

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

PRISCILLA D. COLBERT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 06-47
Issued: March 7, 2006**

Appearances:

*John P. Lutseck, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 7, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated September 8 and July 7, 2005, denying her occupational injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On June 29, 2004 appellant, then a 47-year-old computerizing forwarding system clerk, filed an occupational injury claim alleging that her right shoulder hurt as a result of heavy lifting and repetitive keying. She worked in a limited-duty capacity for four hours a day, but had been released to eight hours with restrictions. Appellant identified the date of injury as June 17, 2004

and indicated that she first realized her right shoulder condition was caused or aggravated by her employment on June 19, 2004.

In a separate statement, appellant noted that she felt discomfort and pain in her right shoulder and arm after working for most of the day. She indicated that her job consisted of lifting 25 to 30 pounds, twisting, bending and repetitive keying and that, when she informed her supervisor that her restrictions were too much for her, her supervisor insisted that she provide updated medical restrictions. Appellant was not able to see her physician immediately, but was able to continue working after applying cold compresses to her right shoulder and resting. She went to a local emergency room and was given work restrictions. A copy of a June 28, 2004 report from Beeghly Emergency Services was submitted which diagnosed a right shoulder strain and provided physical restrictions.

The employing establishment controverted the claim on July 1, 2004. It noted that appellant had a separate workers' compensation claim from which she had recently returned to full duty, although she did not perform the full duties of her "bid job."¹ In a June 29, 2004 letter, her supervisor stated that appellant had been released to full duty on May 3, 2004 with restrictions and that she did not perform any tasks outside her restrictions. A copy of appellant's job description was provided.

By letter dated July 6, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested additional information, including a detailed description of the employment-related activities which she believed contributed to her condition and a medical report providing a diagnosis and an opinion as to the cause of her diagnosed condition.

Appellant submitted an August 3, 2004 statement in which she reported that the duties of her restricted duty job, which included lifting 25 to 30 pounds, twisting, bending and repetitive keying, were the cause of her claimed injury. She also submitted copies of leave slips dated June 21 and 28, 2004, together with work restriction slips and medical notes from Beeghly Emergency Services dated June 21 and June 28, 2004. The history of injury was noted as being due to repetitive keying on a mechanical machine and contained the diagnosis of a right shoulder injury, possible rotator cuff impingement and work restrictions. The coding summary diagnosed a shoulder upper arm injury due to overexertion.² A June 21, 2004 x-ray showed negative results. In the June 28, 2004 notes, Dr. Adrian Ieraci, an osteopath, diagnosed a right shoulder strain.

In an August 3, 2004 report, Steven D. Novicky, a chiropractor, noted that the injury occurred at work on June 17, 2004 and reported that appellant has to lift and carry mail weighing approximately 20 pounds, key the mail and pitch the mail loads on a repetitive basis throughout an eight-hour shift, five days a week. He listed his examination findings and provided a diagnosis of right shoulder sprain/strain. Dr. Novicky opined that appellant's right shoulder

¹ The other claim, No. 09-2010715, is not before the Board on the present appeal.

² The physician's signature is illegible on these reports.

sprain/strain were the result of her occupational duties and that her symptoms were characteristic of injuries sustained in repetitive action duties.

In a July 9, 2004 statement, appellant's supervisor disputed her claim of heavy lifting, noting that appellant had not been required to prep the mail since she returned to full-duty status. She further indicated that prepping the mail was not over 20 pounds, as the heaviest tub weighed 17 pounds and the heaviest tray weighed 16 pounds, which were well below appellant's June 4, 2004 lifting restriction of 25 pounds. With respect to appellant's claim of repetitious keying, her supervisor contended that she was her least productive employee, having keyed approximately 46 hours total machine keying time in 6 weeks. She additionally stated that the machines in the computerizing forwarding system unit were clerk driven and, thus, there was no equipment within the unit which would require a clerk to key faster than her capabilities. The supervisor further indicated that clerks were provided a 15-minute break for every 45 minutes of keying.

By decision dated September 29, 2004, the Office denied appellant's claim on the grounds that she failed to establish that her diagnosed medical condition was causally related to an established work-related event.

On October 28, 2004 appellant requested a review of the written record. She provided copies of evidence previously of record together with duty status reports dated September 22, 2004 and February 4, 2005 which diagnosed a right shoulder impingement.³

By decision dated July 7, 2005, an Office hearing representative affirmed the September 29, 2004 decision.

On August 18, 2005 appellant, through her attorney, requested reconsideration. A copy of Dr. Novicky's August 3, 2004 report was resubmitted to the record.

In a merit decision dated September 8, 2005, the Office denied modification of its July 7, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every

³ The physician's signature is illegible in these reports.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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 causal relationship, generally, 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.⁷

ANALYSIS

Appellant has submitted insufficient medical evidence to establish that her medical condition was caused or aggravated by factors of her federal employment.

Appellant submitted emergency service reports and duty status reports which indicated that she was treated for a right shoulder strain and a right shoulder impingement. However, to the extent that these reports were issued by physicians, there is no discussion in any of the reports explaining how identified factors of her employment, such as keying or lifting, caused or contributed to her condition.⁸ The record contains no rationalized medical opinion explaining how the implicated employment factors caused appellant's right shoulder condition.

Appellant submitted an August 3, 2004 report from Dr. Novicky, a chiropractor. He diagnosed a right shoulder sprain/strain which he opined was causally related to her work duties. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.⁹ As Dr. Novicky did not treat appellant for a spinal subluxation based on x-rays, his opinion with regards to appellant's shoulder condition is of no probative value.¹⁰ Therefore,

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

⁸ *Roy L. Humphrey*, 57 ECAB ____ (Docket No. 05-1928, issued November 23, 2005).

⁹ 5 U.S.C. § 8101(2). See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

¹⁰ *Id.*

his report does not constitute competent medical evidence and does not establish appellant's claim.

Appellant has expressed her belief that her shoulder condition resulted from heavy lifting and repetitive keying. Her supervisor disputed that appellant actually performed the duties that she alleged were the cause of her symptoms and substantiated her disagreement with test results and appellant's production records. While appellant did not provide any independent documentation to support her version of the alleged work activities, it is not disputed that she performed keying and lifting activities. However, she has not submitted medical evidence explaining how these particular job duties would have caused or aggravated a specific medical condition. The Board has held that 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.¹¹ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

The Office advised appellant that she must submit a comprehensive medical report that contained her physician's reasoned opinion on the cause of her claimed condition. She did not submit rationalized medical evidence addressing how her claimed right shoulder condition was caused or aggravated by her employment. Appellant has not met her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

¹¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers Compensation Programs dated September 8 and July 7, 2005 are affirmed.

Issued: March 7, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board