



that appellant had worked a limited-duty assignment since February 22, 2006 due to a right shoulder injury and that he was a casual employee who worked under 90-day appointments.

In a March 17, 2006 treatment note, Ronald Waits, a nurse practitioner, noted appellant's complaint of new injury to his neck and left shoulder from repetitive sorting and transferring mail at work. He advised that appellant's past medical history was significant for ongoing concurrent right shoulder work-related injury and low back pain. Dr. Waits diagnosed left shoulder tendinitis with some suspicion for thoracic outlet syndrome. He opined that appellant's cervical spine symptoms did not appear to have any mechanism associated with work activities. In an attending physician's report of the same date, Mr. Waits checked a box "yes" indicating that appellant's left tendinitis condition was caused or aggravated by his employment activities. The Office received other records from nurse practitioners. Also submitted were March 20, 2006 physical therapy records noting treatment of appellant's right shoulder.

In a March 21, 2006 form report, Dr. Ann Dickson, Board-certified in family medicine, noted appellant's complaint of left shoulder and hand pain from working on a cull belt. She checked a box "yes" on the form report to indicate that her findings were consistent with a work-related mechanism of injury. Dr. Dickson indicated that appellant's diagnosis consisted of unspecified disorders of the bursae and tendons in the shoulder region. She also submitted several other documents listing appellant's work restrictions.

In a March 30, 2006 report, Dr. Mark Failinger, a Board-certified orthopedic surgeon, noted appellant's complaint of increased pain with use of his left side. He diagnosed status post right shoulder decompression and biceps tendinitis.

On April 10, 2006 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence.

In an undated statement, appellant noted that he was working on a light duty cull belt area, taking and placing mail, when he began to feel deep pain in his left shoulder and burning sensations through his neck, left arm, hand and fingers.<sup>1</sup> He indicated that he had no disability or symptoms in his left shoulder prior to this occurrence. Appellant also indicated that he had no history of left shoulder injury.

In a May 8, 2006 report, Dr. Failinger noted appellant's complaint of shoulder problems, indicating that the "other side actually hurts." Upon examination, he found no pain or irritability. Dr. Failinger recommended an electromyogram (EMG) and nerve conduction study. On May 18, 2006 Dr. John Aschberger, a Board-certified physiatrist, diagnosed unspecified disorders of bursae and tendons in the shoulder region. He noted that an EMG revealed normal findings of right arm and right cervical paraspinal muscles. Dr. Aschberger further noted appellant's complaint of pain in the left trapezius and shoulder area. He indicated that an EMG of the left proximal musculature demonstrated no abnormality. Dr. Aschberger noted that a magnetic resonance imaging (MRI) scan revealed disc protrusion in appellant's back. He also found cervical radicular process. On June 7, 2006 Dr. Allan Liebgott, an internist, noted

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<sup>1</sup> On April 13, 2006 the employing establishment terminated appellant's employment for unsatisfactory attendance and punctuality.

evaluating appellant on May 31, 2006 for chronic pain of the neck, shoulder and back as well as major depression. He diagnosed chronic pain syndrome without objective evidence as to causality. Dr. Liebgott opined that appellant's condition was temporally related to his history of injury in September 2005 and February 2006.

On February 9, 2007 Dr. Michael Braaton, a Board-certified diagnostic radiologist, noted that an MRI scan arthrogram of the left shoulder revealed mild supraspinatus and subscapularis tendinosis and no rotator cuff tear. He also noted a small amount of fluid within the subacromial and subdeltoid area, possibly related to mild bursitis or anesthetic injection. On February 12, 2007 Dr. Samuel Ahn, a Board-certified diagnostic radiologist, noted that an arthrogram of the left shoulder taken that day was negative.

