-Sadda and Tamimie are of diminished probative value as they do not contain a rationalized opinion detailing how appellant's condition was related to her employment. Dr. Waivers failed to provide a definitive opinion on the cause of appellant's right rotator cuff tear beyond noting that it probably was employment related. Therefore his opinion is speculative and equivocal in nature and thus insufficient to establish that appellant sustained an injury due to an employment factor.²¹ Dr. Tamimie's opinion is insufficient to support appellant's burden as he provided no opinion as to the cause of her condition beyond noting that she attributed it to her work.

Despite being advised by the Office of the deficiencies in her medical evidence, appellant failed to submit a rationalized opinion addressing the issue of causal relationship and consequently failed to meet her burden of proof. Accordingly, the Office properly denied the claim.²²

²¹ *Jennifer L. Sharp*, 48 ECAB 209 (1996) (medical opinions which are speculative or equivocal in nature have little probative value).

²² The Board's review on appeal is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). The evidence submitted by appellant on her appeals to the Board and the Office was not in the record when the Office issued its March 16, 2000 decision; therefore, the Board cannot review this evidence.

The March 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.²³

Dated, Washington, DC
January 18, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

²³ Appellant was approved for disability retirement by the Office of Personnel Management on July 22, 1999.