



surgery on his left shoulder and returned to limited-duty work on June 2, 2002. Appellant further stated that on June 4, 2002 he stood for one hour while casing mail because there was no swivel chair for him. He related that his request for a chair went unanswered by a supervisor. Appellant noted that another supervisor gave him a shorter chair and he was then able to perform his job. He stated that he turned around to put a letter on his far left and felt a pop and burning sensation in his left shoulder which felt like a ball of fire. Appellant noted that he lost all feeling in his arm and stopped working on June 5, 2002.

In support of his claim, appellant submitted an undated statement revealing that on June 5, 2002 he experienced some swelling and slight bruising on his shoulder. He stated that he did not receive any pain relief with medication and that he had started using a “cryo/cuff” on June 4, 2002. Appellant noted that he left work at 5:00 a.m. because he could not take the pain anymore and his shift ended at 7:30 a.m. He submitted correspondence from the employing establishment requesting him to submit updated medical documentation, a document indicating his request for sick leave and correspondence from the Office authorizing medical treatment for a left shoulder injury he sustained on February 3, 2002. Appellant also submitted medical documents from Dr. J. Hamilton Easter, a Board-certified orthopedic surgeon and his treating physician, Robin August, a nurse practitioner, Dr. Vaneeta Kubal, an emergency medicine specialist, and Dr. Mi-Hyon Cho<sup>1</sup> covering the period February 6 through October 7, 2002.

By letter dated November 20, 2002, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised him about the type of factual and medical evidence he needed to submit to establish his claim. In a letter of the same date, the Office advised the employing establishment that appellant had filed an occupational disease claim on October 23, 2002 but after reviewing the evidence of record, it appeared that he was describing a traumatic injury. The Office requested that the employing establishment provide a traumatic injury claim form to appellant for completion and submit the completed form to its office.

In a November 27, 2002 letter, Andrea T. Robinson, an employing establishment manager of transportation and networks, controverted appellant’s claim on the grounds that he did not injure himself in the performance of duty while working at the employing establishment on June 4, 2002. Ms. Robinson stated that the record reflected that appellant’s original left shoulder injury occurred while he was pulling down a bay door on February 3, 2002. She noted that he performed limited-duty work within his physical limitations and that he subsequently underwent surgery. Ms. Robinson further noted that upon his return to work, appellant was again assigned limited-duty work. She stated that a May 29, 2002 document provided a history that he fell down the stairs over his daughter’s boots a couple of days ago and his shoulder injury flared up. Ms. Robinson also stated that a June 5, 2002 medical document indicated that on June 4, 2002 appellant’s left shoulder popped and he felt a burning sensation down his left arm which felt like it was on fire causing him to leave work at 5:00 a.m. She described his workspace and the adjustable chairs that were used by employees on limited-duty. Ms. Robinson’s letter was accompanied by a November 15, 2002 letter from the employing establishment offering appellant a limited-duty position.

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<sup>1</sup> The Board notes that the professional qualifications of Dr. Cho cannot be determined.

The Office received Ms. August's June 5, 2002 treatment notes providing a description of the left shoulder injury appellant sustained on June 4, 2002. She stated that he indicated that on June 4, 2002 at 2:00 a.m. his left shoulder popped and a burning sensation went down his left arm and his arm felt like it was on fire. Appellant told Ms. August that this happened when he was raising his right shoulder. He also told Ms. August that his left shoulder hurt so much that he had to leave work at 5:00 a.m. Ms. August noted that appellant's left arm was in a sling and found that he was status post left shoulder surgery.

The Office also received medical reports and progress notes from Dr. Nazim Ameer,<sup>2</sup> whose November 18 and 25 and December 2, 2002 reports indicated that appellant underwent a peripheral nerve block in his left shoulder. In his November 18, 2002 report, Dr. Ameer provided that appellant sustained a left shoulder injury at work and that he underwent surgery. He noted appellant's symptoms, which included constant pain and burning that was sharp at times. Dr. Ameer further noted that appellant's pain became worse when he raised his arm above the shoulder and lifted heavy objects. He stated that appellant was diagnosed with complex regional pain syndrome (CRPS)-1, by Dr. Easter. Dr. Ameer provided appellant's social and family histories and his findings on physical examination. He diagnosed sympathetically mediated pain of the left shoulder area and initial stages of CRPS-1 that resulted from appellant's work-related injury.

By decision dated January 22, 2003, the Office found the evidence of record insufficient to establish that the June 4, 2002 incident occurred as alleged. The Office stated that appellant failed to provide additional facts regarding the alleged incident as requested to do so in its November 20, 2002 letter. The Office also found the medical evidence of record insufficient to establish that he sustained an injury due to the claimed event.

