

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

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**M.N., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, TRAVIS  
AIR FORCE BASE, CA, Employer**

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**Docket No. 07-1516  
Issued: November 2, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 14, 2007 appellant filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated August 23, 2006 and February 5 and May 8, 2007 denying her claim for compensation. 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 sustained a shoulder injury in the performance of duty.

**FACTUAL HISTORY**

On June 15, 2006 appellant, then a 63-year-old facility service assistant, filed an occupational disease claim for a torn rotator cuff of both the left and right shoulders. She noted that she had a prior torn rotator cuff in her left shoulder and that when she came to management she did not have full use of her left arm and was on a "medical profile" commencing October 2002. Appellant noted that she had to overcompensate with her right arm/shoulder due to limited use of her left arm. She explained that she was in an automobile accident on

October 4, 2002 which injured her left shoulder. Appellant alleged that the employing establishment refused to advance her leave to have surgery. The employing establishment reassigned her to a new position which resulted in overuse of her right hand and shoulder due to typing and reaching. Following surgery on her left shoulder, appellant continued to get worse and received cortisone injections to ease the pain in order that she could work. She alleged that the employing establishment did not accommodate her and she required surgery on her right shoulder for a torn rotator cuff.

By letter dated July 24, 2006, the employing establishment, through a labor relations officer, controverted appellant's claim. She noted that appellant's initial shoulder injury was not work related but was incurred in an off-duty automobile accident. The labor relations officer noted that appellant was reassigned to production control effective September 18, 2005 due to the lack of sufficient work to keep her busy and the return of an overseas employee. She noted that appellant's prior job and new assignment were similar in nature in that both were clerical jobs that involved telephones typing and filing. The main difference between the two positions was that appellant's current position in production control was in a more structured environment with more direct supervision and several coworkers sharing the workload. Appellant's requests for modification of her position were accommodated. The labor relations officer noted that there was no lifting or overhead reaching required in appellant's job nor was she required to sit for long periods of time. She noted that, while appellant was not provided with her preferred accommodation, her medical restrictions were complied with promptly and adequately. Although appellant did not have any accrued annual leave available and had a negative sick leave balance, she was offered leave without pay and an opportunity to participate in the leave donation program, neither of which she accepted.

By letter dated June 21, 2006, the Office requested further information.

The record includes a September 7, 2005 letter in which appellant was informed by a human resource specialist that she was being reassigned from the position of unaccompanied housing administrative assistant in the dormitory flight to the position of facility services assistant in facility maintenance flight. The reassignment was necessary as her position had been abolished. The record contains memoranda dated between October 3 and April 14, 2006 between appellant and representatives of the employing establishment noting her allegation that her new position was causing increased pain in her shoulder. The employing establishment addressed the accommodations made to her work duties.

Dr. Ronald V. Stradiotto, appellant's treating Board-certified orthopedic surgeon, produced a December 24, 2004 medical report. He summarized his treatment through that date for a left shoulder injury sustained in a motor vehicle accident that occurred around October 1, 2002. Dr. Stradiotto noted that an arthrogram on February 18, 2003 showed a positive tear in the left rotator cuff and that appellant was referred for surgery. However, appellant told him that she was unable to get time off work. She did not undergo surgery until January 13, 2004 for a left shoulder arthroscopy and open rotator cuff repair. Dr. Stradiotto noted that appellant initially improved but began having repeat symptoms of pain in July 2004. He stated that a repeat magnetic resonance imaging (MRI) scan in August 2004 showed a re-tear of her rotator cuff but that a consensus of the physicians agreed that further surgery was not

advised. In a February 2, 2005 report, Dr. Stradiotto noted that although appellant's left shoulder was painful and had weakness.

A thoracic and lumbar spine MRI scan was obtained on February 6, 2006. The results showed spondylosis, thecal sac stenosis and suspect uterine inhomogeneity. In a note dated February 6, 2006, Dr. J.C. Whitmore, an internist, indicated that appellant's MRI scan showed slipped discs that did not appear to be causing nerve injury. Appellant's treatment options consisted of continuing the nonsteroidal anti-inflammatory medications, physical therapy or referral to a spine clinic specialist for a steroid epidural injection.

On February 6, 2006 Dr. Stradiotto indicated that appellant's automobile accident was the primary cause of her need for physical therapy before and after surgery on her left shoulder. He also noted that appellant's delay in surgery was the probable approximate cause of the failure of her initial surgery and the requirement for additional surgery.

An MRI scan performed on May 21, 2006 was interpreted as showing extensive tendinosis of the right shoulder supraspinatus tendon with a probable small full thickness tear and possible injury of the posterior glenoid labrum. In a May 21, 2006 note, Dr. Whitmore indicated that the MRI scan showed a small tear of the rotator cuff when compared to the 2004 MRI scan. He advised that, since the injection had helped so much, no action was necessary at this time.

By decision dated August 23, 2006, the Office denied appellant's claim, finding that she did not establish an injury in the performance of duty.

