

and shoulder was caused by her federal employment. Appellant stated that, following her return to work from carpal tunnel syndrome surgery, she experienced pain in her arm, elbow and shoulder after working a few hours. She thought the pain was due to not having worked in four months but the pain continued after two or three hours. In accompanying narrative statements, appellant provided a history of her employment and described the development of her claimed conditions and medical treatment received.

By letter dated June 9, 2006, the Office requested that the employing establishment respond to appellant's claim and provide a copy of her position description including the physical requirements. By letter of the same date, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the medical evidence she needed to submit to establish her claim. The Office requested a rationalized medical report from appellant's attending physician which described her symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in appellant's federal employment contributed to her condition.

On June 19, 2006 appellant related that the Office erred in stating that the date of her injury was on April 17, 2006. She further stated that she was initially hurt in April 2001 and continued to experience pain. Appellant suffered from pain in her hands, wrists, arm, elbow and shoulder. She submitted a CA-2 form dated November 7, 2005. Appellant alleged that in February 2003 she first realized that the tendinitis in her right forearm and shoulder was caused by her employment. She stated that Dr. Isaias F. Salazar, a Board-certified orthopedic surgeon, opined that her condition was caused by the performance of repetitive work duties.

In a report dated June 6, 2006, Dr. Steve Huang, an occupational medicine specialist, noted appellant's right shoulder and elbow symptoms and repetitive use of her arm. He stated that appellant was originally injured on April 1, 2001 and that she continued to experience pain in her right shoulder, elbow and wrist. Dr. Huang provided a history of her social, family and employment background. He reported essentially normal findings on physical examination. Dr. Huang diagnosed tendinitis in the right shoulder, elbow and wrist. He opined that appellant could return to modified-duty work with physical restrictions from June 6 through 29, 2006.

On December 12, 2005 the employing establishment offered appellant a modified position. Appellant rejected the job offer stating that the position was not consistent with her physician's restrictions.

In a letter dated June 23, 2006, Frank Malone, an officer-in-charge at the employing establishment, stated that appellant returned to work on April 17, 2006 because she wanted work hours. Appellant advised management that she was going to apply for disability retirement. Mr. Malone stated that, at the time appellant returned to work, it was understood that she had no job-related restrictions. Appellant was only entitled to light-duty work due to her nonindustrial restrictions. Mr. Malone stated that appellant agreed to perform duties which included the distribution of letter mail and throwing box mail. On April 17 and 19, 2006 appellant was assigned to the box section to throw box mail. Mr. Malone noted that appellant went home shortly after performing this task because she was unable to perform any other duties. He stated that, after working nine days, she went to her physician due to pain in her arm, elbow and shoulder. On April 30, 2006 appellant submitted a CA-2 form for the pain. Mr. Malone

indicated that appellant probably should have submitted a claim for a recurrence of disability (Form CA-2a) resulting from her previous employment-related elbow condition. He further indicated that she refused a February 2006 limited-duty job offer contending that the work duties were not consistent with her medical restrictions. Mr. Malone related that appellant had not worked since May 30, 2006 because she was having problems performing her work duties and claimed that she was experiencing arm, elbow and shoulder pain. He noted that, due to her nonjob-related injuries, the employing establishment was having difficulty in providing her with work. Mr. Malone concluded that in light of her medical problems, appellant was physically unable to perform her job duties.

In a May 24, 2006 report, Dr. Huang stated that appellant sustained right lateral epicondylitis and noted her physical restrictions.

In a letter dated June 26, 2006, Nancy Lemus, an employing establishment nurse, provided a history of appellant's bilateral carpal tunnel syndrome, rheumatoid, diabetic and right lateral epicondylitis conditions. She stated that appellant did not have any work-related restrictions. Ms. Lemus further stated that contrary to appellant's contention, the duties of an offered job did not require her to work outside her restrictions. She noted that appellant was "P&S'd" by Dr. Lauri B. Hemsley, Board-certified in occupational medicine, on May 24, 2006. Dr. Hemsley advised appellant that she could not find anything wrong with her shoulder after evaluating her following her admission of falling in the parking lot of a grocery store.

