

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

WALTER J. LEWIS, Appellant

and

**DEPARTMENT OF THE ARMY,
Fort Benning, GA, Employer**

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**Docket No. 05-213
Issued: April 5, 2005**

Appearances:
Walter J. Lewis, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On October 26, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 18 and April 15, 2004 finding that he had not established an injury causally related to his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant's claim was properly treated as a claim for a traumatic injury occurring on September 5, 2001; and (2) whether appellant has met his burden of proof in establishing that he sustained an injury on September 5, 2001 causally related to factors of his federal employment.

FACTUAL HISTORY

On October 19, 1995 appellant, then a 36-year-old weapons repair worker, filed a traumatic injury claim alleging that on that date he injured his left shoulder lifting weapons in the performance of duty. The Office accepted this claim and appellant underwent arthroscopic

shoulder surgery in October 1997. He returned to work in June 1998 with restrictions on overhead lifting as well as any lifting of objects weighing over 10 pounds.

Appellant filed a recurrence of disability claim on September 24, 2001 alleging that he sustained a recurrence of total disability on September 5, 2001 causally related to his October 19, 1995 employment injury. He stated that, while moving one pallet on top of another one, he felt a burning pain from his shoulder to his back. Appellant opined that this injury was related to his original shoulder injury on October 19, 1995 as his original injury had never healed and as he had experienced constant pain in the same area of his shoulder and back.

In support of his claim, appellant submitted a report dated September 11, 2001 from Dr. Mark L. Mudano, a Board-certified orthopedic surgeon, noting his injury in 1995, his medical treatment and work restrictions. Appellant alleged that he could no longer lift 10 pounds and that his shoulder pain was constant. Dr. Mudano found a positive sulcus sign in the left shoulder, with no significant atrophy. He noted that appellant demonstrated guarding and some symptom magnification. Dr. Mudano diagnosed chronic rotator cuff tendinitis, left shoulder with associated nonspecific pain.

In a memorandum dated March 5, 2002, the Office claims examiner opined that appellant's claim should be developed as a new traumatic injury. By letter dated March 26, 2002, the Office requested that appellant provide additional factual and medical information regarding his September 5, 2001 employment injury. The Office allowed appellant 30 days to submit any additional evidence.

By decision dated April 26, 2002, the Office denied appellant's traumatic injury claim on the grounds that he had not submitted sufficient factual evidence to establish that an injury occurred at the time, place and in the manner alleged.

Appellant requested reconsideration on January 28, 2003. In support of his request, appellant submitted a statement from Calvin Billingsley, a coworker, asserting on September 5, 2001 he observed that appellant appeared to be in severe pain. At that time appellant informed Mr. Billingsley that he had injured his shoulder and back.

Appellant submitted a narrative statement alleging that on September 5, 2001 he was stacking pallets weighing 5 to 10 pounds when he began to experience a burning pain in his left shoulder. He also submitted a series of unsigned medical notes dated September 18, 2002 through January 8, 2003 from Access Medical.

By decision dated April 3, 2003, the Office accepted that the employment incident occurred on September 5, 2001 as alleged, but found that appellant had not submitted sufficient medical evidence to establish that he sustained an employment injury as a result of this incident.

On March 26, 2004 appellant again requested reconsideration. He resubmitted Dr. Mudano's September 11, 2001 report and submitted a report dated September 5, 2001 from Dr. William E. Roundtree, a Board-certified family practitioner, who noted that appellant complained of left shoulder pain as well as back and neck pain due to old injuries. He stated that appellant's left shoulder now hurt and that appellant did not feel he could lift over 10 pounds. Dr. Roundtree diagnosed chronic rotator cuff tendinitis and possible chronic rotator cuff tear of

the left shoulder. In a note dated March 23, 2004, Dr. Roundtree diagnosed rotator cuff and left shoulder pain and stated that he examined appellant on September 5, 2001 for a workers' compensation injury.

By decision dated April 15, 2004, the Office denied appellant's claim finding that neither Dr. Roundtree nor Dr. Mudano provided a history of injury to include appellant's lifting incident on September 5, 2001.

