



## **FACTUAL HISTORY**

On March 26, 2007 appellant, then a 52-year-old food service worker, filed an occupational disease claim alleging that repetitive duties of her job resulted in a right arm and shoulder condition. She became aware of her condition on February 15, 2007 and realized that it was aggravated by her employment on February 27, 2007. Appellant did not stop work.

In a letter dated March 29, 2007, the Office informed appellant that the evidence of record was insufficient to establish her claim for a right arm/shoulder condition. It advised her as to the medical and factual information required to support her claim. Appellant was given 30 days to submit the requested information.<sup>1</sup>

Appellant submitted a June 5, 2007 statement noting that her job involved placing food on trays that are on a conveyor belt.<sup>2</sup> She also provided physical therapy reports and progress notes from Dr. Robert G. Liss, a Board-certified orthopedic surgeon, dated April 11 to May 23, 2007. On May 2, 2007 Dr. Liss advised that appellant presented on April 11, 2007 with complaints of right shoulder pain, which had been ongoing for several months and hurt more when she used her right arm to cut and lift and do repetitive movements at work. He noted that examination showed slight limitation of internal rotation on the right side with a mild positive impingement sign and no weakness, sensory or reflex loss in the right upper extremity. Dr. Liss opined that appellant had right shoulder rotator cuff tendinitis and referred her to physical therapy. He noted that appellant did not require restrictions with regard to her right shoulder. Dr. Liss opined that appellant had a degenerative condition, but that overhead activities at work and repetitive lifting with the right arm might contribute to increasing symptoms. In a May 2, 2007 work capacity evaluation, he advised that appellant was capable of performing her usual job without restrictions. In a May 23, 2007 report, Dr. Liss advised that appellant had full range of motion and only some mild stiffness with internal rotation. He noted that she was tolerating her full work activities and recommended that she continue with an exercise program for her shoulders and see him on an as needed basis.

By decision dated June 25, 2007, the Office accepted that appellant's job required repetitive motion of the arms and shoulders. It denied her claim on the grounds that the medical evidence was not sufficient to establish that her work caused or aggravated her diagnosed right shoulder rotator cuff tendinitis condition.

## **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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

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<sup>1</sup> The Office granted appellant an extension to provide such evidence by June 25, 2007.

<sup>2</sup> In her statement, appellant also advised that she started her position approximately two months earlier and that it was a reasonable accommodation position.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

An occupational disease or illness means a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection, continued or repeated stress or strain or other continued or repeated conditions or factors of the work environment.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of a condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the employee were the proximate cause of the condition or illness, 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 employee.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>8</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

It is not disputed that appellant's job as a food service worker included repetitive motion of the arms and shoulders. However, she has not submitted sufficient medical evidence to

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Donald W. Wenzel*, 56 ECAB 390 (2005); *William Taylor*, 50 ECAB 234 (1999); *see also* 20 C.F.R. § 10.5(q).

<sup>7</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006); *Donna L. Mims*, 53 ECAB 730 (2002).

<sup>8</sup> *David Apgar*, 57 ECAB \_\_\_\_ (Docket No. 05-1249, issued October 13, 2005).

<sup>9</sup> *G.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1564, issued February 27, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>10</sup> *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-2094, issued January 30, 2007); *Roy L. Humphrey*, 57 ECAB \_\_\_\_ (Docket No. 05-1928, issued November 23, 2005).

support that her diagnosed right shoulder condition was causally related to her employment. For this reason, she has not discharged her burden of proof to establish her claim.

Appellant submitted reports from Dr. Liss for treatment of her right shoulder condition. Dr. Liss diagnosed a right shoulder rotator cuff tendinitis and opined, in his May 2, 2007 report, that appellant's overhead activities and repetitive lifting with the right arm at work "might" contribute to increasing symptoms. The Board finds that Dr. Liss' opinion is equivocal and unrationalized. The Board has held that medical opinions which are speculative or equivocal in character are of diminished probative value.<sup>11</sup> The mere fact that appellant may have experienced symptoms during her employment, without more, is not probative. The Board has held that the concurrence of symptom development with a period of employment is insufficient to establish causal relationship.<sup>12</sup> Dr. Liss did not provide a reasoned medical opinion explaining how appellant's work activities would cause or aggravate her diagnosed condition. Therefore, the reports of Dr. Liss are insufficient to support appellant's claim.

Appellant also submitted physical therapy reports. However, these reports are of no probative value as physical therapists are not physicians as defined under the Act.<sup>13</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>14</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

### CONCLUSION

Appellant has not met her burden of proof in establishing that she developed a right shoulder condition in the performance of duty.

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<sup>11</sup> *L.R. (E.R.)*, 58 ECAB \_\_\_\_ (Docket No. 06-1942, issued February 20, 2007).

<sup>12</sup> *Robert M. Sanford*, 27 ECAB 115 (1975).

<sup>13</sup> 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

<sup>14</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 25, 2007 is affirmed.

Issued: April 9, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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