

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRUCE K. LAMBERTSON and U.S. POSTAL SERVICE,  
POST OFFICE, New Brunswick, NJ

*Docket No. 98-831; Submitted on the Record;  
Issued September 27, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a traumatic right shoulder injury on July 18, 1994 in the performance of duty, causally related to factors of his federal employment.

On October 28, 1994 appellant, then a 46-year-old letter carrier, filed a claim for traumatic injury alleging that on July 18, 1994 while distributing mail into his case he stretched his arm to place a letter and experienced pain from his shoulder down his arm to his hand. Appellant claimed that he had a right shoulder injury with a torn tendon and he ceased work on July 19, 1994, taking sick leave. Appellant's supervisor noted that neither she nor management was notified of this alleged injury until October 28, 1994, three months after the supposed incident.

On a November 21, 1994 duty status report Dr. Matthew Garfinkel, a Board-certified orthopedic surgeon, noted a diagnosis of adhesive capsulitis of the right shoulder. Causation was not mentioned.

By letter dated December 20, 1994, the Office of Workers' Compensation Programs requested further information including a history of injury and medical findings with a rationalized opinion on causal relation.

In support of his claim, appellant submitted multiple medical notes and reports.

A July 7, 1994 medical progress note identified right shoulder, neck and back pain as existing preinjuries. A July 28, 1994 note indicated that appellant was seen for constant neck pain and that he obtained no relief from the pain clinic. No work injury was identified. Appellant was next seen on September 9, 1994 for chronic radiculopathy from his cervical spondylosis. Again, no work injury was identified. Physical therapy evaluations were also submitted.

Appellant submitted a September 26, 1994 magnetic resonance imaging (MRI) scan of the right shoulder which was reported as demonstrating a “partial tear involving the distal supraspinatus tendon.... Degenerative changes and possible tear involving the anterior glenoid labrum.” Causation was not discussed.

An October 5, 1994 report from Dr. David Lessing, a Board-certified orthopedic surgeon, was additionally submitted which gave a history of appellant injuring his right shoulder in May 1994 while pitching mail into cubby holes. Dr. Lessing noted:

“[Appellant] developed a sharp pain and the arm dropped. Subsequently he was able to continue working, however, through June. On July 18 the same thing happened. [Appellant] was out of work until August 5 when he was still having pain but returned to work and was sorting mail again. Again his right arm went down. [Appellant] has not returned to work since and he complains of pain across the acromion and over into the anterior portion of the shoulder down the right biceps. The pain is worse in the evening and he has trouble sleeping.”

A rotator cuff tear was diagnosed but causation was not discussed.

A January 5, 1995 attending physician’s supplemental report Dr. Paul Luparello, a Board-certified internist, noted the date of injury as July 7, 1994; he diagnosed chronic radiculopathy and a right frozen shoulder and he checked “yes,” without explanation, to the question of whether appellant’s present condition was due to the injury for which compensation was claimed.

A February 3, 1995 report from Dr. Kenneth S. Klein, a Board-certified orthopedic surgeon, noted as history of injury that in May 1994 while driving his truck and delivering mail, appellant developed pain, increasing in nature, over the anterior and lateral aspects of his right shoulder. Dr. Klein noted that an MRI scan revealed a slap lesion and probably impingement and he opined that arthroscopic surgery was appropriate.

By decision dated February 15, 1995, the Office rejected appellant’s traumatic injury claim finding that the evidence of record failed to establish fact of injury. The Office found that the evidence of record was conflicting regarding whether the claimed event occurred at the time, place and in the manner alleged and failed to identify a medical condition specifically caused by the events of July 18, 1994.

Appellant, through his representative, requested reconsideration and in support submitted further medical evidence. A March 6, 1995 report from Dr. Garfinkel noted as a history of injury that appellant began to have shoulder pain at work around May 1994. Dr. Garfinkel indicated that he first saw appellant on October 4, 1994 with an initial diagnosis of “severe adhesive capsulitis of the right shoulder perhaps after a period of shoulder inflammation” and that his final diagnosis was “right shoulder capsulitis and rotator cuff tendinitis.”

By decision dated March 5, 1996, the Office denied appellant’s request for modification finding that the evidence submitted was insufficient to warrant modification. The Office found that both the factual and medical evidence were deficient, in that the histories of injury given

were inconsistent and the medical evidence lacked any medical rationale supporting causal relation with appellant's diagnosed conditions.

