

By decision dated December 23, 2008, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence to support a right shoulder injury in the performance of duty on August 22, 2008.

On December 30, 2008 appellant's attorney requested an oral hearing, which was held on April 20, 2009. At the hearing, appellant stated that she developed several preexisting conditions dating back to 1991, including work-related neck, upper back and right arm conditions. After the August 22, 2008 work incident, Dr. Roland K. Sanchez, an attending physician Board-certified in family practice, treated her for right shoulder pain and referred her to Dr. Barry R. Maron, a specialist in orthopedic surgery, who took appellant off work due to the extent of her condition. Appellant had been off work since August 2008 and was in receipt of wage-loss compensation for partial disability under a prior claim.

In a September 4, 2008 treatment note, Dr. Sanchez stated that appellant had pain in her right shoulder, radiating into her right arm.

In a December 11, 2008 report, Dr. Maron stated that appellant experienced pain in the posterior aspect of her right shoulder on August 22, 2008. Appellant was initially sorting and separating mail until her shoulder pain made it too painful to engage in these duties. She moved to her desk computer and tried working there for five minutes, but her shoulder pain worsened. Dr. Maron provided a history of injury that appellant was involved in a motor vehicular accident on November 1, 1991 which resulted in an injury to her thoracic spine. Appellant developed right shoulder pain which required treatment from February 11, 1998 to December 5, 2003. She sustained another injury to her right shoulder while lifting a tub of mail on August 17, 2007 and was diagnosed with right rotator cuff tendinitis. Dr. Maron stated that August 22, 2008 was just another day of work with no new injury. The work demands of that day caused appellant to again become symptomatic, to the point that she was not able to continue work. There was no new pathology defined. The tendinosis and small anterior distal focal tear of the right shoulder rotator cuff as noted on a September 8, 2008 magnetic resonance imaging scan were diagnosed absent further arthroscopic evaluation.

In reports dated June 7 to September 8, 2008, Dr. Maron diagnosed internal derangement of the right shoulder, tendinitis of the right rotator cuff and probable impingement syndrome of the right shoulder. He referred appellant for an arthroscopic evaluation of her right shoulder.

In a July 1, 2009 decision, an Office hearing representative set aside the December 23, 2009 decision. She found that Dr. Maron's reports were sufficient to require further development of the medical evidence. The hearing representative instructed the Office to refer appellant for a second opinion evaluation to address whether her claimed right shoulder

condition was caused or aggravated by the August 22, 2008 work incident and, if so the periods of any disability.¹

The Office referred appellant to Dr. Thomas G. Grace, Board-certified in orthopedic surgery. In a September 23, 2009 report, Dr. Grace listed findings on physical examination, reviewed the medical evidence and the statement of accepted facts. He found that appellant's current shoulder condition was not triggered by the a traumatic incident of August 22, 2008; rather, it was due to a gradual regression in her functional abilities caused by the increasing deterioration of her right shoulder, right arm and neck conditions, which began in 1991 and was aggravated by the August 17, 2007 incident. Dr. Grace diagnosed right shoulder pain secondary to impingement tendinitis with secondary adhesive capsulitis and loss of range of motion in the right shoulder; history of chronic cervical spine pain, probably secondary to cervical spondylosis and cervico-thoracic pain secondary to T5 compression fracture without evidence of discrete disc herniation. He advised that appellant's inability to work was secondary to her right shoulder, neck and upper back conditions which preexisted the August 22, 2008 incident. Dr. Grace found that the August 22, 2008 work incident was not an aggravation of her preexisting conditions but requested a continuum of problems and increased symptomatology which had developed over time and had gradually, progressively worsened to the point where she was not able to work.

