

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**EDDIE J. KING, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Houston, TX, Employer**

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**Docket No. 05-599  
Issued: May 17, 2005**

*Appearances:*  
*Eddie J. King, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On January 13, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated December 17, 2004, denying his claim for a bilateral shoulder strain on August 22, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the December 17, 2004 merit decision.

**ISSUE**

The issue is whether appellant sustained a bilateral shoulder strain on August 22, 2004 causally related to factors of his employment.

## **FACTUAL HISTORY**

On September 28, 2004 appellant, then a 55-year-old food service worker, filed an occupational disease claim alleging that he sustained an injury to both shoulders beginning on August 22, 2004 due to pushing and pulling food carts.

By letter dated October 15, 2004, the Office asked appellant to submit additional information in support of his claim, including a comprehensive medical report with a rationalized opinion as to how his shoulder strain was causally related to factors of his employment.

In two reports dated September 28, 2004, received by the Office on October 18 and November 8, 2004, a physician's assistant provided a diagnosis of a bilateral shoulder strain and indicated that appellant could return to work on that date. The history given by appellant was that he was pushing a food cart on September 28, 2004 when he felt a pain in both shoulders.

In a form report dated October 26, 2004, Dr. Leland A. Winston, a Board-certified orthopedic surgeon, diagnosed a bilateral shoulder strain. The section of the form reserved for the employee's description of the injury indicated chronic pain and strain from pushing and pulling 317-pound carts. Dr. Winston did not provide a medical opinion as to the cause of the shoulder strain.

In a written statement dated October 26, 2004, Stephen Gallardo, chief of food production/service, noted appellant's allegation that his shoulder condition began on August 22, 2004. He stated that appellant did not begin pushing food carts until August 24, 2004. Prior to August 24, 2004, his tasks included pouring beverages and delivering food trays.

By decision dated December 17, 2004, the Office denied appellant's claim on the grounds that the evidence failed to establish that he sustained an injury on August 22, 2004 causally related to factors of his employment.

## **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>2</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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joseph W. Kripp*, 55 ECAB \_\_\_\_ (Docket No. 03-1814, issued October 3, 2003); *Walter D. Morehead*, 31 ECAB 188 (1979) (occupational disease or illness).

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.<sup>3</sup>

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>4</sup> The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the claimant's belief that the condition was caused or aggravated by employment conditions is sufficient to establish causal relationship.<sup>5</sup>

### ANALYSIS

Appellant alleged that he sustained an injury to both shoulders beginning August 22, 2004 due to pushing and pulling food carts.

In a written statement dated October 26, 2004, Mr. Gallardo, an employing establishment manager, stated that appellant did not begin pushing food carts until August 24, 2004. This statement casts doubt on appellant's allegation that his shoulder strain began on August 22, 2004 and on the validity of his claim for a work-related injury.<sup>6</sup>

In two reports dated September 28, 2004, a physician's assistant provided a diagnosis of a bilateral shoulder strain. The history given by appellant was that he was pushing a food cart on September 28, 2004 when he felt a pain in both shoulders. This history does not support appellant's claim that his injury occurred on August 22, 2004. Furthermore, the Board notes that reports from a physician's assistant are of no probative value on the issue of causal relationship under the Act. A "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law and chiropractors only to the extent that their reimbursable services are limited to treatment of a subluxation as demonstrated by x-ray to exist.<sup>7</sup> Lay individuals such as

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<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *James D. Carter, Jr.*, 43 ECAB 113 (1991).

<sup>5</sup> *Robert A. Boyle*, 54 ECAB \_\_\_\_ (Docket No. 02-2177, issued January 27, 2003); *Donna L. Mims*, 53 ECAB 730 (2002).

<sup>6</sup> *Karen E. Humphrey*, 44 ECAB 908 (1993).

<sup>7</sup> 5 U.S.C. § 8101(2).

physicians' assistants, nurse practitioners and social workers are not competent to render a medical opinion.<sup>8</sup> Therefore, the reports from the physician's assistant are not sufficient to establish that appellant sustained a work-related bilateral shoulder strain on August 22, 2004 causally related to factors of his employment.

In an October 26, 2004 report, Dr. Winston diagnosed a bilateral shoulder strain. However, Dr. Winston did not provide a medical opinion as to the cause of the shoulder strain.

Therefore, his report is not sufficient to establish a work-related shoulder strain on August 22, 2004.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a shoulder strain on August 22, 2004 causally related to factors of his employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 17, 2004 is affirmed.

Issued: May 17, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See *Robert J. Krstyen*, 44 ECAB 227 (1992).