



requested a physician's report with an opinion explaining how the alleged work incident caused or aggravated her claimed injury.

In a February 11, 2009 decision, the Office denied appellant's claim finding that, the August 18, 2008 incident occurred, there was no medical evidence, however, providing a diagnosis, which could be connected to the accepted incident.<sup>1</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 filed within the applicable time limitation; that an injury was sustained while 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 and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>3</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 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.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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.<sup>5</sup>

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<sup>1</sup> On May 6, 2009 appellant requested a review of the written record. On May 19, 2009 the Office denied the request for a review of the written record. As noted, appellant filed her appeal with the Board on May 12, 2009. The Board notes that the May 19, 2009 Office decision is null and void as the Board and the Office may not simultaneously have jurisdiction over the same case. The Office may not issue a decision granting or denying a request for a hearing or review of the written record regarding the same issue on appeal before the Board. *See Arlonia B. Taylor*, 44 ECAB 591 (1993).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *S.P.*, 59 ECAB \_\_\_\_ (Docket No. 07-1584, issued November 15, 2007).

<sup>4</sup> *Id.*

<sup>5</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

Appellant alleges that she injured her right shoulder on August 18, 2008 from dropping tubs of flats. The Office accepted that she performed this activity on August 18, 2008. However, appellant has not established an injury due to the incident as she has not submitted any medical evidence to establish that the August 18, 2008 work incident caused or aggravated a diagnosed medical condition.

On January 12, 2009 the Office advised appellant of the medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. However, appellant did not submit any medical evidence prior to the Office's February 11, 2009 decision.<sup>6</sup> The record does not contain any medical report from a physician, received before the Office issued its February 11, 2009 decision, explaining how dropping tubs of flats caused or aggravated her right shoulder condition. Appellant has the burden of proof to submit rationalized medical evidence addressing whether there is a causal relationship between her diagnosed condition and the incident at work. Consequently, appellant did not provide the medical evidence required to establish a *prima facie* claim for compensation.<sup>7</sup>

On appeal, appellant asserts that the reasons for her appeal had been submitted to the employing establishment and that her physician provided a detailed response to the Office's request for information. However, none of these documents was of record prior to the issuance of the Office's February 11, 2009 merit decision. As noted, the Board may only consider evidence that was in the record at the time the Office issued its final decision.

## CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on August 18, 2008 in the performance of duty.

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<sup>6</sup> The record on appeal contains evidence received after the Office issued the February 11, 2009 decision. The Board may not consider evidence that was not before the Office at the time it rendered its final decision. 20 C.F.R. § 501.2(c).

<sup>7</sup> See A.C., 60 ECAB \_\_\_ (Docket no. 08-1453, issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated February 11, 2009 is affirmed.

Issued: February 22, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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