United States Department of Labor
Employees' Compensation Appeals Board

V.F., Appellant	)	
and	)	**Docket No. 12-88**
	)	**Issued: June 8, 2012**
DEPARTMENT OF THE ARMY, RESERVE OFFICERS' TRAINING CORPS, Tuscaloosa, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 24, 2011 appellant filed a timely appeal from a May 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On June 24, 2009 appellant, then a 49-year-old human resources technician, filed a Form CA-1 for traumatic injury, alleging that she pulled a left shoulder muscle on March 11, 2009

[1] 5 U.S.C. § 8101 *et seq.*

while carrying files on the job. An April 3, 2009 magnetic resonance imaging (MRI) scan obtained by Dr. Mary A. Cowart, a Board-certified diagnostic radiologist, exhibited acromioclavicular joint arthropathy, degeneration of the rotator cuff and humeral head, bicipital tendinosis and probable superior labral tear from anterior to posterior, *inter alia*.

In a May 15, 2009 progress note, Dr. John W. Cope, a Board-certified orthopedic surgeon, examined appellant's left shoulder and observed limited range of motion (ROM), rotator cuff tenderness to palpation and a positive impingement sign. He diagnosed left shoulder impingement syndrome with subchondral cystic changes indicative of early arthritis and calcific tendinitis.

OWCP informed appellant in an August 3, 2009 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the March 11, 2009 employment incident and a medical report from a qualified physician explaining how a left shoulder condition resulted from this event.

Appellant specified in an August 21, 2009 statement that she was carrying a large stack of files downstairs on March 11, 2009 when she began to lose her balance. She "jerked" and extended her left arm to maintain her footing and immediately experienced left shoulder pain. Appellant's condition worsened as she continued to carry stacks "over the next two weeks."

In an April 3, 2009 progress note, Dr. Cope related that appellant sustained left shoulder pain "which began spontaneously this past February [2009]." On examination he observed restricted abduction and flexion, greater tuberosity tenderness to palpation and a positive impingement sign. X-rays showed a Type 2 acromion. Dr. Cope diagnosed left shoulder impingement syndrome and ruled out rotator cuff tear.[2] In an August 18, 2009 report, he opined that appellant's condition was caused by "the claimed injury."

Appellant provided a Form CA-1 for traumatic injury and Form CA-2 for occupational disease dated April 1 and May 20, 2009, respectively. She detailed that she pulled a left shoulder muscle due to transporting file folders on February 18 and 25 and March 11, 2009.[3]

By decision dated October 9, 2009, OWCP denied appellant's claim, finding that the medical evidence was insufficient to demonstrate that the March 11, 2009 employment incident caused or contributed to a left shoulder condition.

On October 22, 2009 appellant requested a review of the written record. OWCP received an October 22, 2009 report from Dr. Cope in which he recalled that she told him that she lifted and carried file folders in February 2009, but did not indicate that she lost her balance and extended her left arm to maintain her footing. Dr. Cope described appellant's left shoulder

[2] An April 14, 2009 follow-up note from Dr. Cope recorded similar findings on examination and referred to the results of the April 3, 2009 MRI scan.

[3] The employing establishment's May 26, 2009 civilian safety incident report and a February 28, 2011 affidavit from appellant's spouse listed February 18 and 25 and March 11, 2009 as dates of incident.

impingement syndrome as "spontaneous" because she did not identify a "traumatic precipitator." He opined:

> "[W]hether or not the alleged sticking out of the arm or, for that matter, a carrying of the file folders may or may not have actually caused the injury is unknown to me and, in my opinion, unknowable as I was not present at the time, do not have details of information regarding the specifics of her job description or the specific things that may or may not have happened on the alleged date of injury."

Dr. Cope added that appellant's preexisting left acromioclavicular joint arthritis was aggravated by the injury.

On February 22, 2010 OWCP's hearing representative affirmed the October 9, 2009 decision. In addition, she converted appellant's traumatic injury claim to an occupational disease claim, citing repeated allegations that the left shoulder condition developed over a period of time.

Appellant requested reconsideration on March 4, 2010 and submitted new evidence. In an undated report, Dr. Cope noted that she "was carrying some heavy objects [at work] and reached suddenly to catch something" approximately one year earlier. Appellant subsequently underwent arthroscopic debridement in September 2009.[4] With respect to the cause of her injury, Dr. Cope pointed out that the April 3, 2009 MRI scan report was "chronic in nature" and that impingement syndromes normally occur over time "but certainly can be aggravated by trauma." He concluded:

> "I am not really clear what if any trauma [appellant] had other than a sudden motion in her shoulder and it is difficult for me to assign a causative nature to her injury without a more complete understanding of exactly what the injury may have been. Certainly, repetitive activity with lifting and pulling could aggravate symptoms such as this in the shoulder. To that degree [appellant] may have had an aggravation of her symptoms by her on[-]the[-]job activity."

