

FACTUAL HISTORY

On February 11, 2009 appellant, then a 46-year-old rural mail carrier, filed a claim alleging that on November 24, 2008 she sustained a work-related injury to her right shoulder.¹ She noticed an increase in right shoulder pain on that date and a magnetic resonance imaging (MRI) scan showed that she had a superior labral tear from anterior to posterior (SLAP) in her right shoulder. Appellant attributed this condition to “overcompensation from the original injury (medial epicondylitis) that was still recovering and swollen at the time.”² She stopped work on November 26, 2008.

Appellant received medical treatment from Dr. John P. Byrne, an attending Board-certified orthopedic surgeon. In a February 3, 2009 report, Dr. Byrne stated that appellant reported that her right upper extremity was still bothering her. He had previously worked up her right shoulder due to pain after she returned to work and experienced increased swelling in her right elbow. Dr. Byrne discovered that appellant had a labral tear of her right shoulder, a condition which explained “why she would have this right upper extremity swelling and of course the pain, because this has aggravated the elbow.” He noted that all of her symptoms and signs had occurred after she returned to work. Appellant still had persistent pain and weakness after she returned to full-duty work in November 2008. Dr. Byrne stated, “I think it is what has caused her to be where she is right now with the persistent pain and swelling and now with this right shoulder SLAP tear.” He recommended physical therapy and indicated that she needed a surgical repair of the tear in her right shoulder.³

On February 13, 2009 Postmaster Randolph Ferrell, noted that appellant only carried mail on two days (November 22 and 24, 2008) in the prior two years and that, on those days, she had work restrictions, including no lifting more than 25 pounds. He stated that she would have engaged in minimal raising of her arms above her shoulders on those two days.

In a February 23, 2009 letter, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

¹ Although appellant used a traumatic injury form to file her claim, she later claimed injury over the course of more than one workday and therefore her claim is one for an occupational disease. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

² The Office previously accepted that appellant sustained bilateral medial epicondylitis in December 2004. She underwent Office-authorized left elbow surgery in August 2007 and right elbow surgery in April 2008. The record reflects that on November 22, 2008 appellant began working for the employing establishment as a modified rural mail carrier with restrictions, including lifting no more than 25 pounds. She was to work eight hours per day for five days per week. Prior to starting work on November 22, 2008, appellant had been off work for more than a year due to her work-related elbow condition.

³ In a December 2, 2008 disability certificate, Dr. Byrne found that appellant was disabled due to an unspecified work injury. In a December 18, 2008 certificate, he stated that she could not work. In a February 3, 2009 form report, Dr. Byrne diagnosed medial epicondylitis and, in a February 10, 2009 form report, he listed the date of injury as December 11, 2004 and diagnosed right shoulder labral tear. In both reports, Dr. Byrne listed that appellant was totally disabled.

On March 12, 2009 appellant stated that, due to her bilateral elbow injury, she had been off work for more than a year prior to returning to work on November 22, 2008. On November 22, 2008 she spent about five hours sorting mail and loading it onto her truck with some help from coworkers. Appellant started having pain while delivering mail and received help from coworkers to deliver mail along the remainder of her route. The following day she was not scheduled to work and, when she returned to work on November 24, 2008, she developed pain and swelling in her right arm while delivering her route. Appellant spent about six hours on her delivery route without any assistance. She advised that her right arm continued to be very swollen the next day and that her attending physician recommended her not to work.⁴

In a March 26, 2009 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a right shoulder injury in the performance of duty.

Appellant submitted a November 25, 2008 report in which Dr. Byrne obtained a history that she worked 10 to 12 hours on her first day back at work and then had to work 10 hours on another day. She asserted that this caused persistent pain and swelling. On examination, appellant had increased swelling in the medial aspect of her right elbow and Dr. Byrne took her off work. Dr. Byrne stated that she could not "just go abruptly into that significant duty" and posited that her work was "really causing her a problem."⁵ On December 2, 2008 he reported that appellant had swelling and noted that "she is being aggravated with the amount of work she has to do.... This is obviously a work related, not an illness injury." On December 18, 2008 Dr. Byrne stated that appellant's right elbow seemed worse since she went back to work and "was essentially forced back doing that heavy-duty activity."

