



In a September 27, 2006 letter, the Office advised appellant of the evidence needed to establish his claim, including a detailed description of the work factors alleged to have caused the claimed condition and a statement from his attending physician explaining the causal relationship asserted.

By decision dated November 3, 2006, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that he did not provide sufficient evidence to establish any work factors as factual. The Office also noted that appellant did not submit medical evidence.

In a December 10, 2006 letter, appellant requested reconsideration. He explained that he experienced back and right arm pain when driving the "brand new trucks." The right arm pain due to driving the truck caused appellant difficulty with putting on his shoes and socks. He noticed that when he drove the new trucks, the air conditioner caused his back to ache. Appellant then notified his supervisor that he could not drive the new trucks. He submitted additional evidence.

In an October 27, 2006 letter, Dr. Dalmacio B. Cusi, an attending general practitioner, noted appellant's symptoms of right shoulder and low back pain. He related appellant's account of straining his right shoulder and lumbar spine after overwork and heavy lifting at work on July 17, 2006. On examination, Dr. Cusi noted restricted right shoulder and lumbar motion with lumbar paraspinal spasm. He stated that a right shoulder magnetic resonance imaging (MRI) scan showed supraspinatus tendinosis with a partial tendon tear and osteoarthritis of the acromioclavicular joint. A lumbar MRI scan showed mild diffuse osteoarthritic changes from L4 to S1. Dr. Cusi noted that appellant's condition was improving with treatment.

In a November 1, 2006 letter, Dr. Ronald L. Silver, an attending Board-certified orthopedic surgeon, noted appellant's employment as a tractor trailer driver for the employing establishment. He related appellant's account of right shoulder pain while repeatedly turning the truck steering wheel and unloading and loading mail. Dr. Silver also noted that appellant's belief that "the air conditioning in the truck also made the pain worse." On examination, he observed limited range of right shoulder motion and positive Hawkins, impingement and drop arm tests. Dr. Silver noted that an MRI scan was consistent with a possible partial rotator cuff tear. He diagnosed a "partial thickness rotator cuff tear due to his work injury while lifting and driving the truck." Dr. Silver recommended a subacromial decompression and held appellant off work pending surgery.

By decision dated December 29, 2006, the Office denied modification of the November 3, 2006 decision. The Office found that appellant had not established fact of injury due to inconsistent accounts of how he was injured. The Office found that, while Dr. Silver and Dr. Cusi diagnosed a right shoulder condition due to a lifting injury, appellant claimed a back injury from driving a truck with air conditioning.

## 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 filed within the applicable time limitation; that an injury was sustained while 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 compensation claim regardless of whether the claim is predicated on 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) 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 is generally 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>

## ANALYSIS

Appellant asserted that he sustained back and right arm pain due to driving new Mack trucks on or before July 17, 2006. He initially claimed only a back condition. The Office denied this aspect of the claim in its November 3, 2006 decision. On reconsideration, appellant also alleged a right arm condition attributable to driving new trucks. But in its December 29, 2006 decision, the Office adjudicated only the claimed back condition.

In support of his claim for back and right arm conditions, appellant submitted reports from Dr. Cusi, an attending general practitioner, and Dr. Silver, an attending Board-certified orthopedic surgeon. In an October 27, 2006 letter, Dr. Cusi diagnosed osteoarthritis from L4-S1, osteoarthritis of the right acromioclavicular joint and a partial thickness tear of the right rotator

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Solomon Polen*, 51 ECAB 341 (2000).

cuff. He noted appellant's account of straining his low back and right shoulder on July 17, 2006 while performing heavy lifting at work. However, Dr. Cusi did not provide medical rationale explaining how and why the identified work factor of driving a truck would cause the diagnosed condition. In the absence of such rationale, his report is insufficient to establish causal relationship in this case.<sup>5</sup>

In a November 1, 2006 letter, Dr. Silver noted that appellant experienced right shoulder pain while turning the steering wheel of his truck and loading mail at work. He diagnosed a "partial thickness rotator cuff tear due to his work injury while lifting and driving the truck." This is in comport with appellant's assertion that he experienced right arm pain due to driving a truck at work. In its December 29, 2006 decision, the Office found that appellant claimed only a back condition while Dr. Silver and Dr. Cusi diagnosed a right shoulder condition due to a lifting injury. The Board finds that this was in error. Appellant clearly claimed a right arm condition. Dr. Silver diagnosed a right rotator cuff tear attributable, in part, to driving a truck at work. Although he also mentioned heavy lifting, he identified driving trucks as a cause of the rotator cuff tear. Although Dr. Silver's opinion is insufficiently rationalized<sup>6</sup> to meet appellant's burden of proof in establishing his claim, it stands uncontroverted in the record and is, therefore, sufficient to require further development of the case by the Office.<sup>7</sup> Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.<sup>8</sup> The Office has the responsibility to develop the medical evidence in a proper manner. The Board will remand the case to the Office for further development regarding Dr. Silver's opinion that driving a truck at work caused a right rotator cuff tear. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

### CONCLUSION

The Board finds that the case is not in posture for a decision as the case must be remanded to the Office for further development regarding any causal relationship between appellant's duties as a tractor trailer driver and the claimed lumbar and right shoulder conditions.

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<sup>5</sup> *Steven S. Saleh*, 55 ECAB 169 (2003).

<sup>6</sup> *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

<sup>8</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 29 and November 3, 2006 are set aside and the case remanded for further development consistent with this decision.

Issued: September 12, 2007  
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