By letter dated July 15, 1996, appellant, through his representative, again requested reconsideration and in support submitted further medical evidence. In an April 24, 1996 report, Dr. Dorota M. Gribbin, a Board certified physical medicine and rehabilitation specialist, noted that an MRI scan done on September 26, 1994 was consistent with a primary tear involving the distal supraspinatus tendon and opined:

“[R]epetitive movement at the work place which involved extensive reaching, overhead activities, lifting, pulling, stretching and driving a motor vehicle can contribute and most likely contributed to this impairment. [Appellant] has a history of left below elbow amputation years ago and at this time he is using his right upper extremity extensively and exclusively.”

By decision dated September 16, 1996, the Office denied modification of its prior decision finding that the evidence submitted in support of the request was insufficient to warrant modification. The Office found that Dr. Gribbin's history of repetitive movement involving extensive reaching, overhead activities, lifting, pulling, stretching and driving a motor vehicle was inconsistent with the history of injury as given by appellant on his original claim form.

By letter dated September 10, 1997, appellant, through his representative, again requested reconsideration and in support submitted further medical evidence. Appellant submitted medical records dictations from Dr. Gribbins dated July 19, August 2 and 16 and September 1 and 20, 1994. These dictated notes referred to an automobile accident on June 3, 1993 and continuing neck problems. No injury of July 18, 1994 was identified or discussed. Further, a September 7, 1994 letter from Dr. Gribbins referred to her treatment of appellant since 1993 for neck pain with radiation down both shoulder areas and upper extremities. Again, no July 18, 1994 injury was identified or discussed. A September 29, 1994 report from Dr. Gribbins noted a “history of a motor vehicle accident and a work-related injury which resulted in cervical spine C4-5 herniated nucleus pulposus, right shoulder injury involving partial tear of the supraspinatus tendon and possible tear of the glenoid labrum.” No specific injury on July 18, 1994 was identified or discussed. Dr. Gribbins noted that appellant had excruciating pain in his cervical spine and entire right upper extremity. Based upon electrodiagnostic studies, Dr. Gribbins diagnosed right carpal tunnel syndrome.

Chart dictations by Dr. Garfinkel dated October 4 and 18, November 15 and December 6, 1994 noted that appellant's shoulder pain began about five months preceding October 4, 1994, which would have been in May 1994, that his rotator cuff was inflamed and that he had severe adhesive capsulitis in the right shoulder. No history of a July 18, 1994 injury was mentioned.

By decision dated December 24, 1997, the Office denied appellant's request for modification finding that the evidence submitted was insufficient to warrant modification of its prior decision.

The Board finds that appellant has failed to establish that he sustained a traumatic right shoulder injury on July 18, 1994 in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon 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.<sup>4</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>5</sup>

In the instant case, appellant alleged that on July 18, 1994 he was stretching to put mail in his case when he injured his right shoulder. However, he did not report this injury either orally or in writing to his supervisor or to the employing establishment for over three months. Appellant also provided no confirmation of injury and no witnesses were identified. This unexplained delay in reporting his traumatic injury and lack of confirmation of injury diminishes the probity of his allegations. Further, although appellant had medical treatment on the day following the alleged injury, he failed to tell his physician, Dr. Gribbins, about the July 18, 1994 reaching right shoulder injury and instead spoke only of a June 3, 1993 motor vehicle accident, as documented in Dr. Gribbins' July 19, 1994 dictated chart notes. Additionally, no right shoulder symptoms were noted by Dr. Gribbins on examination, on that date. Failure to obtain specific medical treatment for the alleged injury further diminishes the probity of appellant's allegations. Dr. Gribbins later speculated that appellant's condition was possibly related to

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

<sup>5</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. §10.5(a)(14).

repetitive movement at work with extensive reaching, overhead activities, lifting, pulling, stretching and driving a motor vehicle, all of which were activities occurring during more than one specific day or work shift and this opinion does not support the fact of traumatic injury on July 18, 1994.

Further the medical evidence of record contained conflicting histories of injury, none of which agreed with or provided support for appellant's version of traumatic injury on July 18, 1994. In fact, medical evidence preinjury noted right shoulder problems and pain. This contradicts appellant's allegations of an original July 18, 1994 traumatic injury. Dr. Lessing noted that appellant had an original right shoulder injury in May 1994 and a recurrence on July 18, 1994, but he failed to relate appellant's current symptomatology discreetly to the July 18, 1994 incident and he failed to discuss causal relation. Consequently, this report is insufficient to meet appellant's burden of proof to establish his claim.

As there are such inconsistencies in the evidence presented, so as to cast serious doubt on the validity of appellant's July 18, 1994 traumatic injury claim, the Office properly denied his claim for failure to establish the fact of injury.

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 24, 1997 is hereby affirmed.

Dated, Washington, D.C.  
September 27, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member