

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

---

**D.O., Appellant**

**and**

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

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-1999  
Issued: January 24, 2008**

*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 July 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated January 24 and May 3, 2007, which denied her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

**ISSUE**

The issue is whether appellant sustained an injury causally related to factors of her federal employment.

**FACTUAL HISTORY**

On November 15, 2006 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that she sustained a right shoulder condition while performing a limited-duty position. She noted that she was on restrictions which entailed using her right hand due to a left arm condition. Appellant first became aware of the condition on August 15, 2006. She did

not stop work. The employing establishment indicated that appellant was working in a limited-duty job and her duties consisted of performing the mail count.<sup>1</sup>

On November 24, 2006 the Office advised appellant that additional factual and medical evidence was needed. The Office explained that a physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

In a December 5, 2006 report, Dr. Robert Leb, a Board-certified orthopedic surgeon, noted that appellant was evaluated for a "new problem." Appellant stated that her shoulder condition began when she went back to work following left carpal tunnel surgery. She was placed on right hand duty only but her right shoulder became worse as she was working due to overcompensating for her left shoulder. Dr. Leb indicated that this was a work-related injury. He diagnosed right shoulder impingement syndrome. A December 5, 2006 right shoulder x-ray read by Dr. Leb, showed no evidence of fracture or dislocation or advanced arthritic changes. He advised that anterior cruciate joint arthritis was noted. In a December 28, 2006 report, Dr. Leb stated that appellant was seen for her right shoulder, which was a "work-related injury." He recommended physical therapy, diagnosed right shoulder impingement syndrome and indicated that appellant should remain on light duty.

By decision dated January 24, 2007, the Office denied appellant's claim. It found that appellant did not identify any specific work factors which she believed caused her condition. The Office noted that appellant did not identify which right-handed duties caused her condition.

On January 29, 2007 the Office received an undated report from Dr. Leb who noted that appellant was recovering from a left carpal tunnel surgery under File No. 092061330 related to an April 5, 2005 injury. While appellant was restricted to right-hand duty under this claim, she began to develop right shoulder pain. Dr. Leb diagnosed impingement syndrome and noted that x-rays revealed a Type III acromion. He advised that appellant had no similar problems prior to the date of onset and requested that the right shoulder impingement be allowed as a flow through injury. Dr. Leb opined that, to a reasonable degree of medical certainty, the right-hand duty restriction led to an overuse of her right shoulder impingement syndrome. The Office also received copies of previously received reports.

On February 7, 2007 appellant requested reconsideration. She alleged that she had been performing right hand duty for two years. Appellant's duties included writing and carrying materials under 10 pounds, counting mail every two hours during an eight-hour day, five days a week, four hours sitting and four hours standing. On August 15, 2006 while counting and getting her reports together she felt right arm numbness, her fingers tightened up, and she experienced shooting pain from her waist, to her elbow and shoulder. Appellant alleged that this condition had been continuous since August.

---

<sup>1</sup> The record reflects that appellant has an accepted claim for a left shoulder sprain, left shoulder impingement and left biceps strain. File No. 092044683 & 0904665588. Appellant also has a carpal tunnel claim for an April 5, 2005 date of injury under File No. 092061330. Additionally, she has an April 30, 2006 date-of-injury claim for a right hand injury. File No. 092076911.

In a February 6, 2007 report, Dr. Leb noted that appellant felt that her right shoulder was worsening. He diagnosed right shoulder impingement and possible right rotator cuff tear. Dr. Leb noted that a magnetic resonance imaging scan was warranted and recommended continued light duty.

By decision dated May 3, 2007, the Office denied modification of the January 24, 2007 decision. It noted that it was not clear how her shoulder was related to her limited-duty work as it did not require a lot of shoulder movement. The Office indicated that, under File No. 092061220, she was compensated for wage loss for the period May 18 to July 31, 2006. The Office found that appellant was not employed during this time frame and that there were no work factors that would have contributed to her condition. The Office found that it was unclear what actual work factor was causing appellant's complaints, as her work appeared to be performed at desk level.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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>3</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>4</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 nature of the

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

### ANALYSIS

The evidence establishes that appellant has a right shoulder condition and that she performed activities such as writing and counting mail at work. The evidence establishes that she performed such duties prior to filing her claim. However, appellant has submitted insufficient medical evidence to establish that her right shoulder condition was caused or aggravated by writing or counting mail or any other specific factors of her federal employment.

In support of her claim for a right shoulder condition, appellant submitted several reports from Dr. Leb. They included his December 5 and 28, 2006 reports. Dr. Leb noted that appellant believed that her shoulder condition began when she returned to work following left carpal tunnel surgery as a result of overcompensating for her left shoulder. While he opined that appellant's condition was work related, he did not explain how he arrived at this conclusion. Furthermore, Dr. Leb did not identify any specific employment factors that caused her condition. This is particularly important in light of the fact that appellant was not working from May 18 to July 31, 2006 and alleged that her condition arose on August 15, 2006. Additionally, Dr. Leb did not discuss or exclude any other factors which could have caused or contributed to her condition. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>6</sup>

On January 29, 2007 the Office received an undated report from Dr. Leb, who noted that appellant was restricted to right hand duty after recovering from a left carpal tunnel surgery under File No. 092061330 and began to develop right shoulder pain. He diagnosed impingement syndrome and a Type III acromion. Dr. Leb opined that appellant had no similar problems prior to the date of onset and opined that he believed to within a "reasonable degree of medical certainty that the right-hand duty restriction led to an overuse of her right shoulder impingement syndrome. I therefore believe that it should be an allowed condition." However, the Board has held that an opinion that a condition is causally related to an employment injury, because the employee was asymptomatic before the injury, is insufficient, without supporting rationale, to establish causal relation.<sup>7</sup> The Board also notes that Dr. Leb does not specifically address particular work factors that he believes caused or aggravated appellant's diagnosed condition. Consequently, the Board finds that this evidence is insufficient to establish appellant's claim.

---

<sup>5</sup> *Id.*

<sup>6</sup> *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999).

<sup>7</sup> *Kimper Lee*, 45 ECAB 565 (1994).

Other reports from Dr. Leb did not specifically address causal relationship between appellant's employment and a diagnosed condition.

As there is no reasoned medical evidence explaining how appellant's employment duties caused or aggravated a right shoulder condition, appellant has not met her burden of proof in establishing that she sustained a medical condition in the performance of duty causally related to factors of her employment.<sup>8</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 3 and January 24, 2007 are affirmed as modified.

Issued: January 24, 2008  
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

---

<sup>8</sup> The Board notes that this decision does not preclude appellant from filing a claim for a consequential condition under File No. 092061330.