

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

D.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cleveland, OH, Employer)

**Docket No. 07-1912
Issued: January 10, 2008**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2007 appellant filed a timely appeal from Office of Workers' Compensation Programs' merit decisions dated June 25, 2007 and October 11, 2006 which denied her claim. Under 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 has established that she sustained an injury to her left shoulder in the performance of duty on June 7, 2006.

FACTUAL HISTORY

Appellant, a 49-year-old mail clerk, filed a Form CA-1 claim for benefits on July 30, 2006, alleging that she experienced pain in her left shoulder on June 7, 2007 while reaching to assist a bundle of magazines down a conveyor belt. She submitted a July 20, 2006 treatment slip and disability form from Dr. J. Britten Shroyer, Board-certified in internal medicine, who diagnosed impingement syndrome of the left shoulder.

By letter dated September 5, 2006, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a detailed medical report from a treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment.

In a September 14, 2006 report, Dr. Shroyer stated:

“[Appellant] has been in my office for a third visit for left shoulder pain. As noted in the previous office notes, she injured her left shoulder in June lifting overhead. [Appellant] does repetitive work in her duties as a postal clerk. She had a similar problem which was work-related with her right shoulder, which was treated successfully with open rotator cuff repair.

“Magnetic resonance imaging [MRI] scans demonstrated partial thickness rotator cuff changes consistent with an impingement syndrome. [Appellant] has now failed physical therapy, this is affecting her work. It is my opinion that she should undergo arthroscopic decompression of the left shoulder for her work-related shoulder injury.”

In an August 24, 2006 Form CA-17 duty status report, Dr. Shroyer described the history of injury, reiterated the diagnosis of left shoulder impingement syndrome and indicated that appellant was unable to perform her regular work duties. He outlined restrictions on pulling, pushing, grasping, fine manipulation including keyboarding and reaching above the shoulder. In a September 8, 2006 report, Dr. Shroyer stated that appellant had impingement syndrome and bursitis of the left shoulder and indicated that the condition commenced in approximately April 2006. He advised that appellant could miss a few days of work per week due to pain and attendance in physical therapy sessions.

By decision dated October 11, 2006, the Office denied appellant’s claim, finding that she failed to submit sufficient medical evidence in support of her claim. The Office found that she failed to submit medical evidence providing a diagnosis resulting from the June 7, 2006 work incident.

By letter dated October 16, 2006, appellant’s attorney requested an oral hearing, which was held on March 29, 2007. Dr. Shroyer submitted treatment notes dated July 20, August 4, September 6 and October 18, 2006. He reiterated the previous diagnosis of left shoulder impingement syndrome and reviewed the course of treatment. Dr. Shroyer referred appellant for an MRI scan on August 17, 2006, the results of which indicated a partial tear of the left rotator cuff at the distal supraspinatus tendon.

In a report dated April 19, 2007, Dr. Robert Mark Fumich, a specialist in orthopedic surgery and sports medicine, stated:

“[Appellant] is a 50-year-old white female with left shoulder injuries in June of 2006 at work at [the employing establishment]. She was shifting magazines, felt a pinch in the shoulder, continued to work, then was throwing mail and pushing or pulling mail at approximately a 45-degree angle. [Appellant] was in a stretch

position and had acute pain and discomfort. She no longer continued pulling. The shoulder did not get any better. [Appellant] saw her primary care doctor and then Dr. Shroyer and had physical therapy, which made her shoulder worse. She has had a magnetic resonance imaging scan and was told she needs surgery. [Appellant] comes here today for a second opinion.... She denies any past history of injuries to the left shoulder.

“Physical exam[ination] of the left shoulder shows that she has a frozen shoulder at this point with lack of over 30 degrees of external rotation, abduction, and adduction.

“The subacromial space was injected with cortisone today, and we will see her back in two weeks. If no improvement, she will require a manipulation before any further surgical consideration can be given. MRI [scan] has been completed showing a small partial thickness undersurface rotator cuff tear of the supraspinatus of the left shoulder. We will see her back in two weeks.”

By decision dated June 25, 2007, an Office hearing representative affirmed the October 11, 2006 decision denying the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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.² 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

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.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷ 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 his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury can only be established by medical evidence.⁹ Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on June 7, 2006 caused a personal injury and resultant disability.

The only medical reports appellant submitted were the reports from Drs. Shroyer and Fumich which stated findings on examination and indicated that appellant had left shoulder impingement syndrome, bursitis and rotator cuff tear of the supraspinatus of the left shoulder. These reports, however, did not contain a probative, rationalized medical opinion relating these diagnoses to the June 7, 2006 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰ In his September 14, 2006 report, Dr. Shroyer related appellant's history that she injured her left shoulder in June 2006 while engaged in overhead lifting. He noted that appellant did repetitive work in her duties as a postal clerk. Dr. Shroyer advised that appellant underwent MRI scans which indicated rotator cuff changes consistent with impingement syndrome. He noted that appellant had undergone physical therapy, which was unsuccessful and affected her work. Dr. Shroyer recommended that appellant undergo arthroscopic decompression of the left shoulder for her shoulder injury, which he believed was work related. He also submitted several

⁶ *Id.*

⁷ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *John J. Carlone*, *supra* note 4.

¹⁰ *See Anna C. Leanza*, 48 ECAB 115 (1996).

treatment notes and disability slips which described the history of injury, reiterated the diagnosis of left shoulder impingement syndrome, indicated that appellant was unable to perform her regular work duties and outlined work restrictions pertaining to her left shoulder. In his April 19, 2007 report, Dr. Fumich related appellant's history of injury, stated findings on examination and noted that the MRI scan results indicated a torn left rotator cuff at the supraspinatus tendon.

Although these physicians presented diagnoses of appellant's condition, they did not adequately address how these conditions were causally related to the June 7, 2006 work incident. Dr. Shroyer, in fact, stated in his September 8, 2006 report that appellant's condition commenced in approximately April 2006. There is therefore insufficient rationalized evidence in the record that appellant's left shoulder injury was work related. Appellant failed to provide a medical report from a physician that explains how the work incident of June 7, 2006 caused or contributed to the claimed left shoulder injury.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the June 7, 2006 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained a left shoulder injury in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a left shoulder injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2007 and October 11, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: January 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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