



In support of her claim, appellant submitted an employee health record and a June 22, 2005 duty status report (Form CA-17) by Dianne Keller, physician's assistant, diagnosing right trapezius spasm.

On July 13, 2005 the Office informed appellant that the evidence was currently insufficient to support her claim as the record contained no diagnosis of any condition due to the June 15, 2005 incident. Appellant was advised to submit a physician's opinion containing a diagnosis with an explanation of how the diagnosed condition was causally related to the June 15, 2005 employment incident.

The Office subsequently received x-ray interpretations dated July 15, 2005 of the shoulder, cervical spine, thoracic spine and lumbar spine and a July 27, 2005 report by Dr. Robert L. Gardiner, a treating physician, who requested a magnetic resonance imaging (MRI) scan for appellant and opined that she injured her neck and right shoulder while moving a patient. He noted that appellant "has a lost (sic) of ROM [range of motion] of both body parts."

By decision dated August 15, 2005, the Office denied appellant's claim on the grounds that she failed to establish that the diagnosed condition was causally related to the accepted employment incident.

Following the August 15, 2005 decision, the Office received additional medical and factual evidence including an August 3, 2005 Texas Workers' Compensation work status report, an undated addendum to initial diagnoses, by Dr. Gardiner, reports dated July 12 and August 3, 2005 by Brian Saul, a chiropractor, and rehabilitation therapy notes.

In the August 3, 2005 Texas Workers' Compensation work status report, Dr. Gardiner diagnosed right shoulder rotator cuff tear and cervical compression fracture. He reported the injury as occurring when appellant was lifting a patient from one gurney to another.

In a report dated July 12, 2005, Dr. Saul diagnosed cervical, right shoulder, thoracic and myospasms. He reported that appellant injured herself on June 15, 2005 while helping to transfer a patient. A physical examination revealed decreased cervical and spinal range of motion and tender and taut muscles in the cervical spine and right shoulder girdle area. On August 3, 2005 Dr. Saul diagnosed shoulder pain and stiffness, muscle spasm and difficulty with shoulder movement. The chiropractor attributed appellant's shoulder symptoms to the June 15, 2005 employment injury.

On September 26, 2005 appellant requested reconsideration and submitted evidence in support of her claim including a September 22, 2005 report by Dr. James Barry diagnosing mild right carpal tunnel syndrome.

Appellant subsequently submitted various rehabilitation therapy notes, an October 11, 2005 Texas Workers' Compensation work status report by Dr. Gardiner and an August 23, 2005 report by Dr. Saul. Dr. Gardiner, in the work status report, diagnosed cervical strain and compression fracture of the cervical vertebrae. He noted that the injury occurred while appellant was moving a patient from a gurney to a shower bed on June 15, 2005. On August 23, 2005 Dr. Saul diagnosed S/S cervical, S/S right shoulder, S/S thoracic and myospasms. He reported that appellant injured herself on June 15, 2005 while helping to transfer a patient. A physical

examination revealed decreased cervical and spinal range of motion and tender and taut muscles in the cervical spine and right shoulder girdle area.

On December 27, 2005 the Office denied appellant's request for modification.

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>1</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers compensation laws, namely, arising out of and in the course of employment.<sup>3</sup>

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>5</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>4</sup> *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004); *see also Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>6</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>7</sup>

### ANALYSIS

The Office accepted that transferring of the patient on June 15, 2005 as described by appellant occurred in the performance of duty. The issue at hand, therefore, is whether the medical evidence submitted is sufficient to establish that her diagnosed condition is causally related to the June 15, 2005 employment incident. The Board finds that appellant has submitted insufficient medical evidence to establish that her diagnosed medical condition was caused or aggravated by factors of her federal employment.

In the Texas Workers' Compensation work status reports dated August 3 and October 11, 2005, Dr. Gardiner noted a history of appellant injuring herself while assisting in lifting a patient on June 15, 2005 and he diagnosed a cervical strain and compression fracture of the cervical vertebrae. He did not, however, provide any opinion on causal relationship between the diagnosed condition and a June 15, 2005 employment incident. While a physician's opinion regarding a cervical strain and compression fracture of the cervical vertebrae may not require extensive medical rationale, there must be an opinion on causal relationship based on an accurate factual and medical background and with supporting explanation. To the degree that Dr. Gardiner's statement can be construed as an opinion as to the cause of appellant's diagnosed condition, it is unsupported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factor identified by the claimant.<sup>8</sup> The Board has long held that a medical report not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>9</sup> As Dr. Gardiner provided no supporting rationale explaining how appellant's diagnosed conditions were caused or aggravated by the June 15, 2005 incident, they are of diminished probative value.

Dr. Saul in reports dated July 12 and August 23, 2005 diagnosed S/S cervical, S/S right shoulder, S/S thoracic and myospasms and noted that appellant injured herself on June 15, 2005 while helping to transfer a patient. Under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that their services are limited to treatment consisting of manual manipulation of the spine to correct subluxations as demonstrated by x-ray to exist.<sup>10</sup> The Office's regulation at 20 C.F.R. § 10.5(bb) have defined subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.<sup>11</sup> There is no indication from the record that

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<sup>7</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>9</sup> *Richard A. Neidert*, 57 ECAB \_\_\_\_ (Docket No. 05-1330, issued March 10, 2006).

<sup>10</sup> 5 U.S.C. § 8101(2); *see Paul Foster*, 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004).

<sup>11</sup> 20 C.F.R. § 10.5(bb).

appellant's chiropractor obtained an x-ray which demonstrated spinal subluxation to support the diagnoses of S/S cervical, S/S right shoulder, S/S thoracic and myospasms or that his treatment was limited to manual manipulation of the spine. Therefore, appellant's chiropractor is not considered a physician as defined under the Act and his reports are of no probative medical value.

Appellant also submitted an employee health record, x-ray interpretations and physical therapy notes. The employee health record and x-ray interpretations are insufficient to support appellant's claim as they contain no opinion on causal relationship. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>12</sup> The Board has also held that physical therapist reports have no probative value on medical questions because therapists are not physicians as defined under the Act.<sup>13</sup> Similarly, as physician's assistants are not physicians as defined by the Act,<sup>14</sup> Ms. Keller's report is of no probative value. Appellant has failed to meet her burden of proof.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her conditions. Appellant failed to do so. As there is no probative, rationalized medical evidence addressing how appellant's claimed conditions were caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

### **CONCLUSION**

Appellant did not submit sufficient medical evidence to meet her burden of proof in establishing an injury in the performance of duty on June 15, 2005.

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<sup>12</sup> *Conard Hightower*, 54 ECAB 796 (2003).

<sup>13</sup> *James Robinson*, 53 ECAB 417 (2002); *see also* 5 U.S.C. § 8101(2).

<sup>14</sup> *See* 5 U.S.C. § 8101(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 27, 2005 is affirmed.

Issued: April 10, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board