

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

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N.M., Appellant )

and )

DEPARTMENT OF COMMERCE, BUREAU )  
OF THE CENSUS, FIELD OFFICE, )  
Las Vegas, NV, Employer )

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**Docket No. 06-2050  
Issued: January 17, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 5, 2006 appellant filed a timely appeal from a July 13, 2006 decision of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that she sustained a left shoulder condition in the performance of duty.

**FACTUAL HISTORY**

On December 11, 2003 appellant, then a 65-year-old senior field representative, filed an occupational disease claim (Form CA-2) alleging that she sustained a frozen left shoulder on or before November 1, 2003 in the performance of duty. She attributed her condition to carrying a laptop computer and supplies in a bag on her left shoulder during the previous 14 years. This

equipment was essential to her field survey duties. The employing establishment confirmed that, during the prior 14 years, appellant was required to carry “the bag containing the computer, power pack cord, a spare battery,” documents and brochures.

Appellant first sought medical treatment on November 26, 2003. In a December 10, 2003 slip, Dr. Lawrence Scott Copeland, an attending Board-certified internist, held appellant off work “until after January 6, 2004” for unspecified reasons.

In a January 30, 2004 letter, the Office advised appellant of the additional evidence needed to establish her claim. It emphasized the need for appellant’s physician to explain whether work factors caused or contributed to the claimed left shoulder condition. The Office afforded appellant 30 days to submit such evidence.

In a December 5, 2003 report, Dr. Steven M. Sanders, an attending Board-certified internist, noted that appellant attributed her left shoulder condition to carrying a laptop on her left shoulder for many years. He diagnosed adhesive capsulitis of the left shoulder and administered a subacromial injection. Dr. Sanders submitted January 2004 follow-up reports noting an improved range of motion after physical therapy.

In a January 19, 2004 chart note, Dr. Gregory T. Bigler, an attending Board-certified orthopedic surgeon, noted appellant’s belief that her left shoulder pain came from having carried a computer on her shoulder for many years. He diagnosed a frozen left shoulder and ordered a closed manipulation. Dr. Bigler submitted work restriction slips in February 2004.

Dr. Gerald L. Higgins, an attending Board-certified orthopedic surgeon, submitted February 9 and 25, 2004 slips restricting appellant from driving, lifting and carrying due to surgery on an unspecified date.

In a February 10, 2004 note, Dr. Copeland indicated that appellant had no prior orthopedic injuries and that “carrying a heavy computer may contribute to this condition.”<sup>1</sup>

By decision dated April 7, 2004, the Office denied appellant’s claim on the grounds that causal relationship was not established. It found that appellant’s physicians merely reiterated her belief of a causal relationship without providing their own explanation of how carrying the computer bag would have caused a frozen left shoulder.

On April 27, 2004 appellant requested an oral hearing, held December 21, 2004. At the hearing, appellant reiterated her belief that carrying the laptop computer bag on her left shoulder caused her shoulder condition. She submitted additional evidence.

In work restriction slips from February 25 to October 4, 2004, Dr. Bigler prohibited lifting, carrying or driving. In chart notes from March 29 to August 25, 2004, he diagnosed a

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<sup>1</sup> December 4, 2003 and January 7, 2004 magnetic resonance imaging scans of the left arm and shoulder were negative. Appellant also submitted physical therapy notes dated from December 2003 to February 2004. As these documents were signed and reviewed only by a physical therapist, they do not constitute medical evidence in this case. *Roy L. Humphrey*, 57 ECAB \_\_\_ (Docket No. 05-1928, issued November 23, 2005).

possible rotator cuff tear.<sup>2</sup> Dr. Bigler indicated that appellant had a surgical decompression of the left shoulder in July 2004.<sup>3</sup> In a December 22, 2004 chart note, he stated that appellant reported “no previous injuries or conditions in her left shoulder until she sustained the repetitive overuse injury that occurred while carrying a computer for the last 12 years.” Dr. Bigler opined that appellant’s “job activity of lifting and carrying ha[d] caused her subacromial impingement and rotator cuff condition.”

In a December 21, 2004 report, Dr. Copeland diagnosed adhesive capsulitis of the left shoulder with no history of trauma. He opined that “carrying her computer and briefcases would contribute greatly to her shoulder injury.”

