

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

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**D.J., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
West Los Angeles, CA, Employer**

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**Docket No. 08-940  
Issued: September 16, 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 February 12, 2008 appellant filed a timely appeal from the September 27, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant sustained a right shoulder injury in the performance of duty on September 17, 2004.

**FACTUAL HISTORY**

On November 3, 2004 appellant, then a 58-year-old distribution clerk, filed a claim alleging that she sustained a right shoulder injury in the performance of duty: "I was in a chair and the chair went down the movement startle me, I grab the upper right case with the right

hand.” She did not stop work. On or about October 30, 2004 appellant filed an accident report with her supervisor:

“At approximately 0845 on October 2, 2004 (Saturday) employee was the chair collapsed abruptly dropped my legs (knees) was positioned thusly left leg foot on floor, right leg foot on foot rest I lean forward to put letter in case with my right hand the chair collapsed and I grabbed the case ledge 2<sup>nd</sup> or 3<sup>rd</sup> ledge from the top. I immediately got up from a crouched position after I steadied myself and got up and turned and walked over to employee Brenda Marshall (Safety Captain) I walked over to her and said the chair is unsafe. She then removed the chair from the work place and took the chair the out side of the primary.” (sic)

The employing establishment controverted the claim because appellant could not remember the date of injury.

Dr. Taha Ahmad, a specialist in occupational medicine and a primary treating physician, first saw appellant on October 28, 2004. He provided the following history of injury:

“[Appellant] states that she has had a popping in her right shoulder predominantly and to a lesser extent in the left shoulder for the last few weeks. She states that it began on a Saturday a few weeks ago, she thinks it was October 2, 2004. [Appellant] states that she had it one day and it felt like a pop while she was casing mail. She was sore the next day or so and has even seen the nurse in the [p]ost [o]ffice. It is progressively getting worse.”

Dr. Ahmad examined appellant again on November 17 and December 1, 2004 and on March 28, May 11, September 30 and November 11, 2005. He did not mention an incident involving appellant’s chair at work.

When Dr. Ahmad transferred to a new location, appellant came under the care of one of his associates, Dr. Paul J. Papanek, also a specialist in occupational medicine, who examined appellant on February 21, 2006. Appellant reported a flare up of her right shoulder pain the day before. There was no new injury; she just felt a popping in her right shoulder. Dr. Papanek diagnosed right shoulder cuff tendinitis.

In a decision dated April 4, 2006, the Office denied appellant’s claim for compensation. It found that the evidence failed to establish that the claimed medical condition was related to the initial mechanism of injury as alleged.

In a May 1, 2006 report, Dr. Papanek responded to the Office’s April 4, 2006 decision, as follows:

“I have reviewed Dr. Ahmad’s detailed narrative report comprising four pages written October 28, 2004, in which he indicates that the patient had had an injury on or about October 2, 2004, but indicating that the patient was uncertain about the precise date of injury. Whether the injury occurred on October 2, 2004 or September 17, 2004, it is difficult for me to determine at this time. Dr. Ahmad further reviews an injury to the right shoulder, and also indicates that the patient

had stayed off work because of [c]arpal [t]unnel [s]yndrome from 1994 to 2004. In his subsequent discussion of the causation of the right shoulder and in reviewing my subsequent evaluation of the patient on February 21, 2006, it appears medically probable that the patient had a sprain/strain to the right shoulder on October 2, 2004 or on or about September 17, 2004.... I am sorry that I cannot provide any additional information about causation at this time, now one and [a] half years after the episode.”

Appellant requested reconsideration. She submitted a February 27, 2007 report of Dr. Jacob E. Tauber, an orthopedic surgeon, who diagnosed derangement, right shoulder, probable shoulder impingement syndrome, rule out rotator cuff tear. Dr. Tauber offered an opinion on causal relationship:

“In the specific incident of September 17, 2004, [appellant] was casing mail while sitting in a pneumatic chair, and the chair suddenly dropped, and this caused her to grab a ledge, ‘pulling’ her shoulder. Given this mechanism of injury, it is clear that the shoulder was at the very least aggravated on a permanent basis by the incident of September 17, 2004. In addition, [appellant’s] shoulder condition has been contributed to by her extensive repetitive motion duties over the years of employment. These activities will contribute to the development of shoulder impingement syndrome and possibly contribute to tears of the rotator cuff.

“This patient clear[ly] has an industrially[-]related condition, both due to her repetitive motion duties in the course of her 43 years of employment as well as to the specific incident of September 17, 2004. She should undergo further studies. However, the condition of her shoulder specifically remains to be determined as to the precise diagnoses involved. This will be determined when studies have been completed. However, as indicated, her shoulder condition in and of itself is clearly industrially related.”

