

to sweep mail into trays, she sustained a left shoulder and arm strain and experienced pain across her chest and neck. She stopped working that day. The employing establishment controverted the claim.¹

In a November 8, 2006 emergency room report, Dr. Lynda Martins, Board-certified in emergency medicine, diagnosed a left shoulder strain. She took appellant out of work for two days and stated that she should not participate in any strenuous activity until her condition and sense of well being returned. Dr. Martins discharged appellant on November 9, 2006.

On November 13, 2006 Dr. Peter Leo Varriale, appellant's treating physician and a Board-certified orthopedic surgeon, diagnosed a left shoulder rotator cuff tear. He opined that appellant was totally disabled for work until a December 4, 2006 reevaluation.

By letter dated December 4, 2006, the Office notified appellant of the deficiencies in her claim and requested she provide additional factual and medical evidence.

In a November 13, 2006 report, Dr. Varriale reported appellant's complaints of continuing left shoulder pain and that she experienced progressive pain at work while performing overhead mail sorting. Physical examination revealed flexion to 120 degrees and abduction to 90 degrees with pain on abduction and internal rotation and weakness with external rotation. Dr. Varriale noted that a rotator cuff tear had not been ruled out as a diagnosis. He placed appellant out of work and recommended physical therapy and a magnetic resonance imaging scan.

In duty status reports dated November 20 and December 4, 2006, Dr. Varriale stated that appellant experienced weakness and pain with abduction and rotation and weakness with external rotation. He indicated that she was disabled from work.

On October 25, 2006 Dr. Charles Ruotolo, a Board-certified orthopedic surgeon, reported appellant's complaints of recurrent and intermittent left shoulder pain, as well as some right shoulder pain. He diagnosed bilateral shoulder rotator cuff tendinitis and recommended physical therapy. Dr. Ruotolo returned her to work on October 26, 2006 without restrictions.

Appellant also submitted physical therapy notes dated November 20 through December 6, 2006 and an October 20, 2006 note from a certified physician's assistant taking her off work until further notice due to left rotator cuff tear.

By decision dated January 10, 2007, the Office denied appellant's claim on the grounds that she did not submit sufficient factual evidence establishing that she sustained an injury in the performance of duty, as alleged.

On February 9, 2007 appellant filed a request for a review of the written record by an Office hearing representative.

¹ The record reveals that appellant has a separate claim for a December 7, 2005 left shoulder injury under Office file number xxxxxx018.

In a January 3, 2007 report, Dr. Varriale stated that appellant's employment duties included overhead mail sorting and that she experienced progressive pain after a November 8, 2006 incident. He reported that she had significant limitation of abduction and flexion and weakness with external rotation. Dr. Varriale diagnosed shoulder impingement syndrome with possible tear of the rotator cuff. He stated that her right rotator cuff was injected with cortisone on November 13, 2006 but that she continued to experience pain and loss of range of motion in the arm. Dr. Varriale opined that appellant's present symptoms were directly related to her repetitive job duty of overhead mail sorting and that her present shoulder condition was due to her employment. In a January 3, 2007 duty status report, he continued to take appellant out of work. Dr. Varriale stated that she experienced pain and weakness with abduction and external rotation of the left shoulder. He indicated that appellant sustained a repetitive use injury and that rotator cuff tear was not ruled out.

In an undated statement, appellant contended that on November 8, 2006 she attempted to use a step to sweep the top tier of a delivery bar code sorter (DBCS) to prevent overreaching but that her supervisors stopped her from using the step. She stated that she swept the top tier of the DBCS from the floor, which caused her to strain her left shoulder and arm and caused pain across her chest and neck. Appellant sought medical treatment that day.

By decision dated June 1, 2007, the Office hearing representative affirmed and modified the January 10, 2007 decision finding that the medical evidence of record did not establish that appellant sustained an injury causally related to the November 8, 2006 incident. The hearing representative found that Dr. Varriale did not explain how the November 8, 2006 incident caused the diagnosed condition. She also noted that the doctor's medical opinions were not based on a complete medical and factual history as he did not address appellant's preexisting left shoulder condition.

On April 14, 2008 appellant, through her representative, filed a request for reconsideration. She requested that the Office develop her claim as an occupational disease based on Dr. Varriale's unrefuted opinion that she sustained a left shoulder injury due to her employment duties.

