

record contains the front side of an authorization for medical treatment for a left shoulder or arm injury related to a February 5, 2007 incident. Appellant stopped work briefly, then returned to light-duty work.

Appellant submitted treatment notes dated from February 12 to April 20, 2007 from Dr. Edward A. Wortham, an attending internist, diagnosing a torn left rotator cuff and noting work limitations. Dr. Wortham obtained a February 16, 2007 magnetic resonance imaging scan of the left shoulder showing a partial thickness tear of the supraspinatus tendon and acromioclavicular joint degeneration.

In a May 24, 2007 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. It emphasized the importance of corroborating the claimed incident and submitting rationalized medical evidence explaining how and why that incident would cause the claimed injury. Appellant was afforded 30 days to submit additional evidence. She did not respond.

By decision dated June 26, 2007, the Office denied appellant's claim on the grounds that fact of injury was not established. It found that appellant did not establish that the February 5, 2007 incident occurred as alleged. The Office further found that appellant submitted insufficient medical evidence establishing that the diagnosed left rotator cuff tear was related to the February 5, 2007 incident.

In a June 30, 2007 letter, appellant requested reconsideration. She asserted that the employing establishment would not have made changes to her work area if the left shoulder injury was not work related.

In a July 30, 2007 note, Dr. Wortham diagnosed a left rotator cuff tear and restricted appellant to light duty for four weeks pending a surgical consultation.

By decision dated January 30, 2008, the Office denied modification of the June 26, 2007 decision. It found that Dr. Wortham did not provide a history of injury or explain how and why work factors would cause the claimed left shoulder injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation; that an injury was sustained while 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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

In order to determine whether an employee sustained a traumatic 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 that must be considered jointly. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.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

ANALYSIS

Appellant claimed that she injured her left shoulder on February 5, 2007 when she tossed a parcel into a container. The Office denied the claim as appellant submitted insufficient factual evidence to establish that the incident occurred as alleged. However, on the claim form, appellant’s supervisor noted that the February 5, 2007 incident occurred as alleged and she reported the incident to her supervisor on February 6, 2007. There is no evidence of record controverting appellant’s account of events. The Board finds that appellant has established the February 5, 2007 incident occurred as alleged.⁶ Therefore, the Board will modify the June 26, 2007 and January 30, 2008 decisions to accept that the February 5, 2007 incident occurred at the time, place and in the manner alleged.

The Office also denied the claim on the grounds that appellant submitted insufficient rationalized medical evidence to establish causal relationship. In reports from February 12 to July 30, 2007, Dr. Wortham diagnosed a left rotator cuff tear; however, he did not mention the February 5, 2007 work incident or explain how or why it would cause the rotator cuff tear. Dr. Wortham’s opinion is thus insufficiently rationalized to establish causal relationship.⁷

The Office advised appellant by May 24, 2007 letter of the need to submit rationalized medical evidence explaining how and why the February 5, 2007 incident would cause the claimed left shoulder injury. Appellant did not submit such evidence. Therefore, she did not meet her burden of proof.

³ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁶ *Gregory J. Reser*, 57 ECAB 277 (2005) (an employee’s statement regarding the occurrence of an employment incident will stand unless refuted by strong or persuasive evidence).

⁷ *Deborah L. Beatty*, *supra* note 5.

CONCLUSION

The Board finds that appellant has established that the incident occurred as alleged but has not established that she sustained a left shoulder injury in the performance of duty. Appellant submitted insufficient rationalized medical evidence to establish causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 30, 2008 and June 26, 2007 are affirmed as modified.

Issued: March 20, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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