

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNVEL L. JACKSON-MILES and DEPARTMENT OF VETERANS
AFFAIRS, REGIONAL OFFICE, Los Angeles, CA

*Docket No. 03-1200; Submitted on the Record;
Issued August 4, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof to establish that her right shoulder bursitis and tendinitis are causally related to factors of her federal employment.

On July 2, 2002 appellant, a 59-year-old eligibility clerk, filed an occupation disease claim alleging that her right shoulder bursitis and tendinitis were due to her employment duties of lifting files. She stated that she first realized her condition was employment related on April 18, 1994.

By letter dated July 19, 2002, the Office of Workers' Compensation Programs advised appellant that the information submitted was insufficient to meet her burden of proof and requested that she submit additional factual and medical information, including a comprehensive medical report from her physician. The Office allowed 30 days for appellant to submit the requested medical and factual evidence. Appellant did not respond within the allotted time.

By decision dated August 23, 2002, the Office denied appellant's claim on the basis that she failed to file her claim in a timely manner.

Subsequent to the August 23, 2002 decision, the Office received factual and medical evidence from appellant. Appellant requested reconsideration in an undated letter received on October 4, 2002 and submitted additional medical and factual evidence in support of her claim.

In a decision dated October 18, 2002, the Office modified the August 23, 2002 decision to find that appellant had timely filed her claim. However, the Office rejected appellant's claim on the grounds that the record contained no medical evidence causally relating her diagnosed right shoulder bursitis and tendinitis to factors of her federal employment.

The Board finds that appellant has not met her burden of proof to establish that her right shoulder bursitis and tendinitis are causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³ As part of this burden, the claimant must present rationalized medical evidence, based upon a specific and accurate history.⁴ Rationalized medical evidence is evidence which relates a work incident to a claimant's condition, with stated reasons of a physician.⁵ In the instant case, appellant did not provide the required medical evidence to establish a *prima facie* claim for compensation.

The medical evidence submitted by appellant in support of her claim consisted of work restriction letters, form reports, physical therapy reports and progress notes from Kaiser Permanente which detailed medical treatment during the period 1994 to 2002. Dr. James Korb, a Board-certified internist, in various progress notes during the period 1997 to 2001 diagnosed bursitis in both shoulders. In a June 12, 2002 disability claim form, Dr. Korb, diagnosed right shoulder bursitis and tendinitis which he concluded was not related to her employment. Dr. Korb, in a report dated June 7, 2002, diagnosed right shoulder bursitis and tendinitis which he concluded was not related to her employment. Appellant was diagnosed with right shoulder strain in reports from Kaiser Permanente dated June 25, March 12, July 2, August 1 and 16, 2002. In the March 12, 2002 report, Dr. Korb stated that he could not attribute appellant's condition to her work "within reasonable medical probability." In a July 2, 2002 disability claim form, Dr. Carl R. Kamb, a Board-certified orthopedic surgeon, diagnosed severe chronic right shoulder adhesive capsulitis and right shoulder impingement syndrome. Dr. Kamb checked "no" to the question of whether the condition was due to appellant's employment.

While appellant submitted a factual statement explaining the onset of her right shoulder bursitis and tendinitis and submitted medical evidence from Kaiser Permanente's report diagnosing right shoulder bursitis and tendinitis, the record is devoid of any medical evidence relating her condition to factors of her employment. Rather, Drs. Lamb and Korb specifically stated in disability forms that her condition was not employment related and a March 12, 2002 report concluded that her condition was not employment related. The Office provided appellant

¹ 5 U.S.C. §§ 8101-8193

² *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ The Office's regulations clarify that a traumatic injury refers to injury caused by a specific event or incident or series of events or incidents occurring within a single workday or shift, whereas an occupational disease refers to injury produced by employment factors which occur or are present over a period longer than a single workday or shift; *see* 20 C.F.R. § 10.5(ee).

⁴ *Virginia Richard (Lionel F. Richard)* 53 ECAB ____ (Docket No. 01-107, issued March 8, 2002).

⁵ *Louis T. Blair, Jr.*, 54 ECAB ____ (Docket No. 02-2289, issued January 16, 2003); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

with opportunities to cure the deficiencies in the claim, but at the time of the October 18, 2002 decision, she failed to submit any additional medical evidence pertaining to her claim for right shoulder bursitis and tendinitis. Appellant, therefore, has failed to meet her burden of proof to establish a *prima facie* claim that she developed a medical condition as a result of factors of her federal employment.

The October 18, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁶

Dated, Washington, DC
August 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ The Board notes that subsequent to the October 18, 2002 decision appellant submitted new evidence. The Board has no jurisdiction, however, to review evidence for the first time on appeal that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).