A January 27, 2009 MRI scan of appellant's right shoulder was obtained. It showed that appellant had acromioclavicular arthrosis and labral, supraspinatus tendon and infraspinatus tendon tears.

In a February 10, 2009 report, Dr. Byrne stated that appellant reported she was still having pain in her right shoulder and elbow and was awaiting approval from the Office to treat her right shoulder. He recommended additional diagnostic testing and stated, "In the meantime, she has too much pain at work, so we are going to keep her out until such time that we work it up and get a solution to these problems now in the right shoulder and of course the elbow." On March 31, 2009 Dr. Byrne stated that appellant reported persistent symptoms in her right shoulder, neck and elbows. He found that she was totally disabled and stated, "What we do now is as she went back to work and everything has begun exacerbated after she went back and is doing more than we had recommended. We know she has the SLAP tear and my recommendation is surgery for that to repair that...."

⁴ Appellant submitted a report showing the hours she worked on November 22 and 24, 2008. She worked about 11.5 hours on each day engaging in mail sorting and delivery duties.

⁵ On November 18, 2008 Dr. Byrne recommended that appellant return to work which restricted her from lifting more than 15 pounds and from engaging in repetitive arm motion.

In an April 8, 2009 form report, Dr. Byrne listed the date of injury as November 24, 2008 and diagnosed “SLAP tear shoulder.” He checked a “yes” box indicating that the condition was caused or aggravated by an employment activity and stated, “Caused by repetition activity at work.” In an April 9, 2009 form report, Dr. Byrne listed the date-of-injury as November 24, 2008 and diagnosed minimal cervical disc disease and partial tear of the rotator cuff of the right shoulder. He again checked a “yes” box indicating that the condition was caused or aggravated by an employment activity and stated, “Patient has repetitive shoulder movement as a postal worker.”

Appellant requested a telephone hearing with an Office hearing representative. At the June 16, 2009 hearing, she discussed her work-related injuries and asserted that her repetitive job duties, including sorting and picking up, caused injury to her right shoulder. Appellant claimed that the job that she returned to on November 22, 2008 exceeded her work limitations. A copy of the transcript was sent to the employing establishment for review and comment. On July 15, 2009 Mr. Ferrell stated that in November 2008 appellant worked two days in a limited-duty job which did not require her to lift more than 25 pounds. He asserted that she was not required to work beyond her restrictions. Appellant was only required to work eight hours a day for five days a week.

In an August 18, 2009 decision, the Office hearing representative affirmed the March 26, 2009 decision. Appellant found that the reports of Dr. Byrne were of limited probative value because he did not provide a complete and accurate description of the work duties that she performed.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁶ has the burden of establishing the essential elements of his or her 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 and specific condition for which compensation is claimed are causally related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

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

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁹

ANALYSIS

In February 2009 appellant filed a claim alleging that she sustained a labral tear in her right shoulder due to the work duties she performed in November 2008.¹⁰ She worked for the employing establishment on November 22 and 24, 2008 as a modified rural mail carrier with restrictions, including lifting no more than 25 pounds. The work involved the sorting and delivery of mail. Prior to starting work on November 22, 2008, appellant had been off work for more than a year due to a work-related bilateral elbow condition.¹¹

In a November 25, 2008 report, Dr. Byrne stated that appellant reported that she worked 10 to 12 hours on her first day back at work and then had to work 10 hours on another day. He stated that she had increased swelling in the medial aspect of her right elbow and noted that he was taking her off work. Dr. Byrne stated that her work was "really causing her a problem." In reports dated between December 2 and 18, 2008, he noted swelling in appellant's right elbow, advised that she was totally disabled and asserted that her elbow problems were related to her work. These reports do not mention appellant's claimed right shoulder condition and therefore are not sufficient to establish that she sustained a work-related right shoulder condition in November 2008, nor do they show that she sustained a new work-related elbow condition in November 2008.¹² Dr. Byrne did not provide an accurate history of the work duties that appellant performed in November 2008 or the extent of her modified restrictions. Appellant only worked on November 22 and 24, 2008 before stopping work and she was restricted from lifting more than 25 pounds.¹³ Dr. Byrne did not provide a rationalized medical opinion based on an accurate history explaining how appellant's work duties on November 22 and 24, 2008 caused or contributed to a right shoulder injury or a new elbow injury.

