



pudding in a cooler when moisture accumulated on her sterling silver bracelet. As appellant paid for her bread pudding, she received an electrical shock to her right arm and shoulder from the cash register. Evidence submitted in support of this claim included: leave slips; a request for physical therapy; and a report from Dr. Edward J. Bieber, an orthopedic surgeon, dated July 3, 2007. In the July 3, 2007 report, Dr. Bieber diagnosed appellant with right shoulder subacromiomial syndrome, possible rotator cuff tear and right joint pathology. He noted that appellant had reported right arm pain for the last two months and that she had stated that “this occurred after she received an electric shock.” Appellant states, “it jolted her arm.” Dr. Bieber did not offer a medical opinion regarding the cause of appellant’s diagnosed conditions.

By letter dated September 27, 2007, the Office notified appellant that the evidence submitted was insufficient to support her claim because it did not contain a diagnosis of any condition resulting from her alleged injury and lacked a physician’s opinion explaining how the alleged injury resulted in the condition diagnosed. In response to this notice, appellant submitted a letter requesting the Office change the date of injury from April 12 to 14, 2007, and a portion of the development letter with a statement indicating appellant sustained an injury while employed by the Department of Health and Human Services.

By decision dated November 2, 2007, the Office denied appellant’s claim for compensation because the evidence submitted was insufficient to establish she sustained an injury as defined by the Federal Employees’ Compensation Act.

On November 30, 2007 appellant requested review of the written record. As part of this filing, she submitted a letter dated November 21, 2007 from Dr. Bieber, who diagnosed appellant as having right shoulder rotator cuff tendinitis and acromioclavicular (AC) joint sprain. Dr. Bieber’s letter noted appellant’s history of injury as “patient states that she injured her shoulder at work with the electric shock which caused a sudden jerking of her shoulder.” He thereafter concluded that “[i]t is very conceivable that this could have had its origin with that initial injury, particularly since the pain started immediately thereafter.”

By decision dated February 26, 2008, the Office hearing representative modified the November 2, 2007 decision to accept that an injury occurred but affirmed the denial of compensation on the grounds that the record failed to establish that she sustained the diagnosed shoulder conditions were a result of the accepted employment event.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including: the individual is an employee of the United States within the meaning of the Act; the claim was filed within the applicable time limitation of the Act; 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. 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>2</sup>

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<sup>2</sup> Gary J. Watling, 52 ECAB 357 (2001).

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

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>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### ANALYSIS

In the present case, the Office has accepted that the alleged injury occurred as alleged, that is that she sustained an electric shock from a cash register on April 12, 2007. It has also concluded however that the medical evidence is insufficient to support appellant's claim that her various right shoulder conditions, diagnosed as: right shoulder rotator cuff tendinitis, AC joint sprain, right shoulder subacromial syndrome, possible right rotator cuff tear, and right joint pathology, are causally related to the accepted injury. Although appellant submitted reports from her treating physician, Dr. Bieber, noting these diagnoses and appellant's history of injury, this evidence does not address causation or describe, with detailed rationale, the relationship between the diagnosed conditions and an employment-related incident. The Board has consistently held that a medical report that does not contain a rationalized opinion on causal relationship is of limited probative value.<sup>7</sup>

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<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

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

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>7</sup> *See A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Dr. Bieber repeated appellant's statement that her shoulder conditions were caused by an involuntary reflexive jerk resulting from appellant's exposure to an electrical shock. His report is of limited probative value because his conclusions are, at best, speculative. The substantive paragraph of Dr. Bieber's letter concludes by stating "[i]t is very *conceivable* that this *could have* had its origin with that initial injury, particularly since the pain started immediately thereafter." (Emphasis added.) As a matter of law, terms such as "could," "may," or "might be" indicate that the report is equivocal, speculative or conjectural and is of limited probative value.<sup>8</sup>

Furthermore, Dr. Bieber's report provides no objective findings or medical explanation in support of his opinion that this single isolated event of April 12, 2007 caused the various diagnosed right shoulder conditions. A medical explanation of the physiological process by which the accepted event caused the various diagnosed conditions is especially important in this case as appellant did not seek medical treatment or diagnosis until two months after the alleged injury, for potentially chronic shoulder conditions.

Accordingly, the Board finds that appellant has not met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on April 12, 2007.

### **CONCLUSION**

The Board finds appellant has not met her burden of proof to establish that she sustained right shoulder conditions as a result of her April 12, 2007 injury.

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board