In a February 23, 2007 report, Dr. Aschberger noted that appellant presented requesting a letter regarding his complaints of left shoulder pain. He advised that the date of injury was October 26, 2006, and noted appellant's history of right rotator cuff and biceps tendinitis with right shoulder surgery. Dr. Aschberger reviewed some abnormal findings in the left neck based on electrodiagnostic testing. He indicated that appellant's July 10, 2006 visit revealed persistent pain in the left shoulder with persistent symptoms in the left arm, shoulder and trapezius. Dr. Aschberger noted that appellant reported performing increased repetitive reaching with his left shoulder to protect his right shoulder. He stated that appellant's pain symptoms at the neck and shoulder suggested shoulder impingement. Dr. Aschberger also noted that an MRI arthrogram scan found mild supraspinatus and subscapularis tendinosis on the left. He opined that, "given the history of the case and objective findings, I believe the patient's left shoulder symptomatology is related to his work." Dr. Aschberger opined that appellant's left shoulder symptoms would likely improve with a short course of therapy with little, if any, impairment expected. There was no indication of a cervical radicular process and any cervical spine abnormality was not likely work related.

On April 13, 2007 Dr. Failinger noted appellant's complaint of left shoulder pain when lifting, pushing and pulling. Upon examination, he found some discomfort with adduction and forward flexion and some give away weakness. Dr. Failinger found that appellant was otherwise neurovascularly intact. Appellant also submitted several reports from Dr. Lupe Ledezma, a licensed psychologist, who noted appellant's complaint of continued pain in his left shoulder and upper arm.<sup>2</sup>

In a July 16, 2007 decision, the Office denied appellant's claim finding that the medical evidence did not establish that the claimed medical condition resulted from the accepted event.

In a July 12, 2007 report, Dr. Aschberger noted appellant's status which included persistent left shoulder pain. On July 25, 2007 Dr. Failinger noted seeing appellant for his left shoulder condition on April 13, 2007. He diagnosed left rotator cuff tendinitis. Regarding the cause of appellant's left shoulder condition, Dr. Failinger advised that he never addressed whether appellant's left shoulder condition was work related and advised that he would defer this assessment to Drs. Aschberger and Dickson.

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<sup>2</sup> Dr. Ledezma's reports primarily focused on appellant's treatment for depression and suicidal ideations. The record also contains other evidence from healthcare providers regarding appellant's mental status and treatment.

On August 7, 2007 appellant requested an oral hearing. On October 18, 2007 he submitted an occupational narrative; stating that he began working for the employing establishment on October 10, 2004. Appellant became a mail handler in July 2005 whereby his duties consisted of loading and unloading trays of mail and unloading trucks with parcels weighing up to 70 pounds. He noted sustaining right shoulder and lower back pain on September 28, 2005. On November 22, 2005 appellant noted that the Office accepted his claim for right shoulder and lumbar sprain and strain. He explained that his right shoulder injury resulted in restricted duty, which he began on February 22, 2006, in which he began exclusive use of his left arm for three to four weeks to perform work duties requiring placing loose mail into receptacles.

At a November 27, 2007 oral hearing, appellant, through his attorney, advised that the claim should be treated as an occupational disease claim. On January 10, 2008 appellant submitted a statement reiterating that his claim should be regarded as an occupational disease, not a traumatic injury. He also submitted several reports regarding his psychiatric treatment.

In a March 26, 2008 decision, an Office hearing representative affirmed the July 16, 2007 decision. She adjudicated the claim as an occupational disease as appellant indicated that the use of his left arm for three weeks contributed to his condition. However, the hearing representative found that there was insufficient medical evidence to establish a causal relationship between his repetitive work activities and his left shoulder condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>4</sup>

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

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<sup>3</sup> *J.E.*, 59 ECAB \_\_\_ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

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.<sup>5</sup>

### ANALYSIS

Appellant alleged that he sustained left hand and shoulder pain on March 17, 2006, the date he was diagnosed with left shoulder tendinitis after working in a cull belt area. Although he filed a traumatic injury claim, his March 17, 2006 claim form and subsequent statements reported that repetitive lifting and reaching of mail over the course of three to four weeks caused his claimed condition.<sup>6</sup> The Office properly adjudicated the claim as one for an occupational disease. The evidence also supports that appellant's job duties consisted of loading and unloading trays of mail and placing mail into receptacles. He has not provided sufficient medical evidence, through to establish that his diagnosed left shoulder condition is causally related to these employment activities.

