

November 1, 2006. On November 15, 2006 she first realized that it was due to her repetitive work duties. In an attached statement, appellant noted that her job duties involved many repetitious movements on a daily basis. Her physician diagnosed a torn right rotator cuff based upon a magnetic resonance imaging (MRI) scan. The employing establishment controverted the claim.

In support of her claim, appellant submitted factual and medical information including a copy of her job description, reports by Dr. Michael W. Cantrell, a treating Board-certified orthopedic surgeon and progress notes for 2003 to 2007 and February 1, 2007 MRI scan. On March 22, 2007 Dr. Cantrell diagnosed a partial thickness right shoulder rotator cuff tear based upon an MRI scan. He reported that appellant underwent arthroscopic surgery with decompression for her right shoulder on March 6, 2007. Dr. Cantrell noted appellant's concern that her shoulder condition was a result of her repetitive work duties which he "certainly cannot disagree with this."

In a letter dated May 16, 2007, the Office informed appellant that the evidence of record was insufficient to support her claim. It advised her to submit additional medical and factual evidence.

On May 25, 2007 Dr. Cantrell stated that he had been treating appellant for a right shoulder partial thickness rotator cuff tear since February 22, 2007. He noted that appellant was employed as a mail carrier which required "using her right upper extremity with repetitive abduction and elevation of the shoulder and it is certainly consistent with her symptoms and pathology that this could be the source of her problem."

By decision dated June 20, 2007, the Office denied appellant's claim. It found that the medical evidence was insufficient to establish that her right shoulder condition was employment related.

On July 16, 2007 appellant requested a review of the written record by an Office hearing representative. She resubmitted her July 16, 2007 statement; a July 12, 2007 statement by Judith O. Walker, her mother; and July 12, 2007 statement by Johnny R. Anderson, a companion and colleague.

By decision dated November 7, 2008, the Office hearing representative affirmed the June 20, 2007 decision.

On December 9, 2007 appellant requested reconsideration and submitted copies of a rural route evaluation. She stated that she stopped bowling more than seven years prior.

By nonmerit decision dated January 4, 2008, the Office denied her request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

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.¹

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.²

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.³ 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.⁴ 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.⁵

ANALYSIS -- ISSUE 1

Appellant filed an occupational disease claim alleging that she sustained a right shoulder condition as a result of repetitive motion associated with the delivery of mail. The employing establishment did not contest that she performed these duties. However, it controverted the claim on the basis that her condition was a result of her bowling activities. Appellant stated that she stopped bowling more than seven years ago. The issue is whether the medical evidence establishes a causal relationship between her right rotator cuff tear and the accepted employment factors. The Office accepted that appellant performed the duties of a rural letter carrier. However, it found that the medical evidence did not establish a medical condition arising from these employment factors.

Appellant submitted a March 22, 2007 report by Dr. Cantrell, who diagnosed a partial thickness right shoulder rotator cuff tear based upon an MRI scan. Dr. Cantrell stated that he could "not disagree" with appellant's belief that her shoulder condition was due to her repetitive work duties. On May 25, 2007 he opined that appellant's mail carrier duties, which required

¹ *Donald W. Wenzel*, 56 ECAB 390 (2005); *William Taylor*, 50 ECAB 234 (1999); *see also* 20 C.F.R. § 10.5(q).

² *D.D.*, 57 ECAB 734 (2006); *Donna L. Mims*, 53 ECAB 730 (2002).

³ *David Apgar*, 57 ECAB 137 (2005).

⁴ *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁵ *J.M.*, 58 ECAB ____ (Docket No. 06-2094, issued January 30, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

repetitive elevation and abduction of her shoulder, was “certainly consistent with her symptoms and pathology that this could be the source of her problem.” Dr. Cantrell’s opinion on causal relationship is not based on a reasonable degree of medical certainty. He premised his conclusion on appellant’s belief of a causal relationship. Dr. Cantrell’s statement is speculative. The Board has held that medical opinions which are speculative or equivocal in character are of diminished probative value.⁶ Dr. Cantrell’s opinion is insufficient to establish that appellant’s right shoulder rotator cuff tear was causally related to factors of her employment.

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.⁷ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence.⁸

As there is no rationalized medical evidence of record establishing that appellant’s right shoulder rotator cuff tear was caused or aggravated by her employment duties as alleged, the Board finds that she has failed to meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Federal Employees’ Compensation Act,⁹ the Office’s regulation provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.¹²

⁶ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁷ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *Frankie A. Farinacci*, 56 ECAB 723 (2005).

⁹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, [t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(1)-(2). See *Susan A. Filkins*, 57 ECAB 630 (2006).

¹¹ *Id.* at § 10.607(a).

¹² 20 C.F.R. § 10.608(b). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006) (when an application for review of the merits of a claim does not meet at least one of the three regulatory requirements the Office will deny the application for review without reviewing the merits of the claim).

ANALYSIS -- ISSUE 2

Appellant's December 9, 2007 request for reconsideration did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. She did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).¹³

In support of her reconsideration request, appellant submitted copies of a rural route evaluation and noted that she had stopped her bowling activities. However, the underlying issue in this case is medical in nature. The Office denied her occupational disease claim on the grounds that the medical evidence was insufficient to establish that her right rotator cuff tear was employment related. The copies of a rural route evaluation are not relevant to this issue. Moreover, the fact that appellant stopped bowling is not relevant to the issue of causal relationship absent medical evidence from a physician explaining how this pertains to her claim. Thus, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).¹⁴

Appellant did not establish that the Office erroneously applied or interpreted a point of law; advance a legal argument not previously considered by the Office; or constitute relevant and pertinent new evidence not previously considered by the Office.¹⁵ Therefore, the Board finds that the Office properly denied her request for reconsideration without further merit review.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a right rotator cuff tear causally related to her employment and that the Office properly denied appellant's requests for reconsideration without conducting a merit review of the claim.

¹³ 20 C.F.R. § 10.606(b)(2)(i), (ii).

¹⁴ 20 C.F.R. § 10.606(b)(2)(iii).

¹⁵ 20 C.F.R. § 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 4, 2008 and November 7, 2007 are affirmed.

Issued: November 21, 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