By decision dated July 8, 2008, which was reissued on July 22, 2008, the Office affirmed the June 1, 2007 decision as modified, finding that the medical evidence did not establish that appellant sustained an injury causally related to the November 8, 2006 employment incident.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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

² The initial July 8, 2008 decision incorrectly listed appellant's address necessitating the Office to reissue the decision on July 22, 2008.

³ 5 U.S.C. §§ 8101-8193.

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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

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.⁸

ANALYSIS

The Office accepted that on November 8, 2006 appellant experienced pain while reaching above the shoulder to sweep mail into trays. The issue is whether she sustained an injury causally related to the November 8, 2006 employment incident. The Board finds appellant has not met her burden of proof.

Appellant submitted medical reports dated November 13, 2006 through January 3, 2007 from Dr. Varriale. On November 13, 2006 Dr. Varriale diagnosed left shoulder rotator cuff tear and found her totally disabled for work. In a separate report, he reported appellant's complaints of progressive pain at work, where her employment duties included overhead mail sorting. Dr. Varriale continued to place her out of work finding weakness and pain with abduction and rotation and weakness with external rotation. On January 3, 2007 he reported that appellant's employment duties included overhead mail sorting and that she experienced progressive pain after a November 8, 2006 incident. Dr. Varriale diagnosed shoulder impingement syndrome

⁴ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁷ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

with possible rotator cuff tear. He opined that appellant's symptoms were directly related to her repetitive job duties of overhead mail sorting and that she sustained a repetitive use injury.

The Board finds that Dr. Varriale's reports are not sufficient to establish appellant's claim as he related her shoulder condition to her repetitive job duties rather than the November 8, 2006 employment incident. Although Dr. Varriale mentioned that she experienced pain after November 8, 2006, he did not provide a rationalized medical opinion explaining how she sustained shoulder impingement syndrome and a rotator cuff tear due to her lifting over her shoulder on November 8, 2006. Therefore, Dr. Varriale's reports are of diminished probative value.⁹

In a November 8, 2006 emergency room report, Dr. Martins diagnosed left shoulder strain. She took appellant out of work and recommended that she not participate in any strenuous activity. Further, in an October 25, 2006 report, Dr. Ruotolo reported appellant's complaints of recurrent and intermittent left shoulder pain and diagnosed bilateral shoulder rotator cuff tendinitis. Neither of these reports addresses the cause of appellant's left shoulder condition. Therefore, they are of diminished probative value.¹⁰

Appellant also submitted physical therapy notes dated November 20 through December 6, 2006 and an October 20, 2006 note from a certified physician's assistant. As neither a certified physician's assistant nor a physical therapist is included in the definition of a physician under the Act, these reports are also of diminished probative value.¹¹

Appellant did not submit a rationalized medical opinion from a qualified physician establishing that she sustained a left shoulder injury due to the November 8, 2006 employment incident. Thus, she has not met her burden of proof in establishing her claim.

The Board notes appellant's arguments on appeal that her claim should be adjudicated as an occupational disease. Appellant initially filed a traumatic injury claim alleging that she experienced pain while sweeping mail over her shoulder on November 8, 2006. She subsequently filed a statement reiterating that she was injured on November 8, 2006. Although it is well established that a claim for compensation need not be filed on any particular form, here, appellant's description of her alleged injury meets the definition of a traumatic injury.¹² Appellant did not specifically identify exposure to employment factors for more than one

⁹ See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Victor J. Woodhams*, *supra* note 8.

¹⁰ See *Robert Broome*, 55 ECAB 339 (2004).

¹¹ Under section 8101(2), the definition of a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See also *Jerre R. Rinehart*, 45 ECAB 518 (1994).

¹² See *D.D.*, 57 ECAB 734 (2006); *Barbara A. Weber*, 47 ECAB 163 (1995). See also 20 C.F.R. § 10.5(ee) (traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift).

workday or shift as the cause of her shoulder condition.¹³ Therefore, the Board finds that the Office properly adjudicated her claim as a traumatic injury.¹⁴

CONCLUSION

The Board finds that appellant did not establish that she sustained a left shoulder injury causally related to the November 8, 2006 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 23, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹³ See 20 C.F.R. § 10.5 (q) (occupational disease means a condition produced by the work environment over a period longer than a single workday or shift).

¹⁴ Appellant is not precluded from filing a separate claim for an occupational disease on Form CA-2 within the applicable time limitations provided in 20 C.F.R. § 10.101.