A March 15, 2007 ultrasound revealed a full-thickness tear of the right rotator cuff, as well as bursitis, calcific tenosynovitis and degenerative joint disease. On April 10, 2007 Dr. Tauber reported: “The diagnosis is confirmed, and my conclusions remain unchanged with respect to the fact that there is an industrial relationship to her condition.”

In a decision dated September 27, 2007, the Office denied modification of its prior decision. It found that Dr. Tauber’s opinion was not well rationalized. The Office added that, if appellant wished to claim an occupational disease due to cumulative work factors over the course of 43 years, she could file a claim for occupational disease. As for her claim that she sustained a traumatic injury on September 17, 2004, the Office found no basis for modifying its prior denial of appellant’s claim.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

Causal relationship is a medical issue,<sup>3</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>4</sup> must be one of reasonable medical certainty,<sup>5</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>6</sup>

## ANALYSIS

The Office accepts that the work incident appellant described on her claim form occurred as alleged, specifically, that on September 17, 2004 her pneumatic chair dropped down and she grabbed the case with her right hand. The Office denied compensation on the grounds that the medical opinion evidence was insufficient to establish a causal relationship between this incident and any diagnosed right shoulder condition.

Six weeks after the incident, appellant saw Dr. Taha, a specialist in occupational medicine. Dr. Taha treated appellant for over a year until he transferred to a new location. Appellant never told him about the incident with her chair, and he never offered an opinion on whether this incident caused an injury to her right shoulder. His reports do not support her claim for compensation.

Dr. Papanek, another specialist in occupational medicine, took over appellant's care. Following the Office's April 4, 2006 decision denying compensation, he reviewed Dr. Ahmad's

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(ee), .5(q) (1999) ("traumatic injury" and "occupational disease or illness" defined).

<sup>3</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> See *William E. Enright*, 31 ECAB 426, 430 (1980).

October 28, 2004 initial report and his own evaluation of appellant and concluded that it appeared medically probable that she had sustained a sprain/strain to the right shoulder on October 2, 2004 or on or about September 17, 2004. Dr. Papanek mentioned no incident involving appellant's chair, and he offered no medical rationale to show how he came to his conclusion. Medical conclusions based on inaccurate or incomplete histories are of little probative value.<sup>7</sup> Medical conclusions unsupported by rationale are also of little probative value.<sup>8</sup>

The only other physician who addressed the issue of causal relationship was Dr. Tauber, the orthopedic surgeon, who is the only physician who discussed what happened on September 17, 2004. He gave a history of injury consistent with appellant's claim. He concluded that this incident at least aggravated appellant's shoulder permanently and that over the years repetitive motion duties at work had contributed and would continue to contribute to the development of shoulder impingement syndrome and possibly tears of the rotator cuff. Dr. Tauber offered no medical reasoning. He reported that appellant had an industrially related right shoulder condition, but he did not explain how the September 17, 2004 incident caused or aggravated a full-thickness tear of her right rotator cuff or how it caused or aggravated her diagnosed bursitis, calcific tenosynovitis or degenerative joint disease. Dr. Tauber generally supports appellant's claim, but his lack of medical rationale diminishes the probative value of his opinion.

Dr. Tauber also neglected to account for several facts that appear to be inconsistent with any substantial injury on September 17, 2004. Appellant did not stop work. She did not contemporaneously tell anyone at work that she had hurt herself. Appellant did not report an injury and did not obtain medical attention for six weeks. When she did obtain medical attention, she told Dr. Ahmad that she had experienced popping in both shoulders for the prior few weeks. Appellant stated that it began on a Saturday (September 17, 2004 was a Friday). She mentioned nothing about a chair collapsing, nothing about grabbing a case. When appellant later filed an accident report at work, she stated that her chair collapsed, she steadied herself and she got up and turned and walked over to the safety captain "and said the chair is unsafe." She did not tell the safety captain she was hurt, and when she later filed her claim for compensation, she did not remember when the injury occurred.

Because the medical opinion evidence does not establish that appellant sustained a right shoulder injury in the performance of duty on September 17, 2004, the Board will affirm the Office's September 27, 2007 decision denying compensation benefits.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a right shoulder injury in the performance of duty on September 17, 2004. The medical opinion evidence is insufficient to establish the critical element of causal relationship.

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<sup>7</sup> See *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

<sup>8</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 16, 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