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁰ Appellant also noted problems with her elbows.

¹¹ The elbow injury, which was developed under a separate claim file, occurred in December 2004.

¹² It is unclear from the record whether appellant filed a claim for recurrence of disability due to her accepted elbow condition. However, such a claim would be handled under the claim file for her accepted elbow condition.

¹³ Appellant claimed that she was required to lift more than 25 pounds on November 22 and 24, 2008 but she did not submit evidence supporting this claim. She indicated that she worked for more than eight hours a day on November 22 and 24, 2008 but the record reflects that she was only required to work eight hours a day.

In a February 3, 2009 report, Dr. Byrne stated that appellant reported having pain in her right shoulder and swelling in her right elbow after returning to work in November 2008. He advised that she had a labral tearing of her right shoulder, a condition which explained “why she would have this right upper extremity swelling and of course the pain, because this has aggravated the elbow.” Dr. Byrne noted that appellant still had persistent pain and weakness after she returned to full-duty work in November 2008 and stated, “I think it is what has caused her to be where she is right now with the persistent pain and swelling and now with this right shoulder SLAP tear.”

Although Dr. Byrne now mentioned appellant’s right shoulder complaints, he again failed to provide any accurate description of the nature and extent of appellant’s modified-work duties. His report on causal relationship is of limited probative value because it is not based on a complete and accurate factual history. Dr. Byrne was under the impression that appellant returned to full duty in November 2008 whereas she, returned to modified duty, as noted. He did not provide medical rationale explaining how her restricted duty could have caused her right shoulder injury or new elbow injury. Medical rationale relating appellant’s right shoulder condition to work factors is necessary as the record does not contain any indication that she complained of right shoulder problems until about two months after she stopped work in November 2008. Dr. Byrne noted that all of the symptoms and signs had occurred after she was ordered back to work, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment¹⁴ or that work activities produce symptoms revelatory of an underlying condition¹⁵ does not raise an inference of causal relationship between a claimed condition and employment factors.

In a February 3, 2009 form report, Dr. Byrne diagnosed medial epicondylitis and, in a February 10, 2009 form report, he listed the date of injury as December 11, 2004 and diagnosed right shoulder labral tear. He indicated that appellant was totally disabled. In a February 10, 2009 report, Dr. Byrne stated, “[S]he has too much pain at work, so we are going to keep her out until such time that we work it up and get a solution to these problems now in the right shoulder and of course the elbow.” On March 31, 2009 he found that appellant was totally disabled and stated, “What we do now is as she went back to work and everything has begun exacerbated after she went back and is doing more than we had recommended. We know she has the SLAP tear and my recommendation is surgery for that to repair that...” None of these reports would establish appellant’s claim as none of them contain a rationalized medical report showing that she sustained a right shoulder condition or new elbow condition due to her work in November 2008. Dr. Byrne failed to provide a detailed description of appellant’s work duties or explain how her limited work in November 2008 could have caused shoulder or elbow problems.

In April 8 and 9, 2009 form reports, Dr. Byrne listed the date of injury as November 24, 2008 and diagnosed labral or rotator cuff tear of appellant’s right shoulder. In both reports, he checked a “yes” box indicating that the condition was caused or aggravated by an employment activity and stated that the cause of the condition was the repetitive shoulder motion required by appellant’s job. Although Dr. Byrne indicated that appellant engaged in repetitive motion at

¹⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁵ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

work, he did not provide any specific description of these duties or explain how they could have been responsible for the observed medical conditions.

For these reasons, appellant did not submit sufficient medical opinion to establish that she sustained a right shoulder injury or new elbow injury due to her work activities of November 2008 and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right shoulder injury or new elbow injury in the performance of duty in November 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 18, 2009 is affirmed.

Issued: October 20, 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