

sat in an area where drafts were a constant problem. Appellant became aware of her condition and that it was caused or aggravated by her employment on May 1, 2009. On the reverse side of the claim form, the employer noted that she had worked limited duty in a rehabilitation assignment which did not require lifting above the shoulders or raising her arms to perform the assigned tasks. Appellant did not stop work. In an October 22, 2009 statement, she stated that she sustained work-related injuries to both shoulders in 2002 and that she had a cervical disc condition.² Appellant stated that her chair was given to her in 2005 and was the primary cause of her current condition.

In a November 6, 2009 letter, the Office informed appellant that the evidence of record was insufficient to support her occupational disease claim. It noted that the claim appeared duplicative of previously filed workers' compensation claims and advised her as to the factual and medical evidence to submit.

Appellant responded with a December 29, 2009 statement.³ In a November 30, 2009 report, Dr. Samuel J. Chmell, a Board-certified orthopedic surgeon, advised that her work-related shoulder injuries had deteriorated, particularly on the left side, with her work activities. Appellant required further evaluation, care and treatment of her shoulders and requested authorization for an MRI scan of both shoulders.⁴

By decision dated January 28, 2010, the Office denied appellant's claim finding that, while the claimed work factors occurred, the medical evidence did not establish that a diagnosed medical condition was causally related to the work activities.

On March 26, 2010 appellant requested reconsideration. In a February 18, 2010 letter, she reiterated that her current shoulder condition stemmed from her previous work-related injury. Appellant also advised that all the medical evidence was sent.⁵

In a February 6, 2010 report, Dr. Chmell noted that appellant had a left shoulder rotator cuff tear, right shoulder rotator cuff strain and lumbar disc herniation that were causally related to a work injury. He opined that these "injuries/conditions" "predated the May 1, 2009 circumstances in question" and were permanent in nature and symptomatic on a daily basis. Dr. Chmell stated that, for many years, he had prescribed an ergonomic chair to prevent appellant's conditions from deteriorating and allow her to continue to work, but she had not been provided with appropriate seating at her duty station. He stated that her previously accepted conditions continued to deteriorate because she did not have appropriate seating and she continued to work. Dr. Chmell stated that there was no new diagnosis and that this was not a new injury.

² The record indicates that appellant has accepted work-related conditions in other claims. These other claims are not before the Board on the present appeal.

³ Appellant indicated a copy of the magnetic resonance imaging (MRI) scan results of her shoulders was enclosed; however, this is not of record.

⁴ Although Dr. Chmell noted that his most recent office note was enclosed, this was not of record.

⁵ While appellant advised MRI scan reports were enclosed, these are not of record.

By decision dated June 4, 2010, the Office denied modification of its January 28, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,⁶ including that she is an “employee” within the meaning of the Act⁷ and that she filed her claim within the applicable time limitation.⁸ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁹

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.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical 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.¹²

ANALYSIS

Appellant filed an occupational disease claim on October 22, 2009 and identified prior work-related injuries to her shoulders and neck. She alleged that the chair she was given in 2005 and the area in which she sat to work caused her accepted work-related conditions to worsen. As appellant alleged new work exposures in her October 22, 2009 claim, the Office adjudicated the

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁷ *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁸ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁹ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

¹¹ *D.G.*, 59 ECAB 734 (2008).

¹² *Id.*

claim as a new occupational claim.¹³ The issue is whether she established a new occupational injury.

The Office accepted the work factors appellant alleged. The Board finds that the medical evidence of record is not sufficient to establish that the accepted work factors caused or aggravated her prior shoulder or neck conditions.

Two reports were received from Dr. Chmell. On November 30, 2009 Dr. Chmell stated that appellant's work-related shoulder injuries had deteriorated, particularly on the left side, with her work activities. However, he did not address her work activities or explain how they would cause her shoulder or cervical conditions to worsen. The employing establishment noted that appellant worked at limited duty in a rehabilitation assignment, which did not require above the shoulder lifting or any raising of the arms. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ On February 6, 2010 Dr. Chmell opined that appellant's previously accepted work-related conditions continued to deteriorate because she did not have appropriate seating and continued to work. Again, he failed to offer a fully rationalized medical opinion based on examination findings or objective medical evidence to support that appellant sustained a new medical condition or a worsening, aggravation or acceleration of her previously accepted shoulder or neck conditions due to lack of appropriate seating.¹⁵ Dr. Chmell specifically stated that there was no new injury and no new medical condition. His reports are insufficient to support a new occupational injury claim.

Appellant expressed her belief that her shoulder and neck conditions worsened as a result of her lack of appropriate seating and the area in which she sits to work. 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.¹⁶ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁷ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. As explained, appellant did not submit sufficient medical evidence to establish that she sustained a new occupational injury.

On appeal, appellant's attorney argues the Office's decision is contrary to law and facts; however, for the reasons noted, appellant failed to meet her burden of proof.

¹³ Office regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(ee).

¹⁴ *Michael E. Smith*, 50 ECAB 313 (1999); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁵ *D.G.*, *supra* note 11.

¹⁶ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁷ *Id.*

Appellant may submit additional evidence, together with a formal written request for reconsideration, to the Office within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an occupational disease in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 4, 2010 is affirmed.

Issued: May 13, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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