

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN DANZY and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 01-199; Submitted on the Record;
Issued August 20, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on August 22, 1999.

On September 2, 1999 appellant, then a 42-year-old equipment operator, filed a notice of traumatic injury alleging that on August 22, 1999 while driving a forklift, she stopped to make a turn and felt a "snap" in her neck. She was off work from August 23 through 29, 1999.¹ Appellant stopped work again from September 1 to December 18, 1999, when she returned to light duty.

The record contains intermittent progress notes entitled, "Workers Compensation Follow Up Visits," citing Dr. A. Griffith, a family practitioner, as appellant's attending physician. Dr. Griffith's signature, is not on any of the notes. Each note also provides a different diagnosis. On August 26, 1999 appellant was noted as having bursitis of the left shoulder. On September 1, 1999 the diagnosis was tendinitis of the left shoulder with muscle spasm. On September 29 and October 20, 1999, the diagnosis was "tendinitis -- frozen shoulder." The date of injury on each note was listed as August 22, 1999 and appellant was found totally disabled from work.

Dr. Griffith signed several work excuses for appellant indicating that she was totally disabled from work due to myositis of the left shoulder on August 26 and September 1, 1999, frozen shoulder/muscle spasm on September 15, 1999 and tendinitis on October 24, 1999.

In a CA-17 work restriction form, Dr. Sam Yoon, an employing establishment physician, diagnosed left shoulder strain and noted that appellant was unable to lift, push or pull more than five pounds intermittently.

By letter dated October 4, 1999, the Office of Workers' Compensation Programs requested that Dr. Griffith provide a comprehensive medical report addressing appellant's shoulder condition and how the alleged work incident caused or aggravated the claimed injury.

¹ Appellant's supervisor, F.E. Marshburn, noted on the CA-1 form that appellant informed him on August 22, 1999 that she was experiencing pains in her left shoulder and that she was going to go and see a doctor the next day.

On October 26, 1999 appellant provided the following statement:

“On August 22, 1999 while turning the forklift, I heard and felt my shoulder snap twice. Then I felt my neck and shoulder tighten. I rubbed my neck and shoulder then I continued to perform my duties. While emptying the elevator of train mail, I felt a sudden resurgence of pain and cried out to SDO Marshburn [her supervisor] who was standing near the elevator. I informed him of the pain I felt in my shoulder. Not realizing the severity and extent of my pain, I continued to perform my duties while feeling sharp sporadic pains in my shoulder.”

In a decision dated November 19, 1999, the Office denied the claim on the grounds that appellant failed to establish a causal relationship between her diagnosed conditions and the work incident of August 22, 1999.

On December 7, 1999 appellant requested a hearing, which was held on April 24, 2000.

She subsequently submitted a September 28, 1999 report from Dr. Andrew J. Feldman, a Board-certified orthopedic surgeon, who related that on August 22, 1999 appellant was driving a forklift when she heard and felt a snap in her left shoulder, with pain developing over the course of the following week. Dr. Feldman noted that appellant’s range of motion was limited due to pain and spasm in the shoulder. He stated that appellant had “early adhesive capsulitis findings,” and that x-rays of the shoulder and clavicle showed sclerosis at the acromion. Dr. Feldman opined that appellant’s history and physical examination were consistent with trapezial spasm and early adhesive capsulitis. He prescribed medication and physical therapy.²

A magnetic resonance imaging (MRI) scan of the left shoulder performed on December 7, 1999 showed “hypertrophic changes acromioclavicular joint that predisposes to impingement syndrome; increased signal cuff as described probably reflecting tendinitis.”

In an April 6, 2000 report, Dr. D. Fakhruddin, a Board-certified internist,³ noted that appellant injured her left shoulder at work on August 22, 1999 when she was driving a forklift and made a left turn at the wheel. Dr. Fakhruddin related that appellant initially experienced a sharp shooting in the left shoulder and left side of the neck. He indicated that he first examined appellant on “August 25, 2000”,⁴ at which time her physical findings were severe tenderness and limited range of motion in the left shoulder. An MRI scan was noted as showing left shoulder impingement. Dr. Fakhruddin reported that appellant had undergone a pain management course and physical therapy, but was still symptomatic with limited range of motion. He further stated, “[she] had no prior history of said conditions and the injury as reported to me [is] consistent with the work incident she described.”

² Dr. Feldman’s report is not signed.

³ Dr. Fakhruddin appears to be a physician in charge of pain management at Bedford Williamsburg Medical Center, where appellant was treated by Dr. Griffith, his family physician.

⁴ This is apparently a typographical error and the correct date of first examination was August 24, 1999.

In a July 18, 2000 decision, an Office hearing representative affirmed the Office's November 19, 1999 decision.⁵

The Board finds that the case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act⁶ 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 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.⁷ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury that must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.¹⁰

In this case, the Office has accepted that the employment incident happened on August 22, 1999 at the time, place and in the manner alleged by appellant. The Office, however, denied appellant's claim on the grounds that the medical evidence failed to establish a causal relationship between the employment incident and appellant's alleged shoulder condition or her disability from work.

In support of her claim, appellant submitted work disability notes from Dr. Griffith and reports by Drs. Feldman and Fakhruddin. She has been diagnosed with a left shoulder condition by each physician, but the diagnoses are not consistent. Dr. Griffith stated that appellant had tendinitis, myositis or muscle spasm of the left shoulder but offered no opinion on causal relationship. Dr. Feldman indicated that appellant had early capsulitis, sclerosis at the clavicle and trapezial spasm. He also did not address causal relationship. Dr. Fakhruddin diagnosed left shoulder impingement, which is supported by an MRI report. He opined that appellant's diagnosed condition was consistent with the injury she described on August 22, 1999.

⁵ The Office hearing representative noted that none of the physicians of record addressed the fact that appellant also experienced pain while "lifting" train mail on August 22, 1999. Appellant testified that she was "emptying train mail from the elevator," not lifting. Thus, the Board does not agree with the Office hearing representative that the reports of Drs. Fakhruddin and Feldman are of diminished probative value because they do not discuss appellant's pain on lifting on August 22, 1999.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁸ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Elaine Pendleton*, *supra* note 7.

¹⁰ *Id.*

Although, the report of Dr. Fakhruddin is not sufficiently reasoned to establish appellant's entitlement to compensation,¹¹ it does raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.¹² Because, the medical evidence suggests that appellant suffers from a left shoulder condition, which was either caused or aggravated by the August 22, 1999 employment incident, and the evidence submitted by appellant is not contradicted by any other medical evidence of record, the Board finds that the Office has a responsibility to further develop the claim.

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. The Office has an obligation to see that justice is done.¹³ While a claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁴

On remand, the Office should further develop the evidence by providing Dr. Fakhruddin with a statement of accepted facts and asking that he submit a rationalized medical opinion, supported by objective findings, as to how the employment incident is causally related to appellant's diagnosed of a preexisting shoulder condition, *i.e.*, adhesive capsulitis, sclerosis at the clavicle or trapezian spasm.

The decisions of the Office of Workers' Compensation Programs dated July 18, 2000 and November 19, 1999 are set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
August 20, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

¹¹ The physician's report does not indicate the dates he treated appellant or fully explain how the described work incident is causally related to appellant's diagnosed condition. However, it describes the work injury, supports his diagnosis with an MRI scan finding and offers an opinion on causal relationship. He may also be considered an attending physician as appellant was obviously referred to him for pain management treatment at the recommendation of Dr. Griffith.

¹² *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

¹³ *Mark A. Cacchione*, 46 ECAB 148 (1994).

¹⁴ *Id.*