

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

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J.G., Appellant

and

NATIONAL ENDOWMENT FOR THE  
ARTS, THE NANCY HANKS CENTER,  
Washington, DC, Employer

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**Docket No. 11-1437  
Issued: February 13, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

Oral Argument November 15, 2011

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On May 23, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated November 29, 2010 which found that appellant did not sustain an injury in the performance of duty. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 met his burden of proof to establish that he sustained an injury in the performance of duty on April 15, 2010.

**FACTUAL HISTORY**

On July 27, 2010 appellant, then a 50-year-old computer specialist, filed a traumatic injury claim alleging that, on April 15, 2010, he pulled a muscle in the right shoulder and arm

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

when he moved a printer at work. He indicated that his condition never healed and suspected that he had nerve damage. Appellant did not stop work.

In a September 10, 2010 report, Dr. Cecily Havert, a family practitioner, advised that appellant related that he had a right shoulder injury at work on April 15, 2010 and he was now having pain. Appellant was lifting a heavy printer and immediately felt pain in his right shoulder, which was persisting and even getting worse. Dr. Havert advised that his range of motion was severely diminished and he felt that his strength was also diminished. There was no numbness or tingling in his arm and no neck pain. Dr. Havert diagnosed rotator cuff syndrome of shoulder and allied disorders.

In a September 11, 2010 report, Dr. Havert noted that on April 15, 2010 appellant moved a printer to fourth floor storage and pulled a muscle in his right arm and shoulder. She determined that he had decreased range of motion in pain and rotator cuff musculature in the right shoulder. Dr. Havert diagnosed rotator cuff tendons tear and adhesive capsulitis. She indicated that appellant had disability and checked "yes" in response to whether the diagnosed condition was due to the work incident.

By letter dated October 27, 2010, OWCP advised appellant that when his claim was initially received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Appellant was informed that because the employing establishment did not controvert continuation of pay, or challenge the merits of the case, a payment of a limited amount of medical expenses was administratively approved. However, the merits of the claim were not formally considered. OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion was crucial to his claim and allotted appellant 30 days within which to submit the requested information.

A September 10, 2010 x-ray read by Dr. John De Grazia, a Board-certified diagnostic radiologist, revealed a normal right shoulder.

In an undated statement, received by OWCP on November 23, 2010, appellant described his injury at work on April 15, 2010. On April 15, 2010 he had to replace an old printer, which weighed approximately 98 pounds, with a new one, and moved it to a storage room. While moving the printer, appellant felt a mild shock, which was followed by loss of strength and thought he pulled a muscle or pinched a nerve in his right arm or shoulder. He explained that he did not seek medical treatment right away as he thought he could nurse his arm back to health. However, when appellant extended and twisted or stretched his right arm, he felt severe pain. He provided OWCP with a copy of the specifications for the printer and a CD. Appellant also indicated that he was submitting a CD with digital records and an x-ray from his physician addressing the medical evidence. However, the CD did not contain any medical evidence.

By decision dated November 29, 2010, OWCP denied appellant's claim on the grounds that he did not establish an injury as alleged. It found that the medical evidence was insufficient to establish that appellant's condition was caused by employment duties.

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s 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, 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.<sup>7</sup>

## ANALYSIS

Appellant alleged that on April 15, 2010 he pulled a muscle when he moved a printer in the right shoulder and arm. There is no dispute that appellant moved a printer on April 15, 2010. OWCP found that the claimed incident occurred as alleged.

The Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that moving a printer on April 15, 2010 caused a personal injury. It provides no rationale on causal relations or explanation of the mechanism of injury.

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Delores C. Ellyet*, 41 ECAB 992 (1990).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008).

In a September 10, 2010 report, Dr. Havert advised that appellant related that he sustained a right shoulder injury at work on April 15, 2010 and he was experiencing pain. She noted the history of injury that appellant was lifting a heavy printer and immediately felt pain in his right shoulder. Dr. Havert diagnosed rotator cuff syndrome of shoulder and allied disorders. However, she did not address how lifting a printer would cause or contribute to a diagnosed condition. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>8</sup>

In a September 11, 2010 attending physician's report, Dr. Havert noted a history that on April 15, 2010 appellant moved a printer to storage and pulled a muscle in his right arm and shoulder. She diagnosed rotator cuff tendons tear, and adhesive capsulitis and indicated that there was a disability for work. Dr. Havert indicated that appellant was disabled from work and checked a box "yes" on the form report to indicate that his condition was due to the work incident. The Board notes that the checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.<sup>9</sup> Consequently, the Board finds that the evidence from Dr. Havert is insufficient to establish appellant's claim.

Other medical evidence submitted by appellant, for example the September 1, 2010 x-ray report, did not address causal relationship and is insufficient to establish a work-related condition.

There is insufficient medical evidence from a physician addressing how the employment activities on April 15, 2010 caused or aggravated appellant's right shoulder condition. Consequently, he has not established that the April 15, 2010 employment incident caused or aggravated a specific injury.

On appeal, appellant contends that he established his claim. As noted, the medical evidence is not sufficient on the issue of causal relation. The Board notes that subsequent to OWCP's November 29, 2010 decision, appellant submitted additional medical evidence. The Board has no jurisdiction to review this evidence for the first time on appeal.<sup>10</sup> Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

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<sup>8</sup> S.S., 59 ECAB 315 (2008).

<sup>9</sup> *Linda Thompson*, 51 ECAB 694 (2000); *Calvin E. King*, 51 ECAB 394 (2000).

<sup>10</sup> 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2012  
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