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

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| **E.S., Appellant** | ) | |
| **and** | ) | **Docket No. 10-191** |
| | ) | **Issued: August 2, 2010** |
| **U.S. POSTAL SERVICE, POST OFFICE, Sharpsville, PA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On October 26, 2009 appellant filed a timely appeal from the June 3 and July 8, 2009 merit decisions 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 this case.

### ***ISSUE***

The issue is whether appellant sustained a right shoulder injury while in the performance of duty on February 2, 2009.

### ***FACTUAL HISTORY***

On February 3, 2009 appellant, a 61-year-old letter carrier, filed a traumatic injury claim alleging that he sustained a right shoulder injury in the parking lot behind the employing establishment on February 2, 2009. He slipped on ice and fell on his right elbow, jamming his right shoulder.

Appellant submitted disability slips and progress notes from Dr. Ronald J. Ruscitti, a chiropractor, for the period February 3 through April 8, 2009 reflecting his treatment of appellant for a right rotator cuff sprain. On April 30, 2009 the Office advised him that the information submitted was insufficient to establish his claim and allowed him 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition. Appellant was informed that a chiropractor was considered to be a physician under the Federal Employees' Compensation Act only to the extent that reimbursable services are limited to treatment of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. In response to the Office's request, he submitted progress notes from Dr. Ruscitti for the period April 8 through May 6, 2009.

By decision dated June 3, 2009, the Office denied appellant's claim. Although it accepted that the work event occurred as alleged, the Office found that the record did not contain any probative medical evidence that provided a diagnosis that could be connected to the accepted event.

On June 29, 2009 appellant requested reconsideration. He stated that he sought treatment from Dr. Ruscitti for his shoulder injury because he had been providing excellent medical care for various conditions for over 20 years. Appellant also believed that he was the most economical option.

Appellant submitted a June 24, 2009 narrative report from Dr. Ruscitti, who stated that he examined appellant on February 3, 2009 for complaints of right shoulder and mid-back pain. He informed his physician that he had slipped on the ice while delivering mail, falling on his right elbow and jamming his right shoulder the prior day. On examination, appellant exhibited mild to moderate restricted cervicothoracic ranges of motion with positive cervical compression, right shoulder depression, right Adson's maneuver, right costoclavicular, right hyperabduction and right shoulder apprehension orthopedic test. He exhibited moderate to severely decreased right shoulder ranges of motion with weakness of the right deltoid muscle Grade 3/5, along with moderate swelling of the right shoulder. Dr. Ruscitto stated that he had performed an x-ray of the thoracic spine and right shoulder and that a copy of the radiological report was enclosed.[1] He diagnosed a right shoulder rotator cuff sprain/strain, right shoulder injury, thoracic sprain/strain and thoracic outlet syndrome. Dr. Ruscitto noted that appellant was treated using joint manipulation/mobilization and therapeutic exercises. He opined that appellant's "fall on the ice while working on February 2, 2009 as a mailman directly caused his right shoulder and mid-back condition which resulted in temporary impairment, pain, swelling and restrictive dysfunction of his right shoulder, mid-back and right upper extremity." Appellant also submitted June 17, 2009 progress notes from Dr. Ruscitti.

By decision dated July 8, 2009, the Office denied modification of its prior decision on the grounds that there was no medical evidence from a qualified physician establishing that appellant had sustained an injury under the Act. The claims examiner noted that the record did not contain an x-ray of the lumbar spine or a diagnosis of a subluxation.

[1] The Board notes that the record does not contain a copy of any radiological reports.

## ***LEGAL PRECEDENT***

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under the Act has the burden of proof to establish 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 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 or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

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[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by the Act refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

## ***ANALYSIS***

The Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the February 2, 2009 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion from a qualified physician establishing that the accepted work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy his burden of proof.

Medical evidence submitted by appellant consists of reports, disability slips and progress notes from Dr. Ruscitti, appellant's chiropractor. A chiropractor is considered a physician for purposes of the Act only where he diagnoses a subluxation by x-ray.[11] The evidence does not reflect that Dr. Ruscitti diagnosed subluxation based on the results of an x-ray. Therefore, his reports do not constitute probative medical evidence.[12] The Board notes that the Office advised appellant of the necessity of obtaining a report from a qualified physician. It further informed him that the reports from his chiropractor were insufficient to provide a basis for his claim without a diagnosis of a subluxation demonstrated by x-ray. In spite of the Office's advice, appellant chose not to seek an opinion from a qualified physician, but rather to rely to his detriment on the reports of his chiropractor.

Appellant expressed his belief that his right shoulder condition resulted from the February 2, 2009 employment incident. 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.[13] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2).

[13] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

factors or incidents, is sufficient to establish causal relationship.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report from a qualified physician, which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how his claimed shoulder condition was caused or aggravated by his employment, he has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

On appeal, appellant contends that he saved time and money by seeking treatment from a chiropractor, and that Dr. Ruscitti provided all requested information and evidence to the Office, including x-ray reports. As indicated, Dr. Ruscitti is not considered to be a physician under the Act, as he did not diagnose a subluxation as demonstrated by x-ray. Further, although appellant asserted that x-rays were provided, the record does not contain any x-ray reports of the lumbar spine.

## ***CONCLUSION***

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on February 2, 2009.

[14] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 8 and June 3, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 2, 2010
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