On April 21, 2010 OWCP denied modification of the October 9, 2009 decision.

Appellant requested reconsideration on April 18, 2011 and submitted new evidence. Postoperative notes from Dr. Cope for the period September 10 to December 17, 2009 showed continuing symptoms, notably left shoulder stiffness and restricted ROM.

In a June 25, 2010 report, Dr. Turgay Ongel, a family practitioner, remarked that appellant attributed her left shoulder impingement syndrome and acromioclavicular joint arthritis to lifting and carrying heavy file folders. A January 6, 2011 report from Dr. James R. Green, a Board-certified orthopedic surgeon, diagnosed degenerative changes of the right acromioclavicular joint and also stated that carrying heavy files "most likely aggravated the condition in both shoulders."

[4] The case record indicates that Dr. Cope performed right shoulder arthroscopy with subacromial decompression on September 2, 2009.

On May 23, 2011 OWCP denied modification of the April 21, 2010 decision.

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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[5] 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.[6]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[7] To establish fact of injury in an occupational disease claim, 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.[8]

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.[9]

ANALYSIS

While the case record supports that appellant carried file folders on the job, the Board finds that she did not establish her occupational disease claim because the medical evidence did not sufficiently demonstrate that this accepted employment factor was causally related to a left shoulder condition.

In an April 3, 2009 progress note, Dr. Cope diagnosed left shoulder impingement syndrome that arose spontaneously in February 2009. He added in an August 18, 2009 report

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *See S.P.*, 59 ECAB 184, 188 (2007).

[8] *See R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[9] *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 6.

that the condition was caused by "the claimed injury." Following the September 2, 2009 surgery, Dr. Cope explained in an October 22, 2009 report that appellant's left shoulder impingement syndrome was spontaneous because she did not identify a traumatic precipitator, although she did relate that she carried file folders. He pointed out that the injury aggravated her preexisting left acromioclavicular joint arthritis. Dr. Cope opined that the mechanism of injury was "unknown" and "unknowable" because he was not at the scene and was not adequately informed about what transpired. In an undated report, he restated appellant's account that she "was carrying some heavy objects" and "reached suddenly to catch something." Nevertheless, Dr. Cope commented on the difficulty of determining the cause of her injury "without a more complete understanding of exactly what the injury may have been." He remained uncertain as to whether appellant sustained trauma, but acknowledged that repetitive lifting "could aggravate symptoms" and that she "may have had an aggravation of her symptoms."

A physician's opinion need not reduce the cause or etiology of a disease or condition to an absolute medical certainty, but the opinion supporting causal relationship must be one of reasonable medical certainty and such relationship must be supported with affirmative evidence, explained by medical rationale and based upon a complete and accurate medical and factual background of the claimant.[10] In this case, Dr. Cope failed to provide medical rationale explaining how carrying stacks of file folders at work pathophysiologically either caused left shoulder impingement syndrome or aggravated preexisting left acromioclavicular joint arthritis.[11] At best, he briefly acknowledged the possibility that repetitive lifting "could" and "may" have aggravated appellant's symptoms, which contradicted his earlier suggestion that a traumatic precipitator was required.[12] Furthermore, Dr. Cope repeatedly asserted that he could not identify the mechanism of injury, evincing a lack of reasonable medical certainty.[13]

The remaining evidence was of diminished probative value on the issue of causal relationship. Drs. Ongel and Green opined in June 25, 2010 and January 6, 2011 reports that appellant's left shoulder condition was due to lifting and carrying heavy files. Both physicians, however, failed to offer fortifying medical rationale explaining the basis of their opinions.[14] In addition, Dr. Mary Ann Cowart's April 3, 2009 MRI scan report did not address cause of injury.[15] In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.

Appellant contends on appeal that medical reports sufficiently established that her injury was work related. The Board has already addressed the deficiencies of the medical evidence of record. Appellant may submit new evidence or argument as part of a formal written request for

[10] *A.D.*, 58 ECAB 149, 157 (2006).

[11] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[12] *Geraldine H. Johnson*, 44 ECAB 745 (1993); *Leonard J. O'Keefe*, 14 ECAB 42 (1962) (medical opinions that are speculative or equivocal in character have little probative value).

[13] *Kathy A. Kelley*, 55 ECAB 206 (2004).

[14] *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[15] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

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 did not establish that she sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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