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<b>MALCOLM J. LAFRANCE, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 04-310</b>
	)	<b>Issued: March 25, 2004</b>
<b>DEPARTMENT OF THE ARMY, TOBYHANNA</b>	)	
<b>ARMY DEPOT, Old Forge, PA, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

On November 17, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 6, 2003 finding appellant had not established that he sustained a shoulder injury in the performance of his federal duties. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation based on the premise that his right wrist condition had resolved; and (2) whether appellant met his burden of proof to establish that he sustained a right shoulder injury in the performance of his federal duties.

On October 12, 2002 appellant, then 56-year-old sandblaster, filed an occupational disease claim alleging he experienced a frozen right shoulder as a result of his federal duties. On

July 19, 2002 appellant fell over a pallet while working and sustained a sprained wrist. Appellant notified his supervisor of the incident, was off work for one week and was on light duty for 24 days. Appellant did not file a compensation claim at that time. The file contains progress notes from examinations performed by Dr. Richard Lippin, an orthopedist, between July 29 and August 9, 2002 indicating appellant had a stiff and swollen wrist that gradually improved. There is no mention of a shoulder injury in these notes.

Appellant alleged that within a few weeks of his fall he began to notice stiffness in his right shoulder. On September 20, 2002 he awoke in extreme pain and sought medical treatment and was diagnosed with a frozen shoulder. In a September 20, 2002 report, Dr. Michael Kordek, an orthopedist, stated that appellant presented with complaints of right arm pain. On examination he found decreased active abduction to just 45 degrees and passive to 60 degrees with no crepitation, a tender biceps tendon and very decreased rotation. Dr. Kordek diagnosed adhesive capsulitis of the right shoulder. In a December 2, 2002 letter, the Office requested more information. In a January 17, 2003 report, Dr. James Mattucci, an orthopedic surgeon, stated that according to appellant in late July he fell at work with his hands in front of him, landing on a pallet and began to have some pain, more in his hand and elbow, but within a few weeks he noticed that his right shoulder was getting stiffer. In September 2002, appellant awoke and found that he could not move his right shoulder. Dr. Mattucci stated that his estimation was that over the next two to three months appellant's shoulder stiffened and this most likely is a post-traumatic stiff shoulder that is a form of adhesive capsulitis. He added that he was quite sure appellant's shoulder condition began with the July fall and he was confident of the diagnosis because post-traumatic stiff shoulder is a form of adhesive capsulitis. He added that surgical intervention is warranted. In a January 29, 2003 decision, the Office denied appellant's claim finding that the medical evidence did not support that his condition was related to his federal employment; and the facts suggested that appellant should also file a traumatic injury claim.

On February 5, 2003 appellant filed a notice of traumatic injury (Form CA-1) alleging he fell on July 19, 2002 injuring his wrist and shoulder. On February 28, 2003 appellant requested a review of the written record. In a September 25, 2003 decision, the hearing representative remanded the case to be developed as a traumatic injury claim. On September 30, 2003 appellant elected disability retirement. The record contains progress notes from appellant signed by an occupational therapist indicating appellant received treatment between February 25 and May 23, 2003 for shoulder, elbow and forearm pain. In a November 6, 2003 decision, the Office accepted that appellant sustained a wrist strain and sprain injury on July 19, 2002 when he fell over a pallet which had resolved no later than August 9, 2002, the date when appellant failed to appear for an evaluation preceding his return to work. The Office further noted that the medical evidence subsequent to August 5, 2002 fails to mention the wrist condition.

The Office denied appellant's claim that his shoulder condition was causally related to the accepted fall. Specifically, the Office found that the medical evidence was insufficient to establish that appellant sustained adhesive capsulitis from the fall he experienced that day as Dr. Mattucci's January 17, 2003 report is speculative and lacks sufficient rationale.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>2</sup>

### **ANALYSIS -- ISSUE 1**

In the present case, the Office has the burden of proof to justify terminating appellant's wrist condition effective August 9, 2002. The Board finds that the Office has not met its burden to terminate appellant's condition. The Office justified termination by noting that appellant failed to appear for an August 9, 2002 fitness-for-duty examination and because there was no further mention of his wrist condition in the medical evidence. The Office may not surmise that appellant's accepted condition had ceased.<sup>3</sup> The Office must base its opinion on rationalized medical evidence and such rationalized medical evidence is not present in the record. The Board notes that there is no evidence in the record that supports that appellant's wrist condition has resolved. Therefore the Office has not met its burden of proof to terminate appellant's compensation based on the premise that his right wrist condition had resolved as of August 9, 2002.

### **LEGAL PRECEDENT -- ISSUE 2**

The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or factors of employment. As part of this burden the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background establishing a causal relationship.<sup>4</sup>

An award of compensation may not be based on surmise, conjecture, speculation or the claimant's belief of causal relationship.<sup>5</sup> The claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>6</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>7</sup> Neither the fact that the

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<sup>1</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>2</sup> *Id.*

<sup>3</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1970); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>4</sup> *Brian E. Flescher*, 40 ECAB 532 (1989).

<sup>5</sup> *William Nimitz, Jr.*, *supra* note 3; *Miriam L. Jackson Gholikely*, *supra* note 3.

<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986).

<sup>7</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

condition became apparent during a period of employment nor the claimant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>8</sup>

### **ANALYSIS**

In the present case, appellant has not submitted sufficient medical evidence to establish his right shoulder condition is related to the July 19, 2002 fall. Appellant sought medical attention after the accepted incident, but there is no mention of a shoulder condition until September 20, 2002, nearly two months after the incident. The only medical evidence in the record that causally relates the shoulder condition to appellant's work is the January 17, 2003 report from Dr. Mattucci. This report is insufficient because Dr. Mattucci stated that his *estimation* was that over the next two to three months appellant's shoulder stiffened and this *most likely* is a post-traumatic stiff shoulder that is a form adhesive capsulitis. (Emphasis added.) He added that that he was quite sure appellant's shoulder condition began with the July fall at work and he was confident of the diagnosis because post-traumatic stiff shoulder is a form of adhesive capsulitis. These statements explaining the relationship between appellant's shoulder condition and work are speculative. More important Dr. Mattucci failed to explain how an injury could occur in July and not manifest itself for two months. He does state that post-traumatic stiff shoulder is a form of stiff shoulder, but he does not explain why the stiff shoulder did not occur immediately, as the wrist condition did. As mentioned above there is no mention of a shoulder condition in any of the medical records prior to September 20, 2002. Absent this explanation appellant has not met his burden of proof to establish his right shoulder condition is work related.

### **CONCLUSION**

The Office has not met its burden of proof to establish that appellant's right wrist condition resolved as of August 9, 2002. Appellant has not met his burden of proof to establish that his right shoulder condition is work related.

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<sup>8</sup> *Bruce Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy R. Goad*, 5 ECAB 192, 193 (1952).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2003 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: March 25, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member