



during scheduled business hours and on the employing establishment's premises at the time of the work incident.<sup>1</sup>

On September 2, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence. It requested a physician's report with an opinion on the causal relationship between the alleged work incident and appellant's diagnosed condition.

Appellant submitted a September 19, 2008 statement explaining that he was injured after lifting 40-pound free weights while doing a military press. He explained that the left weight shifted causing his left shoulder to rotate backwards. Appellant sought treatment and physical therapy within days of the injury. He submitted a CA-1 form within 48 hours but it did not reach its intended destination until after he inquired about it. Appellant submitted a September 22, 2008 physical therapy note indicating that he injured his left shoulder on January 27, 2008 while lifting weights at the employing establishment's gym. A September 23, 2008 report from Dr. Kit McCalla, an osteopath specializing in orthopedic surgery, noted that appellant was initially treated on February 20, 2008 for complaint of a left shoulder injury sustained three weeks prior while lifting free weights at work. He also noted that appellant had surgery on June 25, 2008 for left claviculo-acromial joint and subsequently underwent postoperative therapy until he was released to full duty.

On February 20, 2008 Dr. McCalla noted that appellant presented for a 12-week postoperative followup following a right Achilles tendon and fibular biopsy. He noted appellant's complaint of pain in his left shoulder from lifting weights three weeks prior. Dr. McCalla stated that appellant was having a hard time with overhead activities. His examination revealed left shoulder acromioclavicular (AC) joint tenderness with pain. Dr. McCalla diagnosed "acute onset left AC joint arthritis, not osteoarthritis, clinically." On April 2, 2008 he noted that appellant's AC joint was tender and remained a focal point of pain. Dr. McCalla diagnosed right shoulder AC joint arthritis. He noted that appellant's right distal fibula biopsy was benign with the bone window almost completely closed. Dr. McCalla advised that appellant could return to full duty. In a June 25, 2008 surgical report, he performed left shoulder mini open distal clavicle resection. Dr. McCalla diagnosed left shoulder AC joint arthritis and noted that appellant's left shoulder pain and tenderness had not resolved for any length of time through conservative treatment.<sup>2</sup>

In a decision dated October 10, 2008, the Office denied appellant's claim finding the medical evidence to be insufficient to establish a diagnosis that could be connected to the claimed event.

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<sup>1</sup> The employing establishment controverted the claim on the basis that appellant filed his claim after 30 days.

<sup>2</sup> Dr. McCalla's office also forwarded a December 6, 2007 surgical report, in which Dr. McCalla noted performing a right leg open bone cyst biopsy of the distal fibula with a closed biopsy bone allograft.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his 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>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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.<sup>5</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 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>6</sup>

## ANALYSIS

The record reflects that, on January 27, 2008, appellant was lifting free weights in the employing establishment's gym while in the performance of duty. However, the medical evidence does not establish that lifting free weights caused or aggravated his claimed left shoulder injury.

On September 23, 2008 Dr. McCalla noted treating appellant on February 20, 2008 for a left shoulder injury he sustained at work while lifting free weights. He advised that appellant's injury required surgery on his left claviculo-acromial joint. However, this report is of diminished probative value as Dr. McCalla did not provide medical rationale explaining how lifting weights

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *S.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

caused or aggravated appellant's left shoulder injury.<sup>7</sup> Dr. McCalla did not explain the reasons how the February 20, 2008 weight-lifting incident caused or aggravated the AC joint arthritis or the necessity for surgery on June 25, 2008.

On February 20, 2008 Dr. McCalla noted appellant's complaint of left shoulder pain from lifting weights and difficulty with overhead activities. He diagnosed acute onset left AC joint arthritis but did not address whether weight lifting caused or aggravated appellant's diagnosed left AC arthritis condition. The Board has held that 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>8</sup> His reports of April 2 and June 25, 2008 reiterated the diagnosis of right shoulder AC joint arthritis and left shoulder AC joint arthritis, respectively. However, neither report offered an opinion on causal relationship or attributed appellant's weight-lifting incident as the cause of his diagnosed condition. As noted, medical evidence without an opinion on causal relationship is of little probative value.

Appellant also submitted a September 22, 2008 treatment note from a physical therapist indicating that he injured his left shoulder lifting weights at the employing establishment's gym. However, the Board has noted a physical therapist is not a physician as defined under the statute. Therefore any report from such individual does not constitute competent medical evidence which, in general, can only be given by a qualified physician.<sup>9</sup>

The Office notified appellant of the evidence needed to establish his claim on September 2, 2008. Specifically, the Office requested that appellant needed to submit a physician's medical explanation of how the alleged work incident contributed to his left shoulder condition. However, he did not submit a reasoned medical opinion explaining how the February 20, 2008 weight-lifting incident caused or aggravated any diagnosed conditions. Consequently, the Board finds that appellant did not establish his claim.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury on January 27, 2008 in the performance of duty.<sup>10</sup>

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<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> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007).

<sup>9</sup> *See* 5 U.S.C. § 8101(2) (defining the term "physician"); *A.C.*, 60 ECAB \_\_\_\_ (Docket No. 08-1453, issued November 18, 2008).

<sup>10</sup> Appellant submitted new evidence on appeal. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated October 10, 2008 is affirmed.

Issued: September 3, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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