Appellant requested reconsideration on July 7, 2004 noting that he believed that Dr. Roundtree's report dated June 30, 2004 was sufficient to establish "causal relationship between my employment factors and my preexisting condition." Dr. Roundtree stated that he had examined appellant in 2001 and that at that time appellant had injured his shoulder lifting at work "doing some over the head lifting." Dr. Roundtree provided his diagnosis in 2001 as rotator cuff tendinitis aggravated by his occupation. He provided appellant's current left shoulder findings as marked tenderness of the left rotator cuff area, decreased range of motion of the left shoulder. Dr. Roundtree stated, "I do feel that these problems are all work related and occupation related. Certainly his injury of September 5, 2001 was an aggravation of a previous workers' compensation injury."

By decision dated August 18, 2004, the Office denied appellant's claim noting that Dr. Roundtree attributed his condition in 2001 to overhead lifting rather than to placing one pallet on top of another. The Office also suggested that appellant and Dr. Roundtree had implicated work duties over a period longer than one day or work shift and that he consider filing an occupational disease claim. The Office concluded that appellant had not submitted the necessary rationalized medical opinion evidence to meet his burden of proof and establish his claim for an employment-related injury.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability is the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹ On the other hand, the Office'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.²

¹ 20 C.F.R. § 10.5(x).

² 20 C.F.R. § 10.5(ee).

ANALYSIS -- ISSUE 1

In the instant case, the Board finds that the Office properly changed appellant's claim for a recurrence of disability into a claim for an occupational disease. Appellant attributed his physical condition to moving one pallet on top of another on September 5, 2001. This statement does not support a spontaneous change in a medical condition without an intervening injury or new work exposure. Instead, appellant provided a description of the specific event within a single work shift which he believed caused or contributed to his left shoulder condition. Accordingly, the Board finds that the Office properly treated appellant's case as a new traumatic injury claim rather than a claim for recurrence of disability.³

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 or specific condition for which compensation is claimed is causally related to the employment injury. 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.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. 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.⁶ The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.⁷

³ *Ian H. Just*, Docket No. 05-80 (issued March 11, 2005); *Denise Moore*, Docket No. 04-383 (issued June 1, 2004).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

⁶ *Id.*

⁷ *Id.*

ANALYSIS -- ISSUE 2

Appellant has established that the employment incident occurred as alleged, that he was lifting pallets in the performance of duty on September 5, 2001. However, appellant must also submit rationalized medical opinion evidence establishing that he sustained an injury as a result of this incident. In support of his claim, appellant submitted a report from Dr. Mudano, a Board-certified orthopedic surgeon, dated September 11, 2001 diagnosing chronic rotator cuff tendinitis in the left shoulder with nonspecific pain. Dr. Mudano did not provide a description of appellant's work activities on September 5, 2001 and did not offer an opinion on the causal relationship between appellant's diagnosed condition and his employment. This report is not sufficient to meet appellant's burden of proof.

In further support of his claim, appellant submitted reports from Dr. Roundtree, a Board-certified family practitioner dated September 5, 2001 and June 30, 2004. Dr. Roundtree diagnosed chronic rotator cuff tendinitis and possible chronic rotator cuff tear of the left shoulder. He reported appellant's history of injury as "doing some overhead lifting." Dr. Roundtree opined that appellant's left shoulder conditions were work related and an aggravation of his previously accepted employment injury. These reports are not sufficient to meet appellant's burden of proof as Dr. Roundtree's report did not include a proper factual background. Although he noted appellant's September 5, 2001 injury was due to lifting, he described this lifting as over the head. Appellant, on the other hand, indicated that he was stacking pallets and did not describe exceeding his work restriction by lifting over his head. A clear history of injury is necessary from Dr. Roundtree due to the amount of time which has elapsed from appellant's date-of-injury until the report date of 2004. Due to the factual discrepancies, Dr. Roundtree's reports are not sufficient to meet appellant's burden of proof.

Appellant submitted a series of unsigned medical reports from Access Medical dated from September 18, 2002 through January 8, 2003. It is well established that, to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician.⁸ As there is no signature on any of these notes, the Board cannot ascertain whether the notes were signed by a qualified physician. Therefore, the Board will not consider these notes to be medical evidence. As these notes are not competent medical evidence, the notes cannot establish a causal relationship between appellant's employment incident and his diagnosed condition.⁹

CONCLUSION

The Board finds that the Office properly developed appellant's claim as a new traumatic injury rather than a recurrence of disability. The Board further finds that appellant has failed to submit the necessary medical opinion evidence based on a proper factual background to meet his burden of proof in establishing an injury in the performance of duty on September 5, 2001.

⁸ *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁹ See *Arnold A. Alley*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 18 and April 15, 2004 are hereby affirmed.

Issued: April 5, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member