Appellant, through his attorney, requested reconsideration in a May 15, 2003 letter, accompanied by an April 19, 2003 letter explaining the discrepancy in Ms. August's description of the May 29, 2002 incident. He stated that Ms. August misinterpreted what he said about the events of May 29, 2002. Appellant explained that he did not fall or land on his shoulder, but rather jolted his shoulder which caused him pain when he stumbled on his daughter's skates on the steps. Regarding the June 4, 2002 incident, appellant explained that he went to work at 11:00 p.m. and there was no swivel chair in his work area. He stated that he stood for one hour while performing his work duties and this request for a chair was ignored by a supervisor. Appellant further stated that another supervisor gave him a regular four-legged chair, which was much lower and was not the correct chair for casing mail. At 2:00 a.m. he stated that he took a letter with his right hand and crossed over his left shoulder which was in a cryocuff and he felt a pop. Appellant related that right away he felt a burning sensation and told his supervisor. He noted that his supervisor laughed at him and that no paperwork was filed for reinjuring his shoulder. Appellant further noted that he continued to work until 5:00 a.m., when he left work because he could not take the pain any longer. He related that he saw Dr. Easter on June 5, 2002 who wanted him to have x-rays performed. Subsequently, the Office received treatment notes from Thomas Kituskie, appellant's physical therapist, regarding his left shoulder.

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<sup>2</sup> The Board notes that the professional qualifications of Dr. Ameer cannot be determined.

On August 15, 2003 the Office issued a decision denying appellant's request for modification based on a merit review of the claim. The Office accepted that he was performing his limited-duty work casing mail on June 4, 2002. The Office found that the claimed injury constituted a traumatic injury rather than an occupational disease. The Office, however, found the medical evidence of record insufficient to establish that appellant reinjured or aggravated his February 3, 2002 employment-related left shoulder injury on June 4, 2002.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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 applicable time limitation; that an injury was sustained while 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>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>5</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered, in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>6</sup> In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>9</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

<sup>6</sup> See also, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

## ANALYSIS

In this case, the Office found the evidence of record sufficient to establish that appellant was performing limited-duty work in a regular chair at the employing establishment on June 4, 2002. The employing establishment contends that he did not sustain an injury at work on June 4, 2002. An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast sufficient doubt on an employee's statements in determining whether he has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>10</sup>

In his occupational disease claim form, appellant stated that on June 4, 2002 he hurt his left shoulder while casing mail. He stated that, while he was performing this limited-duty work activity he turned around to put a letter on his far left and felt a pop and burning sensation in his arm.

In her May 29, 2002 treatment notes, Ms. August, a nurse practitioner, provided a history that appellant fell a couple of days prior down the stairs over his daughter's boots, which caused his shoulder injury to flare up. In an April 19, 2003 letter, appellant explained the discrepancy regarding the May 29, 2002 incident. He stated that Ms. August misinterpreted his comments about what took place on that date. Appellant also stated that he did not fall or land on his shoulder, but rather jolted his shoulder, which caused him pain when he stumbled on his daughter's skates on the stairs. He then provided a description that on June 4, 2002 he had to stand for one hour while casing mail because there was no swivel chair in his work area and a supervisor ignored his request for such chair. Appellant was later given a regular four-legged chair by another supervisor to case mail, although it was not the proper chair for performing this task. He stated that, when he took a letter with his right hand and crossed over his left shoulder he felt a pop and burning sensation in his shoulder. The Board notes that Ms. August subsequently provided a similar history of the June 4, 2002 incident, as given by appellant in her June 5, 2002 treatment notes. She noted that, appellant stated that on June 4, 2002 at 2:00 a.m., his left shoulder "popped" and he felt a burning sensation down his left arm and it felt like it was on fire. Ms. August further noted that, appellant stated that this happened while he was raising his right shoulder.

Although the employing establishment contended that appellant did not sustain the June 4, 2002 incident the Board finds that the statements of appellant and Ms. August's June 5, 2002 treatment notes provide a consistent history of incident and that appellant received medical treatment for his left shoulder contemporaneous to the June 4, 2002 incident. Accordingly, the

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<sup>10</sup> *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

Board finds that the evidence of record supports that the incident occurred at the time, place and in the manner alleged.<sup>11</sup>

The Board, however, finds that the medical evidence of record fails to establish that appellant either aggravated his February 3, 2002 employment-related injury or sustained a new left shoulder injury due to the June 4, 2002 employment incident.

