

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERIC N. COOK and U.S. POSTAL SERVICE,
MAIN POST OFFICE, St. Louis, MO

*Docket No. 03-705; Submitted on the Record;
Issued April 8, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty.

On July 11, 2002 appellant, then a 56-year-old custodial laborer, filed an occupational disease claim alleging that on May 1, 2002 he realized that his degenerative arthritis of the right shoulder and of the acromioclavicular joint were due to factors of his employment. In support of his claim, appellant submitted a description of his work duties. He also submitted an April 18, 2002 report from Dr. Robert S. Kramer, a Board-certified orthopedic surgeon, revealing a history of his injury, medical treatment and social and family background. Dr. Kramer noted his findings on physical and objective examination and diagnosed right shoulder pain and possible rotator cuff tear. He recommended that appellant undergo magnetic resonance imaging (MRI) of the right shoulder for further evaluation of the rotator cuff structures and the right shoulder.

In a letter dated July 29, 2002, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit additional factual and medical evidence supportive of his claim within 30 days. By letter of the same date, the Office requested that the employing establishment submit factual evidence regarding appellant's claim.

By letter dated October 3, 2002, appellant responded to the Office's request by resubmitting Dr. Kramer's April 18, 2002 report. He also submitted treatment notes dated April 4, 2002 regarding his right shoulder, a disability certificate of the same date and a January 3, 2002 report indicating that he suffered from an emotional condition due to his service in Vietnam from Ronald Piontek, an adult nurse practitioner. In addition, appellant submitted Dr. Kramer's April 10, 2002 disability certificate indicating that he was released to regular duty on that date and diagnosing right rotator cuff tear. An undated disability certificate from Mary Greteman, a radiologic technologist, indicated that appellant could return to work on April 24, 2002. An April 8, 2002 x-ray report of Dr. Deborah T. Wadsworth, a Board-certified radiologist, indicated a normal right shoulder, but recommended an MRI scan. Dr. Kramer's

May 15, 2002 report revealed his findings on physical examination, a diagnosis of right shoulder degenerative arthritis of the acromioclavicular joint and subacromial impingement.

Appellant also submitted documents regarding his request for leave under the Family Medical Leave Act and correspondence with the employing establishment requesting him to complete a leave form to cover his absence from work during the period August 9 through October 1, 2002.

By decision dated November 25, 2002, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed conditions in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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.⁴

Appellant did not submit sufficient medical evidence to establish that his right shoulder conditions were caused by factors of his employment. Dr. Kramer's April 18, 2002 report

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

finding that appellant had right shoulder pain and possible rotator cuff tear did not provide a definitive diagnosis, rather it merely indicated that appellant had symptoms of pain and may have had a rotator cuff tear.

Dr. Kramer's April 10, 2002 disability certificate revealing a diagnosis of right rotator cuff tear failed to explain how or why the diagnosed condition was caused by factors of appellant's employment.⁵ Similarly, his May 15, 2002 report, diagnosing right shoulder degenerative arthritis of the acromioclavicular joint and subacromial impingement, failed to address whether these conditions were caused by factors of appellant's employment.

Mr. Piontek's April 4, 2002 treatment notes regarding appellant's right shoulder, disability certificate of the same date and January 3, 2002 report concerning appellant's emotional condition are of no probative medical value inasmuch as a nurse practitioner is not a "physician" within the meaning of the Act.⁶ Similarly, Ms. Greteman's undated disability certificate is of no probative medical value because a radiologic technologist is not a "physician" under the Act.⁷

The April 8, 2002 x-ray report of Dr. Wadsworth revealed a normal right shoulder.

The Office advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a rationalized medical opinion to describe or explain how his shoulder conditions were caused by factors of his federal employment. As appellant has failed to submit any probative medical evidence establishing that he sustained an injury in the performance of duty, the Office properly denied his claim for compensation.⁸

⁵ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

⁶ 5 U.S.C. § 8101(2) which defines "physician" as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; *see also Joseph N. Fassi*, 42 ECAB 231 (1991) (medical evidence signed only by a registered nurse or nurse practitioner is generally not probative evidence).

⁷ 5 U.S.C. § 8101(2).

⁸ The Board notes that appellant submitted new evidence with his appeal. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

The November 25, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member