

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMA JACKSON and U.S. POSTAL SERVICE,
ROYAL OAK PROCESSING & DELIVERY CENTER, Troy, MI

*Docket No. 03-1945; Submitted on the Record;
Issued October 8, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained a right shoulder injury due to her federal employment.

Appellant, a 40 year-old clerk, filed a notice of traumatic injury alleging that on December 9, 2002 she injured her right side and upper back while dispatching mail to the dock. The Office of Workers' Compensation Programs requested additional factual and medical evidence in a letter dated January 2, 2003. By decision dated February 4, 2003, the Office denied appellant's claim finding that the claimed events occurred as alleged, but that appellant had failed to submit medical evidence to establish a *prima facie* claim.

Appellant requested reconsideration on March 5, 2003 and submitted additional medical evidence. By decision dated May 2, 2003, the Office denied modification of the February 4, 2003 decision.¹

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a right shoulder injury due to her federal employment.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.²

¹ On appeal to the Board appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

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

The Office accepted that appellant actually experienced the employment incident of dispatching mail in the performance of duty on December 9, 2002. However, the Office found that appellant failed to submit sufficient medical evidence to meet her burden of proof.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.³ 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. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

In support of her claim, appellant submitted several reports from Wilfred Regan, a physician's assistant. A physician's assistant is not a physician as defined under the Federal Employees' Compensation Act.⁵ Therefore, these reports cannot be considered as probative by the Board in resolving the question of the causal relationship between appellant's diagnosed conditions and her accepted employment activities.⁶ As this was the only evidence providing a diagnosis of appellant's condition at the time of the Office's February 4, 2003 decision, the Office properly found that appellant had not submitted sufficient medical evidence to establish a *prima facie* claim.

Appellant submitted reports dated February 20, 2003 from Dr. Richard T. Perry, a Board-certified orthopedic surgeon, diagnosing right rotator cuff tendinitis. He described appellant's history of injury as working dispatching, when she "apparently had an acute onset of pain after she was lifting or reaching something." Dr. Perry found no visible atrophy, ecchymosis or swelling of the shoulder and noted that appellant had fairly full passive motion. He found a positive impingement sign to both Neer and Hawkins' maneuvers, but no other clinical signs. Dr. Perry diagnosed rotator cuff tendinopathy. In a report dated March 20, 2003, he noted that appellant's examination demonstrated significant apprehension and pain, particularly with impingement signs as well as a mildly positive O'Brien test with pain in the axial. Dr. Perry diagnosed continued mild rotator cuff tenopathy.

³ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁴ *James Mack*, 43 ECAB 321 (1991).

⁵ 5 U.S.C. §§ 8101-8193, 8101; *John D. Williams*, 37 ECAB 238 (1985).

⁶ *Arnold A. Alley*, 44 ECAB 912, 921 (1993).

The medical evidence in the record is insufficient to meet appellant's burden of proof. While Dr. Perry noted her history of injury and diagnosed a medical condition, he failed to opine whether or not he believed that appellant's condition was causally related to the employment activity of dispatching on December 9, 2002. As noted above, the medical evidence necessary to establish a claim must include an opinion on the causal relationship between the diagnosed condition and the employment activities accepted as factual by the Office. Dr. Perry did not provide a reasoned explanation of how and why appellant's accepted employment activities caused or contributed to the diagnosed condition. As there is no medical opinion evidence addressing the issue of a causal relationship between appellant's diagnosed condition and her accepted employment activities and no accompanying medical rationale in support of such an opinion, appellant has failed to meet her burden of proof and the Office properly denied her claim.

The May 2 and February 4, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 8, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member