The record contains several reports, treatment notes and disability certificates of Dr. Easter, appellant's treating physician. His duty status reports dated August 15 and 26, September 9 and October 7, 2002 provided a history of injury, that on February 3, 2002 appellant hurt his left shoulder when he tried to open a door and he felt a pop, pain and numbness in his shoulder. They also provided a diagnosis of shoulder pain. Dr. Easter's reports are of diminished probative value because pain is not a diagnosis, but a symptom of a condition and as such, absent objective evidence of appellant's shoulder problem are insufficient to establish that he has a work-related condition.<sup>12</sup> Further, Dr. Easter's reports failed to address whether the diagnosed condition was caused or aggravated by the June 4, 2002 employment incident.

In his August 15 and October 3, 2002 attending physician's reports, Dr. Easter found that appellant's left shoulder subacromial decompression, radiculopathy at C5 based on an electromyogram and status post left shoulder subacromial decompression were caused by the February 3, 2002 employment injury. However, they are insufficient to establish appellant's burden because they did not provide any medical rationale explaining how or why his conditions were caused or aggravated by the accepted employment injury.

Dr. Easter's prescriptions dated February 13 and 18, March 8 and April 26, 2002 for a magnetic resonance imaging scan and physical therapy and his February 18, April 26 and May 22, 2002 disability certificates revealing that appellant had left shoulder impingement and that he could return to limited-duty work predates the June 4, 2002 employment incident and thus, failed to address whether his shoulder condition was caused or aggravated by the accepted employment incident. In addition, Dr. Easter's June 5, July 17 and October 7, 2002 prescriptions for continued physical therapy failed to provide a diagnosis and to address whether the diagnosed condition was caused or aggravated by the June 4, 2002 employment incident.

Dr. Easter's June 5, July 17, August 7 and 26 and September 9, 2002 and undated disability certificates indicated that appellant was status post left shoulder surgery, he had left shoulder pain, left shoulder impingement, shoulder surgery, radiculopathy at C6 and left shoulder decompression and that he could return to limited-duty work with certain physical restrictions. These disability certificates, however, failed to discuss whether or how the diagnosed conditions were caused by appellant's June 4, 2002 employment-related injury.<sup>13</sup>

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<sup>11</sup> *Louise F. Garnett*, 47 ECAB 639, 643-44 (1996); *Constance G. Patterson*, 41 ECAB 206 (1989); *Julie B. Hawkins*, 38 ECAB 393 (1987).

<sup>12</sup> *See Ruth Sequel*, 48 ECAB 188, 193 (1996); *Val D. Wynn*, 40 ECAB 666, 668 (1989).

<sup>13</sup> *Daniel Deparini*, 44 ECAB 657, 659 (1993).

Similarly, Dr. Easter's October 7, 2002 prescription revealing a diagnosis of left radiculopathy at C5 and left shoulder decompression and ordering physical therapy, Dr. Kubal's February 21, 2002 medical treatment notes diagnosing left shoulder impingement and tendinitis and Dr. Mi-Hyon Cho's September 3, 2002 report finding that appellant had left cervical radiculopathy predominately at C5 and borderline left carpal tunnel syndrome, failed to address whether his condition was caused or aggravated by the accepted employment incident.

In addition, Dr. Ameer's November 18 and 25 and December 2, 2002 reports and treatment notes indicating that appellant received a peripheral nerve block in his left upper extremity and his November 18 and December 2, 2002 reports revealing a diagnosis of "337.9" did not address whether appellant's left shoulder condition was either caused or aggravated by the accepted employment incident. In another report dated November 18, 2002, Dr. Ameer diagnosed sympathetically mediated pain of the left shoulder and initial stages of CRPS-1 that resulted from appellant's work-related injury. Dr. Ameer did not provide any medical rationale explaining how or why appellant's shoulder conditions were caused or aggravated by the June 4, 2002 employment incident.

Lastly, Ms. August's duty status reports and treatment notes and the treatment notes of Mr. Kituskie, a physical therapist, concerning the treatment of appellant's left shoulder are of no probative medical value because a nurse practitioner<sup>14</sup> and a physical therapist<sup>15</sup> are not considered physicians under the Act.

As appellant has failed to submit rationalized medical evidence establishing that he sustained an injury caused or aggravated by the June 4, 2002 employment incident, the Board finds that he has failed to satisfy his burden of proof in this case.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty.

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<sup>14</sup> 5 U.S.C. § 8101(2); *see also Joseph N. Fassi*, 42 ECAB 231 (1991).

<sup>15</sup> 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 15 and January 22, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 23, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member