

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

D.T., Appellant

and

**DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, HEADQUARTERS OFFICE,
Alexandria, VA, Employer**

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**Docket No. 12-1597
Issued: January 15, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 19, 2012 appellant filed a timely appeal from a May 24, 2012 Office of Workers' Compensation Programs' (OWCP) decision denying her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish that her left shoulder conditions are causally related to an October 7, 2002 employment incident, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant requested an oral argument. The Clerk of the Board mailed a letter to appellant to confirm a continuing desire for an oral argument in Washington, DC. No written confirmation was received. Thus, the Board has decided the appeal on the record.

On appeal, appellant contends that she lacks access to the medical evidence required to establish her claim as her doctor left the practice.

FACTUAL HISTORY

On November 4, 2002 appellant, then a 55-year-old special assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury when an elevator door shut on her left shoulder in the performance of duty on October 7, 2002.

In a report dated November 21, 2002, Dr. Jafar Nazemian, a family practitioner, diagnosed persistent pain in the shoulder and arm.

In a November 26, 2002 report, Dr. Rafik D. Muawwad, a Board-certified orthopedic surgeon, diagnosed adhesive capsulitis and calcific tendinitis of the left shoulder. He reported a history of pain in the left shoulder that had been going on for about five weeks after it was caught in an elevator accident.

On April 5, 2012 appellant filed a claim for wage-loss compensation for the period March 26 through April 6, 2012.

By letter dated April 13, 2012, OWCP indicated that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. It reopened the claim for consideration because a claim for wage-loss compensation had been received. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Subsequently, appellant submitted an e-mail correspondence dated April 18, 2012 indicating that she received a medical bill from Dr. Muawwad, who had left his place of employment over five years prior and could not be located.

By decision dated May 24, 2012, OWCP denied the claim on the basis that the evidence submitted was not sufficient to establish causal relationship between the diagnosed conditions and the October 7, 2002 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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, that an injury⁴ was sustained in the performance of duty, as alleged,

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁷

ANALYSIS

OWCP accepted that the employment incident of October 7, 2002 occurred at the time, place and in the manner alleged. The issue is whether appellant’s left shoulder conditions resulted from the October 7, 2002 employment incident. The Board finds that appellant did not meet her burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

In a November 26, 2002 report, Dr. Muawwad diagnosed adhesive capsulitis and calcific tendinitis of the left shoulder and reported a history of pain in appellant’s left shoulder that had been going on for about five weeks after it was caught in an elevator accident. Although he provided firm diagnoses, he did not provide adequate medical rationale explaining the mechanism of how appellant’s left shoulder conditions were caused or aggravated by the accepted incident. Lacking thorough medical rationale on the issue of causal relationship, the report is of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on October 7, 2002.

On November 21, 2002 Dr. Nazemian diagnosed persistent pain in the shoulder and arm. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship.⁸

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

Dr. Nazemian failed to address the issue of causal relationship between the October 7, 2002 employment incident and the diagnosed conditions. Therefore, the Board finds that appellant did not meet her burden of proof with this submission.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the October 7, 2002 employment incident, she has failed to meet her burden of proof.

On appeal, appellant contends that she lacks access to the medical evidence required to establish her claim. As noted, she has the burden of establishing the essential elements of her claim. Appellant may submit rationalized medical opinion evidence from any physician on the issue of causal relationship.⁹ Thus, the Board finds her argument is not substantiated.

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 her burden of proof to establish that her left shoulder conditions are causally related to an October 7, 2002 employment incident, as alleged.

⁹ See *supra* notes 3-7.

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2013
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