

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

D.C., Appellant	)	
	)	
and	)	<b>Docket No. 08-1289</b>
	)	<b>Issued: October 16, 2008</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Cleveland, OH, Employer	)	
	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On March 24, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated February 27, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained an injury to her left shoulder in the performance of duty on June 7, 2006.

**FACTUAL HISTORY**

This is the second appeal before the Board. On July 30, 2004 appellant, a 49-year-old mail clerk, filed a claim alleging that she experienced pain in her left shoulder while reaching to push some magazines down a conveyor belt. Her treating physician, Dr. J. Britten Shroyer, Board-certified in internal medicine, diagnosed impingement syndrome of the left shoulder. He submitted several reports indicating that appellant injured her left shoulder in June 2006 while engaged in overhead lifting. His reports noted that appellant's regular duties as a postal clerk

entailed repetitive work in her duties as a postal clerk and indicated that she was no longer able to perform these duties due to her work-related left shoulder injury. By decision dated June 25, 2007, the Office denied appellant's claim. By decision dated June 25, 2007, an Office hearing representative affirmed the October 11, 2006 decision. In a January 10, 2008 decision,<sup>1</sup> the Board affirmed the Office's decision. The facts of this case are set forth in the Board's January 10, 2008 decision and are incorporated herein by reference.

By letter dated February 13, 2008, appellant's attorney requested reconsideration. In a July 3, 2007 report, Dr. Shroyer noted that there was apparently some confusion as to when and how appellant sustained her left shoulder impingement syndrome. He stated:

“[Appellant] recalled a specific time and activity that she [was] performing when she injured her shoulder in June of 2006. I do not see where I had noted in my notes that this is a repetitive injury type of mechanism. Perhaps the confusion comes with the diagnosis of impingement syndrome, which is synonymous with partial thickness rotator cuff tearing.

“To repeat, it is my recollection and it is reflected in my notes that [appellant] had a one-time injury to her shoulder in June 2006, and it is my feeling that her shoulder condition of partial thickness rotator cuff tear/impingement syndrome is directly related to that incident as described by [appellant].”

By decision dated February 27, 2008, the Office denied modification of its prior decisions.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that 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.<sup>3</sup> 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.<sup>4</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually

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<sup>1</sup> Docket No. 07-1912 (issued January 10, 2008).

<sup>2</sup> 5 U.S.C. § 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury can only be established by medical evidence.<sup>10</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on June 7, 2006 caused a personal injury and resultant disability.

The July 3, 2007 report from Dr. Shroyer essentially reiterated the findings and conclusions he presented in previous reports of record. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>11</sup> Dr. Shroyer's July 3, 2007 report, did not provide a probative, rationalized medical opinion relating appellant's diagnoses to the June 7, 2006 incident at work. He merely stated in summary fashion that her condition of partial thickness rotator cuff tear/left shoulder

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<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* For a definition of the term "injury, see 20 C.F.R. § 10.5(a)(14).

<sup>7</sup> *Id.*

<sup>8</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>9</sup> *Id.*

<sup>10</sup> *John J. Carlone*, *supra* note 5.

<sup>11</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

impingement syndrome was directly related to the June 7, 2006 work incident, as described by appellant.

Dr. Shroyer did not adequately address how medically appellant's diagnosed conditions were causally related to the June 7, 2006 work incident. There is insufficient rationalized evidence to support that appellant's left shoulder injury was work related. Appellant failed to provide a medical report from a physician that provides a medical opinion as to how physiologically the work incident of June 7, 2006 caused or contributed to the claimed left shoulder injury.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the June 7, 2006 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained a left shoulder injury in the performance of duty. The Office properly denied appellant's claim for compensation.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a left shoulder injury in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 27, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 16, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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