

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

C.V., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
LONG BEACH HEALTHCARE SYSTEM,)
Long Beach, CA, Employer)

Docket No. 08-2132
Issued: March 24, 2009

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 29, 2008 appellant filed a timely appeal from a May 14, 2008 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review denying her occupational disease claim. Pursuant to 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 established that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On May 23, 2007 appellant, a 61-year-old medical supply technician, filed an occupational disease claim (Form CA-2) for right shoulder pain. She attributed her shoulder pain to lifting surgical trays and loaners in the performance of her federal employment.

Appellant submitted no medical evidence in support of her claim, and by letter dated July 17, 2007, the Office notified her that the evidence submitted was insufficient to support her claim and provided her an opportunity to further support her claim.

Appellant submitted no additional supporting evidence, and by decision dated August 17, 2007, the Office denied her claim because the evidence of record was insufficient to establish that she sustained an injury as defined by the Federal Employees' Compensation Act.

By letter dated September 5, 2007, appellant requested an oral hearing. A hearing was held on March 11, 2008.

In support of her claim, appellant submitted a March 17, 2008 medical report signed by Dr. Brian Coyne, Board-certified in family medicine, who diagnosed appellant with rotator cuff syndrome. Dr. Coyne reported that appellant's pain was chronic and appeared to have originated from an overuse event over one-year prior at work. In a March 21, 2008 report, he asserted that appellant's condition originated at work over one-year prior and required workers' compensation intervention.

By decision dated May 14, 2008, the Branch of Hearings and Review affirmed the Office's August 17, 2007 decision. The hearing representative found that appellant failed to establish that she sustained an injury while in the performance of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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 condition and the specific employment factors identified by the employee.⁵

ANALYSIS

Appellant identified lifting of surgical trays and loaners as employment factors contributing to her injury, and the Office has accepted that she performed these duties in the course of her employment. It is appellant's burden to submit rationalized medical evidence establishing a diagnosed condition causally related to the identified employment factors. The Board finds the evidence of record insufficient to establish that she sustained an injury in the performance of duty.

While Dr. Coyne's March 17, 2008 medical report diagnosed appellant with rotator cuff syndrome, he expresses no opinion on the causal relationship between this diagnosed condition and alleged factors of appellant's employment. Although his report states that appellant's chronic pain originated from an overuse event at work, the Board has consistently held that pain is a symptom, not a compensable diagnosis.⁶

Similarly, Dr. Coyne's March 21, 2008 medical note asserts that appellant's condition originated at work over one year prior. But this note is of little probative value as Dr. Coyne's opinion is unsupported by a complete history of injury⁷ and any explanation of the nature of the relationship between the diagnosed condition and appellant's specific employment factors.⁸

The Office informed appellant of the need to submit a physician's opinion which explained how the claimed condition was related to employment-related factors. However, none of the medical evidence of record establishes this causal relationship.⁹

Accordingly, appellant has failed to establish that she sustained an injury in the performance of duty.

⁵ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ See *Robert Broome*, 55 ECAB 339, 342 (2004); *Ruth Seuell*, 48 ECAB 188 (1996).

⁷ The Board has held that medical opinions based upon an incomplete history have little probative value. *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

⁸ See *Victor J. Woodhams*, *supra* note 5.

⁹ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

CONCLUSION

The Board finds that the Office properly concluded that appellant has failed to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2008 decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review is affirmed.

Issued: March 24, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board