

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

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A.C., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,  
SAN FRANCISCO VMAC, San Francisco, CA,  
Employer**

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**Docket No. 09-2082  
Issued: April 16, 2010**

*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 August 13, 2009 appellant filed a timely appeal from a May 28, 2009 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

**ISSUE**

The issue is whether appellant satisfied his burden of proof to establish he sustained an injury in the performance of duty on July 19, 2007 causally related to his employment.

## **FACTUAL HISTORY**

On July 31, 2007 appellant a 46-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) for numbness in his right wrist and shoulder as well as shoulder, buttocks and tailbone pain.<sup>1</sup>

In an undated supplemental statement, appellant related that on July 19, 2007 while in the intensive care unit's nurse station, the chair in which he was seated tilted forward and as he attempted to brace himself, he jammed his right shoulder. Appellant alleged that because of this incident he sustained shoulder, back and right wrist pain.

Appellant submitted an April 20, 2009 note signed by a nurse practitioner.

By decision dated May 28, 2009, the Office denied the claim, finding that, although appellant established the July 19, 2007 incident occurred as alleged, he has not established that the July 19, 2007 incident caused a medically-diagnosed injury.

## **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>3</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>4</sup> As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

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

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<sup>1</sup> Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal, which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). See *J.T.*, 59 ECAB \_\_\_ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *J.P.*, 59 ECAB \_\_\_ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB \_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</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>9</sup>

### ANALYSIS

The Office accepted that the July 19, 2007 incident occurred as alleged. Appellant's burden is to demonstrate the accepted employment incident caused a medically-diagnosed injury. Causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence. Appellant has not submitted any medical opinion evidence and, consequently, the Board finds that appellant has not satisfied his burden of proof to establish on July 19, 2007 he sustained an injury in the performance of duty causally related to his employment.

In support of his claim, appellant submitted a note signed by a nurse practitioner. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence.<sup>10</sup> Accordingly, the nurse practitioner's note does not constitute medical evidence and does not satisfy appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>11</sup> The fact that a condition manifests itself or worsens during a period of employment<sup>12</sup> or that work activities produce symptoms revelatory of an underlying

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<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>8</sup> *T.H.*, 59 ECAB \_\_\_ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>9</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

<sup>11</sup> *D.I.*, 59 ECAB \_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>12</sup> *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

condition<sup>13</sup> does not raise an inference of causal relationship between a claimed condition and an employment incident.

**CONCLUSION**

The Board finds that appellant has not satisfied his burden of proof to establish he sustained an injury in the performance of duty on July 19, 2007 causally related to his employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2010  
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

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<sup>13</sup> *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).