



his left shoulder/left rotator cuff on June 30, 2008. The June 30, 2008 accident report indicated with a checkmark that appellant's left shoulder injury was work related.

On July 18, 2008 the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a June 30, 2008 report, received by the Office on August 7, 2008, Dr. Czerkowski stated that appellant's left shoulder was tender and painful and had been bothering him because he hit a bump while driving. He advised that appellant had surgery to repair his left rotator cuff approximately one year prior to his examination. Dr. Czerkowski noted some crepitus with abduction and external rotation of the shoulder, but no instability. He advised that appellant's labrum was normal based on testing and opined that his rotator cuff seemed intact.

In a report dated August 6, 2008, Dr. H. Lynn Norman, Board-certified in orthopedic surgery, stated that appellant continued to experience pain in his left shoulder with reaching up and lifting. He noted that appellant believed he sustained a reinjury of his left shoulder in June 2008; appellant also considered that he never fully recovered from his October 2007 left rotator cuff surgery. On examination, Dr. Norman noted weakness with resistance in abduction and forward flexion. He recommended that appellant continue on light-duty work with no lifting or pushing overhead, with a limit of five pounds.

By decision dated August 26, 2008, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim that he sustained a left shoulder injury in the performance of duty on June 30, 2008.

On September 23, 2008 appellant requested reconsideration.

In a September 10, 2008 report, Dr. Norman stated:

"I first examined [appellant] on July 18, 2008, for evaluation of ongoing symptoms regarding the left shoulder. [Appellant] had previously had surgical repair in October 2007 but never fully recovered from his symptoms and continued with persistent pain. He had since returned to work with an activity limitation of no overhead lifting with the left arm and no lifting over five pounds. A magnetic resonance imaging [MRI] scan that was done in July [2008] was nondiagnostic, due to the artifact from the metallic implants. I did get a shoulder arthrogram at St. Vincent's on September 2, 2008, which confirmed a full thickness tear of the supraspinatus tendon of the left shoulder.

"After reviewing the clinical notes from [appellant's] prior treating [physician,] it is evident that his symptoms never fully recovered following the initial injury or following the surgery. He continues with a torn rotator cuff tendon that, based on his history and current condition, extends back to the initial work-related injury in 2007. The physical exam[ination] along with the history and review of medical

records establishes the fact that his rotator cuff is still torn, requires further treatment and is directly related to the work injury that he sustained in April 2007.

“I recommend that [appellant] undergo a shoulder arthroscopy, repair of rotator cuff tendon as indicated and will probably be an open repair due to this delayed treatment, which has probably resulted in a retracted tendon. He could continue a light[-]duty job status at this time with limitation of overhead lifting with the left arm above chest height not to exceed five pounds.”

By decision dated October 7, 2008, the Office denied modification of its prior decision.

On October 28, 2008 appellant requested reconsideration.

In a July 18, 2008 report, received by the Office on October 28, 2008, Dr. Norman stated the history of injury and noted complaints of left shoulder pain stemming from his preexisting left shoulder condition. He related that appellant had difficulty reaching up and overhead with the left arm and continued to experience weakness. Dr. Norman diagnosed left rotator cuff tendinitis with possible re-tear.

By decision dated November 5, 2008, the Office denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</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.<sup>4</sup> 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> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>6</sup>

The Board has held that 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>7</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

### ANALYSIS

The Office accepted that appellant experienced left shoulder pain while driving over a bump on June 30, 2008. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>9</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the June 30, 2008 employment incident caused a personal injury that would have been competent to cause the claimed injury.

Drs. Czerkowski and Norman stated findings on examination and indicated that appellant had left shoulder pain; however, these physicians related his left shoulder symptoms to a previous injury and to his October 2007 surgery for left rotator cuff repair. Dr. Czerkowski noted tenderness and pain in appellant's left shoulder, which he attributed to hitting a bump while driving on June 30, 2008. He noted that appellant had surgery to repair his left rotator cuff approximately one year prior to his examination. Dr. Czerkowski noted some crepitus on range of motion tests but found that appellant's left shoulder was stable, that he had a normal labrum and that his rotator cuff seemed intact. Dr. Norman stated that appellant had a torn left rotator cuff tendon which, based on his history and current condition, was directly related to a work injury he sustained in April 2007.<sup>10</sup> He noted that appellant previously had surgical repair in October 2007; however, he never fully recovered from his symptoms and experienced

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<sup>6</sup> *Id.*

<sup>7</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>8</sup> *Id.*

<sup>9</sup> See *John J. Carlone*, *supra* note 4.

<sup>10</sup> While both Dr. Norman and Dr. Czerkowski noted that appellant had a preexisting shoulder condition and Dr. Norman asserted that he sustained a "work injury" in April 2007, there is no indication in the record that his preexisting left shoulder condition and October 2007 surgery for rotator cuff repair was work related. In addition, there is no documentation in the record showing that appellant previously filed a claim or that the Office accepted a claim based on a left shoulder injury.

continuous, persistent pain. Dr. Norman stated that a September 2, 2008 arthrogram indicated a full thickness tear of the supraspinatus tendon of the left shoulder. He diagnosed left shoulder tendinitis with probable re-tear of the left rotator cuff.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>11</sup> Although Dr. Norman did present diagnoses of appellant's condition, tendinitis and probable re-tear of the left rotator cuff, he did not sufficiently explain how these conditions were causally related to the June 30, 2008 employment injury. The medical reports of record did not explain how medically appellant would have sustained a left shoulder injury because he hit a bump in the road while driving on June 30, 2008.<sup>12</sup> There is no indication in the record, therefore, that the diagnosed conditions were work related. Appellant failed to provide a rationalized, probative medical opinion relating his current condition to any factors of his employment.

The Office advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant, therefore, did not provide a medical opinion from a physician to sufficiently describe or explain the medical process through which the June 30, 2008 work accident would have caused or contributed to the claimed left shoulder injury. The Office properly denied his claim for compensation in its August 26, October 7 and November 5, 2008 decisions.

### **CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a left shoulder injury in the performance of duty on June 30, 2008.

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<sup>11</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>12</sup> The June 30, 2008 form reports from Dr. Czerkowski that supported causal relationship with a checkmark are insufficient to establish the claim. The Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 5, October 7 and August 26, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: September 22, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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