By decision dated and finalized April 11, 2005, the Office hearing representative set aside the April 7, 2004 decision, finding that the medical record was sufficiently supportive of causal relationship to require further development. The hearing representative remanded the case for appointment of a second opinion physician and issuance of a *de novo* decision.

On August 9, 2005 the Office referred appellant, the medical record and a statement of accepted facts, to Dr. Jerrold Sherman, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Sherman submitted an August 25, 2005 report reviewing the medical record and statement of accepted facts. He found no abnormalities of the left shoulder on examination. Dr. Sherman diagnosed “[l]eft shoulder status post closed manipulation and arthroscopic surgery without neurologic or mechanical deficit.” He opined that appellant’s shoulder condition was unrelated to work factors as the “carrying of weights across the left trapezius muscle *via* shoulder strap” would not cause a torn rotator cuff, frozen shoulder or “SLAP” (superior labrum anterior-posterior) lesion. Dr. Sherman opined that appellant was able to work eight hours a day without restrictions.

By decision dated July 13, 2006, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office accepted that appellant was required to carry a computer bag and supplies on her left shoulder. However, appellant’s physicians did not provide sufficient rationale explaining how and why these work activities would cause her left shoulder condition. The Office found that the weight of the medical evidence rested with Dr. Sherman, who found no abnormalities of the left shoulder and opined that carrying the computer would not have caused the diagnosed shoulder conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>4</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 filed within the applicable time limitation; that an injury was sustained while in the

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<sup>2</sup> June 15, 2004 nerve conduction velocity and electromyography studies were indicative of left cervical radiculopathy.

<sup>3</sup> There is no operative report of record regarding a left shoulder arthroscopy.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

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>5</sup> 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>6</sup>

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) 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 claimant.

The medical evidence required to establish causal relationship is generally rationalized medical opinion 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>7</sup>

### ANALYSIS

Appellant claimed that she sustained a frozen left shoulder in the performance of duty due to carrying a laptop computer and supplies in a bag over her left shoulder. The Office initially denied the claim by April 7, 2004 decision as causal relationship was not established.

Following an oral hearing, appellant submitted additional reports from Dr. Bigler, an attending Board-certified orthopedic surgeon, and Dr. Copeland, an attending Board-certified internist. In a January 19, 2004 chart note, Dr. Bigler diagnosed a frozen left shoulder. He opined on December 22, 2004 that appellant sustained a "repetitive overuse injury that occurred while carrying a computer for the last 12 years." Dr. Bigler stated that appellant's "job activity of lifting and carrying ha[d] caused her subacromial impingement and rotator cuff condition." In February 10 and December 21, 2004 reports, Dr. Copeland diagnosed adhesive capsulitis of the left shoulder. He opined that carrying the computer "would contribute greatly to her shoulder injury."

By decision dated April 11, 2005, the Office set aside the April 7, 2004 decision. The Office obtained a second opinion examination by Dr. Sherman, a Board-certified orthopedic

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<sup>5</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Solomon Polen*, 51 ECAB 341 (2000).

surgeon. In an August 25, 2005 report, Dr. Sherman noted no abnormalities of the left shoulder. He opined that carrying a laptop computer in a bag on the left shoulder would not have caused the previously diagnosed adhesive capsulitis or frozen shoulder. This is in contrast to Dr. Bigler's and Dr. Copeland's support of a causal relationship between carrying the computer bag and the left shoulder conditions.

The Board finds that there is a conflict of medical opinion between Drs. Bigler and Copeland, for appellant, and Dr. Sherman, for the government. The Act, at 5 U.S.C. § 8123, states that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. Thus, the case will be remanded to the Office to resolve the conflict. On remand of the case, the Office shall prepare an updated statement of accepted facts and refer it, the medical record and appellant to an appropriate specialist or specialists to obtain an impartial medical opinion explaining any causal relationship between appellant's left shoulder conditions and her federal employment. Following this and all other development deemed necessary, the Office shall issue an appropriate decision in the case.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision due to a conflict of medical opinion. The case must be remanded for further development to resolve the conflict.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 13, 2006 is set aside. The case is remanded for further development consistent with this decision.

Issued: January 17, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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