

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

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<b>S.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-74</b>
	)	<b>Issued: June 1, 2011</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS HEALTH ADMINISTRATION,</b>	)	
<b>Houston, TX, Employer</b>	)	
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<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 12, 2010 appellant filed a timely appeal from a September 8, 2010 merit decision of the Office of Workers’ Compensation Programs denying her occupational exposure claim. Pursuant to the Federal Employees’ Compensation Act<sup>1</sup> and 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 met her burden of proof to establish that she developed shoulder impingement syndrome or subacromial bursitis impingement causally related to factors of her employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On February 22, 2010 appellant, then a 52-year-old pharmacy technician, filed an occupational disease claim (Form CA-2) alleging that she developed right hand, arm and shoulder pain with numbness in her fingers. She noted that her injury was a result of the repetitive motions of preparing numerous intravenous treatments (IVs) each day. Appellant first became aware of her condition on January 29, 2010 and of its relationship to her employment on February 5, 2010. The employing establishment received notice of her injury on February 22, 2010.

By letter dated February 26, 2010, the Office informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and directed to submit it within 30 days. In a letter of the same date, the Office also requested additional factual information from the employing establishment.

In a February 23, 2010 back to work letter, Dr. Michael Shelton, Board-certified in family medicine, noted that appellant was seen that day and could return to work on February 26, 2010. In a February 25, 2010 return to work letter, appellant was restricted from pushing, pulling or reaching with her right shoulder until March 25, 2010.

By letter dated February 26, 2010, the employing establishment controverted the claim stating that there was no factual or medical evidence supporting that the alleged occupational disease claim was caused by any employment activities.

By letter dated March 1, 2010, appellant's supervisor, Patricia Williams, reported that appellant informed her of her right shoulder condition on February 22, 2010, stating that it had been painful for some time. By letter dated March 2, 2010, Ms. Williams placed appellant on light duty. A pharmacy technician position description and application for the position were also submitted.

By decision dated March 29, 2010, the Office denied appellant's claim finding that the evidence did not establish that she sustained an injury. It found that the evidence was insufficient to establish that the work activities occurred as alleged and there was no medical evidence that provided diagnoses which could be connected to the claimed events.

Appellant requested reconsideration on August 6, 2010. In support of her request, she submitted her offer of light-duty assignment which was signed and accepted on March 5, 2010.

In duty status reports dated March 25 to April 12, 2010, Dr. Christina Walker, Board-certified in family medicine, diagnosed right shoulder impingement syndrome and subacromial bursitis impingement. She restricted appellant's activities due to her conditions.

By decision dated September 8, 2010, the Office affirmed the March 29, 2010 decision, as modified. While the medical evidence provided a diagnosis of right shoulder impingement

syndrome effusion and subacromial bursitis impingement, it was not sufficient to establish that the diagnosed condition was causally related to the cited work factors.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the 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 filed within the applicable time limitation; that an injury was sustained while 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.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 employee.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.<sup>7</sup> Rationalized medical opinion

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<sup>2</sup> The Board notes that appellant submitted additional evidence after the Office rendered its September 8, 2010 decision. The Board’s jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 10.510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010).

evidence must be based on a complete factual and medical background of the employee 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. This medical opinion must include an accurate history of the employee's employment injury, and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### ANALYSIS

The Office denied appellant's claim on the grounds that it lacked sufficient medical evidence to support that the diagnosed right shoulder condition was causally related to the cited work factors. The Board finds that the medical evidence of record is insufficient to establish that appellant's shoulder impingement syndrome and subacromial bursitis impingement are causally related to factors of her employment.

In February 23 and 25, 2010 return to work notes, Dr. Shelton restricted appellant from pushing, pulling or reaching with her right shoulder. He did not provide a specific diagnosis or state what activities appellant was engaged in that caused or contributed to her condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> Thus, Dr. Shelton's report is insufficient to meet appellant's burden of proof.

In duty status reports dated March 25 to April 12, 2010, Dr. Walker diagnosed appellant with shoulder impingement syndrome and subacromial bursitis impingement. She also restricted appellant's activities due to her injury. While Dr. Walker diagnosed appellant's injury, she did not identify its cause and did not mention appellant's employment activities. Without medical reasoning explaining how appellant's employment factors caused her right shoulder injury, Dr. Walker's reports are insufficient to meet appellant's burden of proof.<sup>10</sup>

The remaining evidence of record is not sufficient to establish that appellant sustained shoulder impingement syndrome and subacromial bursitis impingement causally related to factors of her employment. Appellant failed to adequately describe her work factors and specifically, what was physically required to make large volumes of IVs.<sup>11</sup> Her light-duty assignment, the official pharmacy technician position description and position application do not establish that the work-related events occurred as alleged nor do they support that the right shoulder injury was medically related to the cited work factors.

On appeal, appellant contends that the pain in her right shoulder and hand resulted from making IVs over the years. Her belief that work caused her medical condition does not

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<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

constitute the medical evidence necessary to establish causal relationship. As noted, the record is without rationalized medical evidence from a physician that addresses the causal relationship between the shoulder impingement syndrome and subacromial bursitis impingement and the cited work factors. Thus, appellant has failed to meet her burden of proof.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that shoulder impingement syndrome and subacromial bursitis impingement is causally related to factors of her employment as a pharmacy technician.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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