In a February 23, 2007 report, Dr. Aschberger found persistent pain in appellant's left arm, shoulder and trapezius. He noted that appellant increasingly reached with his left shoulder to protect his right shoulder postsurgery. Dr. Aschberger opined that appellant's pain symptoms suggested shoulder impingement and, based on appellant's history and objective findings, that the left shoulder symptoms were related to his employment. Although his opinion generally supports causal relationship, he did not provide medical rationale explaining the reasons increased left shoulder reaching would cause or aggravate appellant's diagnosed left shoulder condition.<sup>7</sup> Dr. Aschberger stated that his opinion was based on appellant's history and objective findings but he did not explain how a particular finding or a particular aspect of appellant's history supported his conclusion on causal relationship. His report also did not demonstrate any familiarity with the February and March 2006 time period in which appellant's claimed left shoulder condition became symptomatic.<sup>8</sup> Other reports from Dr. Aschberger did not specifically address how appellant's employment activities caused or aggravated a diagnosed left shoulder condition.

On June 7, 2006 Dr. Liebgott diagnosed chronic pain syndrome without objective evidence on causality. He opined that appellant's condition was temporally related to the history

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<sup>5</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>6</sup> 20 C.F.R. § 10.5(ee) defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. 20 C.F.R. § 10.5(q) defines an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift.

<sup>7</sup> *S.S.*, 59 ECAB \_\_\_ (Docket No. 07-579, issued January 14, 2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

<sup>8</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

of injury in September 2005 and February 2006. The Board notes that a temporal relationship between employment and the onset of a medical condition is insufficient to establish causal relationship.<sup>9</sup> Dr. Liebgott did not otherwise explain how particular employment activities caused or aggravated a diagnosed medical condition. Dr. Dickson's March 21, 2006 report noted appellant's complaint of left shoulder and hand pain from working on a cull belt. She checked a box "yes" on the form report to indicate that her findings were consistent with a work-related mechanism of injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.<sup>10</sup> Dr. Dickson provided no medical rationale to support her opinion on causal relationship.

Dr. Failinger treated appellant's left shoulder condition but, in his July 25, 2007 report, he specifically declined to address whether any left shoulder condition was employment related.<sup>11</sup> Similarly reports of other physicians did not address whether appellant's employment activities caused or aggravated a diagnosed left shoulder condition.

The record also contains treatment notes from nurse practitioners and physical therapists. However, nurses and physical therapists are not "physicians" as defined under the Act. Their opinions are of no probative value.<sup>12</sup> Consequently, the medical evidence is insufficient to establish that a diagnosed left shoulder condition is causally related to appellant's job duties.

On appeal, appellant resubmitted his January 10, 2008 statement asserting that the Office has a duty to develop the evidence. As noted, appellant has the burden of proof to establish his claim and the medical evidence submitted is insufficient to meet appellant's burden of proof or to require further development of the claim. The Office is not obligated to disprove a claim.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

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<sup>9</sup> See *A.D.*, 58 ECAB \_\_\_\_ (Docket No. 06-1183, issued November 14, 2006) (the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

<sup>10</sup> *Alberta S. Williamson*, 47 ECAB 569 (1996).

<sup>11</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>12</sup> *David P. Sawchuk*, 57 ECAB 316 (2006); *Roy L. Humphrey*, 57 ECAB 238 (2005); see 5 U.S.C. § 8101(2) (defining the term "physician"); see also *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>13</sup> See *Robert P. Bourgeois*, 45 ECAB 745 (1994) (where medical reports gave some support for causal relationship and appellant established a *prima facie* claim, the evidence was of such little probative value that the Office discharged its responsibility of taking the next step by notifying appellant of the additional medical evidence is needed to establish the claim fully).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated March 26, 2008 is affirmed.

Issued: November 20, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board