

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

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**G.G., Appellant**

**and**

**U.S. BORDER PATROL, Tucson, AR, Employer**

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**Docket No. 08-1470  
Issued: November 18, 2008**

*Appearances:*  
*Ralph Hunt*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On April 16, 2008 appellant filed a timely appeal from a March 17, 2008 Office of Workers' Compensation Programs' merit decision. 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 he sustained a right shoulder injury in the performance of duty on September 13, 2007.

**FACTUAL HISTORY**

Appellant, a 30-year-old border patrol agent, alleged that he sustained an injury to his right arm, shoulder and upper back on September 13, 2007 while driving his motor vehicle over rough roads and terrain. He filed a claim for benefits on September 27, 2007. Appellant indicated that he experienced pain and numbness while driving the vehicle on a dirt road in rough terrain on September 13, 2007.

Appellant submitted an emergency room report dated September 27, 2007 which indicated he was treated for paresthesia and excused from work from September 27 through 28, 2007. Following his discharge, he was placed on light duty.

In an October 1, 2007 report, Dr. Scott V. Slagis, Board-certified in orthopedic surgery, stated that he was treating appellant for right arm and shoulder pain. He stated:

“[Appellant] reports about five months ago he was involved in a scuffle. He works as a border patrol agent. [Appellant] hurt his shoulder. Since that time he has developed numbness and tingling in his right arm. It goes all the way down into [appellant’s] hand. It has not gotten any better. [Appellant] has good motion of his shoulder. No real impingement. [Appellant] also has good motion of his neck.”

Dr. Slagis noted that a cervical spine radiograph demonstrated some C5-6 disc space narrowing. He advised that right shoulder radiographs are normal and stated:

“Tingling, numbness and burning all the way down into the hand is certainly much more consistent with a radiculopathy or brachial plexus injury rather than primary shoulder pathology. Therefore I think workup should be more in this direction with a magnetic resonance imaging [MRI] scan of the cervical spine and electromyogram/nerve conduction velocity studies to pick up any peripheral neuropathy, possibly brachial plexus injury.”

In a report dated October 1, 2007, Dr. Ben A. Leeson, a specialist in emergency medicine, stated:

“This is a 30-year-old male with a history of a right arm injury in April 2007 that occurred at work as he works at [the employing establishment]. [Appellant] reports that in April he was chasing a border crosser when he wrestled the crosser to the ground, he sustained an injury to his right arm and shoulder that was diagnosed as shoulder strain. Over the past two weeks on and off, [he] has had arm numbness that comes and goes. [Appellant] reports the numbness has been occurring more often, he describes it as electric and tingly. It radiates from the right shoulder blade down the whole arm. [Appellant] has associated sharp pain in the right shoulder. The pain is rated a 2 to 3 out of 10 on the pain scale.”

On examination, Dr. Leeson noted that appellant has normal strength and full range of motion of the right shoulder, with tenderness to full extension. He also related that appellant had 100 percent sensation at the shoulder level and 100 percent sensation at the entire left arm and bilateral lower extremities. Dr. Leeson diagnosed paresthesia, neuropathy, neurapraxia, pinched or entrapped nerve, frozen shoulder, cervical or thoracic fracture, nerve impingement, right shoulder fracture, degenerative changes and osteoarthritis. He noted that x-rays of the cervical spine, thoracic spine and right shoulder showed no fractures, no degenerative changes, and no dislocations. Dr. Leeson advised that, given appellant’s history and the possibility that his condition might be related to work, he should follow up for a full evaluation and continue with light duty until cleared for full duty.

By letter dated October 24, 2007, the Office advised appellant that he needed to submit additional factual and medical evidence in support of his claim. It stated that appellant had 30 days to submit the requested information.

By decision dated November 27, 2007, the Office denied appellant's claim, finding that he failed to establish fact of injury. It stated that appellant failed to submit sufficient evidence to establish that he sustained an injury in the performance of duty on September 13, 2007.

On December 12, 2007 appellant requested reconsideration. By letter dated December 12, 2007, Ralph Hunt, appellant's union representative, noted that appellant had filed a previous claim for a right shoulder injury, No. xxxxxx303, which occurred in April 2007 when appellant wrestled an illegal alien to the ground. The claim was accepted by the Office. Mr. Hunt stated that there was documentation indicating appellant had sustained a new work injury on September 13, 2007 while driving on rough roads and terrain; however, the Office had not received and evaluated this evidence.

By decision dated March 17, 2007, the Office accepted that appellant drove over rough terrain on September 13, 2007, as alleged. It modified the November 27, 2007 decision to find that he established the incident of that date. However, the Office found that appellant failed to submit sufficient medical evidence to establish that the September 13, 2007 employment incident resulted in an injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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>2</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>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> The medical evidence required

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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).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

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

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>6</sup>

### ANALYSIS

The record establishes that appellant drove over rough terrain on September 13, 2007 at the time, place and in the manner alleged. However, the question of whether this incident caused a personal injury must be established by medical evidence.<sup>7</sup> Appellant has not submitted sufficient, probative medical evidence to establish that the employment incident on September 13, 2007 caused a personal injury and resultant disability. 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>

In this case, appellant submitted October 1, 2007 reports from Drs. Slagis and Leeson.

On October 1, 2007 Dr. Leeson noted numbness and tingling in appellant's right arm, radiating down into his hand, stemming from the April 2007 scuffle with the illegal alien. He advised that appellant had good motion of his shoulder with no real impingement and good motion of his neck. Dr. Slagis stated that a cervical spine radiograph demonstrated some C5-6 disc space narrowing and that right shoulder radiographs were normal. He asserted that appellant's symptoms were more consistent with radiculopathy or brachial plexus injury as opposed to primary shoulder pathology. Dr. Slagis recommended an MRI scan of the cervical spine and electromyogram/nerve conduction velocity studies to evaluate whether appellant had any peripheral neuropathy or brachial plexus injury.

Dr. Leeson stated findings on examination and indicated that appellant had pain in his right shoulder with full range of motion and tenderness to full extension. He diagnosed paresthesia, neuropathy, neurapraxia, pinched or entrapped nerve, frozen shoulder, cervical or thoracic fracture, nerve impingement, right shoulder fracture, degenerative changes and osteoarthritis. Dr. Leeson noted that x-rays of the cervical spine, thoracic spine and right shoulder showed no fractures, no degenerative changes and no dislocations.

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>9</sup> Although Drs. Slagis and Leeson did present several diagnoses

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<sup>6</sup> *Id.*

<sup>7</sup> *John J. Carlone, supra* note 4.

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

<sup>9</sup> *See Anna C. Leanza, 48 ECAB 115 (1996).*

of appellant's condition, they did not provide a rationalized, probative medical opinion indicating how these conditions were causally related to the September 13, 2007 work incident. These physicians did not sufficiently describe or explain the medical process through which the September 13, 2007 work incident caused an injury.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Accordingly, as appellant has failed to submit any probative medical evidence establishing that he sustained a right shoulder injury in the performance of duty on September 13, 2007, the Office properly denied appellant's claim for compensation. The Board will affirm the March 17, 2008 decision.

**CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a right shoulder injury in the performance of duty on September 13, 2007.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 17, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 18, 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