By letter dated August 31, 2006, appellant requested reconsideration alleging that the injury to her shoulders and torn rotator cuff occurred on the job. She alleged that management refused her leave to have surgery on her left shoulder and that this directly affected her right shoulder. Appellant noted that she was reinjured at work doing typing and reaching. In treatment forms dated from November 13, 2005 to January 10, 2006, the physicians at Kaiser Permanente indicated that appellant remained on restrictions with regard to sitting, lifting overhead and reaching with her left arm.

In an August 21, 2006 report, Dr. Stradiotto noted that appellant continued to complain of bilateral shoulder pain. He opined that it was imperative that she be given time off for the repair. Dr. Stradiotto believed that appellant was disabled from her job on the basis of the recurrent symptoms to both of her shoulders requiring her to use her arms in a very active way. Appellant's diagnosis was bilateral rotator cuff disease and Dr. Stradiotto recommended retirement based on her continuing symptoms of pain.

In an August 24, 2006 report, Dr. Whitmore stated that appellant had multiple, injections and underwent surgery for her shoulder, with only limited success. Appellant complained of frequent flare-ups of pain.

In a November 18, 2006 letter to the Office, appellant contended that the employing establishment disregarded her doctors' orders causing her medical condition to get worse and forcing her to retire early.

By decision dated February 5, 2007, the Office denied modification of the August 23, 2006 decision.

On March 11, 2007 again requested reconsideration. In a March 2, 2007 medical report, Dr. Samuel J. Brown, a surgeon, noted that appellant told him that she injured her right shoulder when reaching over the top of her computer monitor station to obtain a four- to six-inch ring binder. Appellant told Dr. Brown that, as she grasped the binder and pulled it off of the carousel, the full weight was placed on her shoulders. She felt a sharp pain in her shoulder. Dr. Brown opined that it was medically reasonable to conclude that her right shoulder discomfort since April 2006 was caused or aggravated by this injury, which made it work related.

By decision dated May 8, 2007, the Office denied modification of its February 5, 2007 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> These are the essential elements of each and every occupational disease claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</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 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

### ANALYSIS

In the instant case, appellant sustained a prior injury to her left shoulder as a result of an automobile accident unrelated to her federal employment. She alleged that the duties of her job, specifically typing and reaching, aggravated her left shoulder injury and caused an injury to her right shoulder due to overuse.

Appellant has not submitted sufficient medical evidence in support of her contention that the alleged overuse of her shoulders, arms and hands in her job led to any diagnosed medical condition. Her initial injury to her left shoulder was caused by a nonwork-related automobile accident on October 4, 2002. Dr. Stradiotto was appellant's treating orthopedic surgeon for this accident. He indicated that the automobile accident caused appellant's left rotator cuff tear. Dr. Stradiotto noted that the fact that appellant delayed surgery probably was the approximate cause of the failure of her initial surgery and the requirement for additional surgery. In his report of August 21, 2006, he noted that appellant continued to experience bilateral shoulder pain, that his diagnosis was bilateral rotator cuff disease. Dr. Stradiotto recommended full retirement based on her continuing symptoms of pain and swelling in her left shoulder and her new acute symptoms in her right shoulder. He did not indicate that appellant's job had any relationship to her shoulder condition.<sup>5</sup>

Dr. Brown noted a possible connection between appellant's work and her shoulder condition. However, appellant gave a different history to Dr. Brown than provided on her claim form, her letters to the Office and her prior physicians. She told Dr. Brown that she sustained injury while grasping a binder from above her shoulders while at work. Initially, the Board notes that appellant's new history is highly suspicious due to the delay in attributing her injury to this alleged incident. Dr. Brown did not attribute appellant's shoulder condition to the alleged factors of overusing her right shoulder, typing or general reaching. He merely stated that "it is medically reasonable to conclude" that appellant's right shoulder discomfort since April 2006 was caused by the injury. However, Dr. Brown did not provide sufficient explanation for his stated conclusion. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>6</sup> The other medical opinions are also insufficient to establish any causal relationship. None of the physicians at Kaiser Permanente attributed

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<sup>4</sup> *Id.*

<sup>5</sup> Appellant alleges that she delayed getting the necessary surgery due to the fact that the employing establishment would not give her time off. The employing establishment disagreed with this assertion, noting that, although appellant had no more annual or sick leave available, she could get the surgery and take leave without pay or participate in the leave donation program, neither of which she accepted. There is no evidence that the employing establishment is responsible for appellant's delay in getting the surgery.

<sup>6</sup> *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

appellant's medical condition to her employment. Similarly, Dr. Whitmore did not address causal relationship.

The Board finds that she failed to meet her burden of proof in establishing causal relationship. The mere appearance of a condition during appellant's employment does not raise an inference of causal relationship between the condition and the employment.<sup>7</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an injury to either shoulder in the performance of duty, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 8 and February 5, 2007 and August 23, 2006 are affirmed.

Issued: November 2, 2007  
Washington, DC

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

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

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

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<sup>7</sup> *Shirley A. Temple*, 489 ECAB 404 (1997).