

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANDREW R. MILLER and DEPARTMENT OF HOUSING & URBAN  
DEVELOPMENT, Kansas City, MO

*Docket No. 02-2331; Submitted on the Record;  
Issued February 24, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that his right shoulder condition is causally related to his employment.

On February 4, 2001 appellant, then a 49-year-old supervisory financial analyst, filed a claim for occupational disease alleging that two years of prolonged and continuous use of his computer mouse caused him to develop adhesive capsulitis and related conditions. Appellant did not stop work except to undergo medical treatment. The employing establishment did not controvert appellant's claim, but submitted statements confirming that since 1998, approximately 35 to 50 percent of appellant's job time was spent using a computer mouse.

By decision dated April 27, 2001, the Office of Workers' Compensation Programs found that the evidence of record insufficient to establish that appellant's right shoulder condition was causally related to factors of his employment.

By letter dated May 1, 2001, appellant requested reconsideration of the Office decision and submitted additional medical and factual evidence in support of his claim. In a decision dated August 3, 2001, the Office found that the additional evidence and arguments submitted by appellant were insufficient to warrant modification of the prior decision.

By letter dated August 4, 2001, appellant again requested reconsideration of the Office's decision and submitted additional medical and factual evidence in support of his claim. In a decision dated December 12, 2001, the Office found that the additional evidence and arguments submitted by appellant were insufficient to warrant modification of the prior decision.

By letter dated September 1, 2002, appellant submitted his final request for reconsideration, together with additional evidence and arguments. In a decision dated September 30, 2002, the Office found that the additional evidence and arguments to be insufficient to warrant modification of appellant's claim.

The Board finds that this case is not in posture for decision due to an unresolved conflict of medical opinion.

An employee seeking benefits under the Federal Employees' Compensation Act 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 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. 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>1</sup>

In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>2</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>3</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>4</sup> The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.<sup>5</sup>

In this case, it is undisputed that appellant's job required him to use a computer mouse for 35 to 50 percent of each working day and that he has been performing this job since 1998. Therefore, the only issue is whether appellant established that he sustained an injury as a result of his employment duties.

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<sup>1</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) ("occupational disease" defined).

<sup>4</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>5</sup> *Charles E. Evans*, *supra* note 1.

Appellant's treating physician, Dr. Everett J. Wilkinson, Jr., an osteopath, opined that appellant's diagnosed right shoulder conditions are causally related to appellant's employment duties.<sup>6</sup> In Dr. Wilkinson's initial report of record dated November 20, 2000, he noted appellant's history of right shoulder pain beginning in August 2000 and further noted that appellant reported no trauma or injuries to his shoulder, beyond the repetitive use of a computer mouse in his employment. After examination of appellant, Dr. Wilkinson diagnosed adhesive capsulitis and stated that appellant needed additional diagnostic testing to rule out additional conditions. X-rays performed on December 8, 2000 revealed only mild degenerative joint disease, but magnetic resonance imaging yielded findings suggestive of a partial rotator cuff tear, as well as tendinitis and mild degenerative arthritis. On January 9, 2001 Dr. Wilkinson performed an acromioplasty with resection of the acromioclavicular ligament and rotator cuff tear repair. In an attending physician's form report dated April 13, 2001, Dr. Wilkinson diagnosed adhesive capsulitis of the right shoulder and indicated by check mark that this condition was causally related to appellant's employment. He elaborated on his check mark, stating that appellant's injury was consistent with extensive repetitive motion of the shoulder while using a computer mouse. In a medical report dated August 10, 2001, Dr. Wilkinson further explained that he was very skeptical in the beginning that the use of a computer mouse was the cause of appellant's right shoulder problems, however, after extensively questioning appellant, the mouse use was the only activity he could elicit as a cause of appellant's condition. In a follow-up report dated May 17, 2002, Dr. Wilkinson again explained that he could find no other possible cause for appellant's right shoulder conditions. He stated that impingement syndrome, subacromial bursitis and rotator cuff tendinitis could all be caused by repetitive use of the upper extremity, although usually associated with an overhead position, but that repetitive use alone can be an etiology for these conditions. In his final report of record, Dr. Wilkinson reiterated that he had treated appellant for right rotator cuff tendinitis, which was unresponsive to conservative treatment and required acromioplasty. He explained that subsequent to the acromioplasty, appellant developed adhesive capsulitis and underwent manipulation under anesthesia. Dr. Wilkinson further stated: "This injury was a work injury and was directly related to his job activities, that of using a mouse at a computer terminal on a daily basis."

In an undated report received November 26, 2001, Dr. Daniel D. Zimmerman, an internist and Office medical adviser, opined that using a computer mouse requires trivial motion at the shoulder level and that operating a mouse would not cause, aggravate, accelerate or precipitate shoulder capsulitis.

Section 8123(a) of the Act<sup>7</sup> provides, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." The Board finds that the opinion of Dr. Wilkinson, that appellant's current right shoulder conditions are the result of

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<sup>6</sup> In addition to the reports from Dr. Wilkinson, appellant submitted treatment notes from Dr. Richard Emery, his treating chiropractor. However, under section 8101(2) of the Act, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-rays to exist. *Edward Schoening*, 48 ECAB 326 (1997); *Mary A. Wright*, 48 ECAB 240 (1996). As appellant's claim does not involve a spinal subluxation, Dr. Emery's reports cannot be considered those of a physician.

<sup>7</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

repetitive use of a computer mouse in appellant's employment, is sufficiently well rationalized to create a conflict in medical opinion with that of the Office medical adviser, Dr. Zimmerman, who opined that computer mouse use could not have caused appellant's right shoulder condition. To resolve the conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Act, refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for a reasoned opinion as to whether appellant has any right shoulder conditions causally related, either directly or through aggravation, precipitation or acceleration, to his use of a computer mouse in his employment. After such development as it deems necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated September 30, 2002 and December 12, 2001 are set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC  
February 24, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member