The employing establishment submitted a description of appellant's distribution clerk position.

Dr. Hemsley's June 14, 2006 report provided a history of appellant's right elbow and forearm condition and medical treatment. On physical examination, she reported full range of motion of the right shoulder, elbow and wrist and normal upper extremity strength. Dr. Hemsley diagnosed right lateral epicondylitis. She opined that appellant was at maximum medical improvement. Dr. Hemsley further opined that, based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) (A.M.A., *Guides*), appellant had zero percent impairment of the upper extremity and whole person. She stated that appellant only had a mild change in her daily living activities and no objective findings. Dr. Hemsley opined that an impairment rating for pain would not adequately reflect appellant's condition since the change in her daily living activities was mild. She concluded by noting appellant's physical restrictions and recommending job modification.

Dr. Huang's August 8, 2006 report revealed essentially normal findings on physical examination of appellant's right shoulder and elbow. He released her to return to modified work with restrictions from July 24 through August 8, 2006.

An August 8, 2006 report of Dr. Christopher J. Shean, a Board-certified orthopedic surgeon, stated that appellant had right tennis elbow and cubital tunnel symptoms. He indicated that appellant wished to schedule surgery for operative release.

By decision dated September 27, 2006, the Office found that appellant did not sustain an injury while in the performance of duty. The medical evidence failed to establish a causal relationship between the alleged shoulder and elbow conditions and her employment duties.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion 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.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁷

² Following the issuance of the Office's September 27, 2006 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

ANALYSIS

The Board finds that appellant has failed to establish a causal relationship between her right wrist, arm, elbow and shoulder conditions and her federal employment. The record reveals that appellant previously sustained right carpal tunnel syndrome and a right elbow condition in April 2001. According to appellant, she underwent right carpal tunnel release surgery in either 2003 or 2004.

Appellant submitted several reports of Dr. Huang. In a June 6, 2006 report, Dr. Huang stated that appellant was originally injured on April 1, 2001 and that she continued to experience pain in her right shoulder, elbow and wrist. He reported essentially normal findings on physical examination. Dr. Huang diagnosed tendinitis in the right shoulder, elbow and wrist. He opined that appellant could return to modified-duty work with physical restrictions from June 6 to 29, 2006. Dr. Huang's May 24, 2006 report stated that appellant had right lateral epicondylitis and physical restrictions. His reports are of diminished probative value as they failed to address whether the diagnosed conditions were caused or aggravated by factors of appellant's employment. The Board, therefore, finds that this evidence is insufficient to establish appellant's burden of proof.

Dr. Huang's August 8, 2006 report provided essentially normal findings on physical examination of appellant's right shoulder and elbow. He released her to return to modified work with restrictions from July 24 to August 8, 2006. Dr. Huang failed to provide a definite diagnosis of a right upper extremity condition or to address whether the diagnosed condition was caused or aggravated by factors of appellant's employment. The Board finds that Dr. Huang's report is insufficient to establish appellant's burden of proof.

Similarly, Dr. Hemsley's June 14, 2006 report failed to provide a diagnosed condition or address whether the diagnosed condition was caused or aggravated by factors of appellant's employment. She reported normal findings on physical examination. Dr. Hemsley opined that appellant was at maximum medical improvement and that she had zero percent impairment of the upper extremity and whole person based on the A.M.A., *Guides*. She stated that an impairment rating based on pain would not adequately reflect appellant's condition since the change in her daily living activities was mild. Dr. Hemsley noted her physical restrictions and recommended job modification. As she did not diagnose a condition causally related or aggravated by appellant's employment, the Board finds that her report is insufficient to establish appellant's claim.

In an August 8, 2006 report, Dr. Shean opined that appellant had right tennis elbow and cubital tunnel symptoms. His report is of diminished probative value because he failed to address whether the diagnosed conditions were caused by appellant's employment. The Board finds that Dr. Shean's report is insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained right wrist, arm, elbow and shoulder conditions causally related to factors of her federal employment as a clerk. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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