

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

J.S., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
West Roxbury, MA, Employer**

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**Docket No. 09-2305
Issued: May 14, 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 September 16, 2009 appellant filed a timely appeal from a July 24, 2009 merit decision denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty causally related to her employment.

FACTUAL HISTORY

On May 26, 2009 appellant, a 59-year-old diagnostic radiologic technician, filed an occupational disease claim (Form CA-2) for a torn right rotator cuff that she alleges was caused by lifting patients, operating equipment necessary to obtain diagnostic x-rays and the repetitive shoulder motions required to perform her employment duties. She first became aware of her condition and that it was caused by her federal employment on May 16, 2006.

By letter dated May 28, 2009, the Office advised appellant that she had not submitted sufficient evidence to establish her claim. Appellant was requested to submit a comprehensive medical report from her treating physician which described a detailed history of her condition, her symptoms, results of examinations and tests, diagnosis, summary of treatment provided, and the doctor's opinion, with medical rationale explaining the cause of her condition and specifically whether her federal employment contributed to her condition.

Appellant submitted no additional evidence supporting her claim, within the 30 days allowed by the Office.

The Office, by decision dated July 24, 2009, found that appellant had established the employment factors she alleged responsible for her condition, but the Office denied the claim because the evidence of record did not demonstrate the established employment factors caused a medically diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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.⁷

ANALYSIS

The Office accepted that appellant identified the employment factors she deemed responsible for her condition. Appellant's burden is to demonstrate that the established employment factors caused a medically diagnosed condition. As noted above, causal relationship is a medical issue that can only be proven by probative rationalized medical opinion evidence. Because appellant has not submitted any medical opinion evidence supporting her claim, the Board finds she has not established a *prima facie* case that she sustained an injury in the performance of duty causally related to her employment.

On appeal, appellant submitted additional evidence supporting her claim. However, the Board's jurisdiction is limited to the evidence of record that was before the Office at the time it rendered its decision and, consequently, the Board may not consider evidence for the first time on appeal.⁸

CONCLUSION

The Board finds appellant has not established that she sustained an injury in the performance of duty causally related to her employment.

⁷ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ 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).

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 14, 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