By decision dated October 29, 2009, the Office found that the weight of medical evidence as represented by Dr. Grace's opinion established that the August 22, 2008 work incident did not result in any injury to her right shoulder.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

¹ The Office noted that appellant had filed several previous claims: Under claim number xxxxxx085, the Office accepted that she sustained a fractured vertebra, for which surgery was warranted and developed anxiety as a result of performing her duties on November 1, 1991; appellant receives partial wage-loss benefits under that claim. Under claim number xxxxxx561, the Office denied a September 2007 occupational disease claim for back pain in a November 26, 2007 decision, the Office denied modification of this decision by decisions dated September 9 and December 16, 2008. The appeal of the December 16, 2008 reconsideration denial is currently on appeal before the Board.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The medical evidence required to establish causal relationship is usually rationalized medical 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.⁷

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.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

ANALYSIS

The Office accepted that appellant worked at sorting mail and at her computer on August 22, 2008. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ Appellant has not submitted sufficient medical evidence to establish that the August 22, 2008 employment incident caused injury to her right shoulder, as alleged.

Appellant submitted reports from Drs. Maron and Sanchez. The physicians provided findings on examination and indicated that appellant had internal derangement of the right shoulder, tendinitis of the right rotator cuff and probable impingement syndrome of the right shoulder. Their reports, however, did not sufficiently address how these conditions related to the August 22, 2008 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician’s

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” *see* 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 5.

knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ Dr. Maron advised that appellant experienced pain in the posterior aspect of her right shoulder on August 22, 2008 while sorting mail and working at her desk computer. He stated that there was nothing special about this day and emphasized that she did not sustain new injury. Dr. Maron reviewed appellant's history of injury and noted that she initially experienced right shoulder pain in 1998 and reinjured her shoulder while lifting a tub of mail on August 17, 2007. He advised that the August 22, 2008 incident did not change the pathology of her preexisting condition, noting that his opinion remained essentially unchanged from reports submitted prior to the August 22, 2008 incident.

Dr. Maron did not adequately address how appellant's shoulder conditions were causally related to the August 22, 2008 work incident. His reports did not provide a full history of her prior work injuries or accepted conditions. Rather, stated that appellant did not sustain any new injury or experience any new pathology on August 22, 2008. Dr. Maron noted only that her work activities were revelatory of her underlying shoulder condition and not caused by the incident at work.¹² Dr. Sanchez advised that appellant had pain in her right shoulder radiating into her right arm. He did not provide any opinion regarding whether her claimed shoulder pain was work related or caused by the accepted incident. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of August 22, 2008 caused or contributed to her right shoulder condition.

Appellant was subsequently referred for a second opinion examination by Dr. Grace, who stated that her shoulder condition as of August 22, 2008 represented the gradual progression of her prior accepted shoulder, arm, neck and upper back conditions and not caused by a single, traumatic episode of August 22, 2008. The August 22, 2008 work incident did not constitute any aggravation of the preexisting conditions. Dr. Grace advised that appellant's increased symptomatology developed over time and gradually worsened to the extent that she was not able to work. He concluded that her resultant disability was secondary to her right shoulder, neck and upper back conditions which preexisted the August 22, 2008 work incident. Appellant noted that she was in receipt of compensation benefits under her prior claims.

The Board finds that Dr. Grace's referral report is sufficient to negate a causal relationship between the August 22, 2008 work incident and appellant's right shoulder condition. Dr. Grace reviewed the statement of accepted facts and her extensive medical history and concluded that her disability was due to her preexisting conditions and was not caused by the August 22, 2008 incident at work. On appeal, counsel for appellant contends that Dr. Grace supported causal relationship to the August 22, 2008 incident, but as noted he negated causation to the incident at issue in this case. Dr. Grace's report is thorough, probative and well rationalized and is based on the medical evidence of record. The Board therefore finds that it

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹² See *Gary M. DeLeo*, 56 ECAB 656 (2005).

constitutes the weight of medical opinion. Appellant did not establish that she sustained a right shoulder injury on August 22, 2008.¹³

CONCLUSION

The Board finds that appellant failed to establish that she sustained a right shoulder injury, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 7, 2011
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

¹³ This disposition does not preclude appellant from pursuing a claim related to the August 17, 2007 incident at work.