

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

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**S.B., Appellant**

**and**

**DEPARTMENT OF COMMERCE, U.S.  
CENSUS BUREAU, Dallas, TX, Employer**

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**Docket No. 10-923  
Issued: November 17, 2010**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 18, 2010 appellant filed a timely appeal from a December 16, 2009 decision of the Office of Workers' Compensation Programs. 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 established that she sustained an injury in the performance of duty, causally related to her federal employment.

**FACTUAL HISTORY**

On March 30, 2009 appellant, a 58-year-old field representative, filed an occupational disease claim in which she alleged that typing on a raised surface and sitting for three days during a training session aggravated her right shoulder, wrist and thumb conditions, and osteoarthritis in her low back and right knee. She first became aware of her conditions and their relationship to her federal employment on February 6, 2009.

On February 6, 2009 Dr. Ryan S. Labovitch, a Board-certified orthopedic surgeon, presented findings on examination. He diagnosed right shoulder rotator cuff impingement/tendinopathy and a possible “labral versus biceps” condition.

On February 25, 2009 the employing establishment proposed to terminate appellant’s employment because she failed to follow proper procedures and, consequently, discrepancies were found in her work.

On May 11, 2009 Dr. David Chang, a Board-certified orthopedic surgeon, reviewed appellant’s medical history, noting that she had been in a training session in January 2009 during which she had to type on a keyboard in a raised position, which aggravated her preexisting shoulder condition. He explained that appellant had been in a motor vehicle collision approximately five years previously and sustained shoulder and lumbar disc injuries. Dr. Chang presented findings on physical examination. He diagnosed lumbar degenerative joint disease and herniation of the nucleus pulposus (HNP), impingement syndrome, rotator cuff and labral tears, biceps tendinitis, and historical wrist, hand and knee injuries.

Appellant submitted undated notes describing the employment activities she deemed responsible for her conditions.

By decision dated June 24, 2009, the Office accepted the typing and training activities alleged. It denied appellant’s claim finding that she did not establish that the accepted employment factors caused any of the claimed medical conditions.

On July 6, 2009 appellant, through her attorney, requested an oral hearing, which was conducted on October 1, 2009. She testified concerning her history of injury and medical conditions. No additional medical evidence was submitted.

In a decision dated December 16, 2009, an Office hearing representative affirmed the June 24, 2009 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>2</sup> 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.<sup>3</sup> As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>4</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>3</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Id.*; *Nancy G. O’Meara*, 12 ECAB 67, 71 (1960).

the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>5</sup>

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.<sup>6</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>7</sup>

### ANALYSIS

The Office accepted the employment factors appellant deemed responsible for her alleged condition, typing on a raised keyboard and extensive sitting during training sessions. Appellant's burden is to demonstrate that these employment factors caused her claimed conditions.<sup>8</sup> The Board finds that she has not met her burden of proof to establish that the accepted employment factors caused or aggravated her right shoulder, upper extremity, knee or lumbar conditions.

Dr. Labovitch diagnosed right shoulder rotator cuff impingement, and a possible "labral versus biceps" condition. However, he did not identify appellant's work factors or explain how such accepted employment factors would cause or contribute to the conditions he diagnosed. Dr. Labovitch offered no opinion regarding the cause of appellant's diagnosed conditions. Dr. Chang diagnosed lumbar spine degenerative joint disease and HNP, impingement syndrome, rotator cuff and labral tears, biceps tendinitis, and historical injuries to appellant's wrist, hand and knee. He provided a brief history of a one-and-a-half-day training session in January 2009 when appellant typed with a keyboard in a raised position. Dr. Chang also noted a five-year history of a prior motor vehicle accident. He noted appellant's claim that her recent training session had aggravated her conditions, but failed to provide an explanation as to how the conditions he diagnosed were caused or aggravated by the accepted employment factors. Dr. Chang offered no independent medical opinion explaining the cause of appellant's diagnosed

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

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

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *See Roy L. Humphrey*, 57 ECAB 238 (2005); *see Naomi A. Lilly*, 10 ECAB 560, 574 (1959).

conditions. Consequently, the opinions of the physicians of record have little probative value. Their reports do not establish causal relationship.<sup>9</sup>

Causal relationship is a medical issue that can only be established by probative medical opinion evidence. The medical evidence of record lacks a physician's opinion based on a full and accurate history explaining how appellant's typing activities resulted in her various medical conditions.

An award of compensation may not be based on surmise, conjecture or speculation.<sup>10</sup> Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>11</sup> The Board has held 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 condition<sup>13</sup> does not raise an inference of causal relationship between a claimed condition and employment factors.

### **CONCLUSION**

The Board finds that appellant did not establish that she sustained any right shoulder, upper extremity, knee or low back condition, causally related to her federal employment.

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<sup>9</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

<sup>10</sup> *Edgar G. Maiscott*, 4 ECAB 558 (1952).

<sup>11</sup> *D.I.*, 59 ECAB 158 (007); *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).

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2010  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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