

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERTA A. FLEMING and U.S. POSTAL SERVICE,  
POST OFFICE, Fairbanks, AK

*Docket No. 01-1353; Submitted on the Record;  
Issued May 23, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a right upper extremity condition in the performance of duty.

On April 6, 2000 appellant, then a 46-year-old clerk, filed an occupational injury claim alleging that she sustained epicondylitis and shoulder pain in her right upper extremity due to performing repetitive duties at work. Appellant indicated that she performed repeated lifting, carrying and throwing of mailbags and other items weighing up to 70 pounds; she noted that these duties required constant twisting of her hands and arms.<sup>1</sup> By decision dated June 28, 2000, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence in support thereof. By decision dated and finalized January 8, 2001, an Office hearing representative affirmed the Office's June 28, 2000 decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right upper extremity condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of 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

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<sup>1</sup> This claim bears the file no. A14-351921. On April 18, 2000 appellant filed another similar occupational injury claim (A14-351922). The files for the two claims have been combined into the present file. The Office of Workers' Compensation Programs had previously accepted that appellant sustained a right biceps strain at work on October 3, 1998.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each 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 a causal relationship 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>

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a right upper extremity condition in the performance of duty.

In support of her claim, appellant submitted medical documents detailing the treatment of her right upper extremity, including an April 26, 2000 report of Dr. Larry Harikian, an attending physician specializing in internal medicine. These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship or otherwise indicate that appellant sustained an employment injury.<sup>6</sup> Appellant also submitted numerous reports of registered nurses, physician assistants and physical therapists. However, as causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician cannot be considered by the Board in adjudicating that issue.<sup>7</sup>

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<sup>4</sup> See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>6</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>7</sup> *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993). The Office provided appellant several opportunities to provide probative medical evidence, but appellant failed to provide such evidence.

The January 8, 2001 and June 28, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.<sup>8</sup>

Dated, Washington, DC  
May 23, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> Appellant submitted additional evidence after the Office's January 8, 2001 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).