

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

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**A.M., Appellant**

**and**

**DEPARTMENT OF THE NAVY, MILITARY  
SEALIFT COMMAND, NORFOLK NAVAL  
AIRSTATION, Norfolk, VA, Employer**

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**Docket No. 10-242  
Issued: October 5, 2010**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 2, 2009 appellant filed a timely appeal from a September 23, 2009 merit decision of the Office of Workers' Compensation Programs that affirmed an April 15, 2009 merit decision. 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 a recurrence of total disability on or after January 2008 causally related to her accepted 2006 left shoulder employment injury.

**FACTUAL HISTORY**

On May 14, 2006 appellant, a 60-year-old ordinary seaman, sustained a left shoulder injury after losing her footing while descending a ladder. She grabbed a railing to prevent herself from falling. On July 16, 2008 the Office accepted her claim for left shoulder and upper

arm sprain, unspecified disorder of the left shoulder bursae and tendons, and nonspecific sprain and strain of the left shoulder and upper arm.

Appellant submitted a December 3, 2008 report from the employing establishment health unit. The treating physician diagnosed neck and finger pain. On January 30, 2008 the physician diagnosed a traumatic cyst in appellant's right thumb as well as right shoulder impingement. The treating physician declared appellant unfit for duty. Appellant also submitted a report signed by a physical therapist.

On January 23, 2008 appellant filed a compensation claim for leave without pay (LWOP) for unspecified dates in February through April 2008.<sup>1</sup> She noted that the wage-loss compensation sought was attributable to, among other issues, "loss of hotel lodging," "loss ... [of] basic pay." This form was received by the Office on February 9, 2009.

In a report dated July 18, 2008, Dr. Lydia M. Grypma, a Board-certified internist, noted that appellant had been treated in December 2006 for left shoulder strain, but was seen again in January 2008 for a right shoulder strain. She advised that appellant's left shoulder "remains well" and explained that appellant had no restrictions of the right shoulder. Dr. Grypma presented findings on examination and diagnosed osteoarthritis of appellant's left knee which she opined was not caused by her employment duties. She reported that appellant's knee strain had resolved. Dr. Grypma released appellant to full duty without restrictions.

On February 12, 2009 the Office notified appellant that her compensation claim was one for a recurrence of disability. It advised her that she needed to submit additional factual and medical evidence supporting her claim and provided guidance concerning the evidence required. Appellant did not submit any additional evidence.

In a decision dated April 15, 2009, the Office denied appellant's claim, finding that the evidence of record did not demonstrate that her disability for the period claimed was causally related to her accepted left shoulder injury.

On April 19, 2009 appellant, through her attorney, requested an oral hearing.

During the hearing held on July 24, 2009, appellant and her attorney were present. She provided testimony concerning her history of injury, employment duties and other claims.<sup>2</sup> On September 23, 2009 the Office affirmed the denial of the claim.

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<sup>1</sup> It appears that the form may have been completed on January 23, 2009, rather than 2008.

<sup>2</sup> Under claim File No. xxxxxx981, the Office accepted appellant's claim for a right thumb injury sustained on October 25, 2007. This claim was administratively closed with no time lost from work. Under claim File No. xxxxxx726, appellant claimed compensation for a right shoulder injury she sustained on December 28, 2007. By decision dated July 22, 2009, the Office denied the claim. Finally, under claim File No. xxxxxx399, appellant claimed compensation for a left knee meniscal tear she sustained on January 9, 2008. By decision dated October 6, 2008, the Office denied the claim.

## LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,<sup>3</sup> the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.<sup>4</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>5</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.<sup>6</sup> The 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.<sup>7</sup>

The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.<sup>8</sup>

In order to be entitled to reimbursement for medical expenses, a claimant must establish the expenditures were incurred for treatment of the effects of an employment-related injury.<sup>9</sup> Proof of causal relation in a case such as this must include supporting rationalized medical evidence.<sup>10</sup> Therefore, in order to prove that physical therapy is warranted, appellant must submit evidence to show that the physical therapy is for a condition causally related to the employment injury and that the physical therapy is medically warranted. Both of these criteria must be met in order for the Office to authorize payment.<sup>11</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *See S.F.*, 59 ECAB \_\_\_\_ (Docket No. 08-426, issued July 16, 2008); *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>5</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>6</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> *D.I.*, 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Manuel Garcia*, 37 ECAB 767 (1986).

<sup>8</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>9</sup> *See* 5 U.S.C. § 8103(a) (the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies, prescribed or recommended by a qualified physician, that the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of any monthly compensation). To be entitled to reimbursement of medical expenses, however, the employee must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation must include supportive rationalized medical evidence. *Carolyn F. Allen*, 47 ECAB 240 (1995). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3(d) (September 1995).

<sup>10</sup> *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

<sup>11</sup> *Carolyn F. Allen*, *supra* note 9.

## ANALYSIS

The Office accepted appellant's claim for left shoulder and upper arm sprain, unspecified disorder of the left shoulder bursae and tendons, and nonspecific sprain and strain of the left shoulder and upper arm. The issue is whether her alleged total disability for work from February 2008 through April 2008 was causally related to her accepted injury. This is a medical issue that can only be established by probative medical opinion evidence. The Board finds that the medical evidence of record is insufficient to establish causal relationship; therefore, appellant has not established that she sustained a recurrence of total disability causally related to her accepted employment injury.

The relevant medical evidence of record consists of medical reports from the employing establishment's health unit and Dr. Grypma's July 18, 2008 reports. While Dr. Grypma noted that following appellant's 2006 employment injury she had been treated for left shoulder strain, the examination performed in 2008 related to a right shoulder strain. She offered no opinion regarding the cause of appellant's 2008 right shoulder strain, but noted only that the condition was not causing any limitation or restriction when appellant was examined on July 18, 2008. Dr. Grypma also diagnosed neck and finger pain, a traumatic cyst in appellant's right thumb and nonindustrial osteoarthritis of her left knee. The Office has not accepted appellant's claims for these conditions. The medical evidence of record does not explain how any of these conditions were causally related to appellant's accepted left shoulder injury. This evidence is not sufficient to establish disability commencing in January 2008 due to the May 14, 2006 injury.

Appellant submitted a report signed by a physical therapist. Because healthcare providers such as physician assistants or physical therapists are not physicians as defined under the Act, their reports do not constitute probative medical evidence.<sup>12</sup> This evidence does not establish a causal relationship between the established employment incident or the accepted employment injuries and appellant's alleged condition.

The Board notes that the medical evidence does not establish disability from work commencing January 2008 due to the accepted conditions. A treating physician at the employing establishment's health unit declared appellant unfit for duty on January 30, 2008, but the conditions diagnosed involved appellant's right shoulder and thumb, neither accepted as employment related. The Office accepted appellant's left shoulder and upper arm injury, not her right shoulder claim.

## CONCLUSION

The Board finds appellant has not established that she sustained a recurrence of total disability commencing January 2008 causally related to her accepted injury of May 19, 2006.

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<sup>12</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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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