

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

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ELLA D. ARMAGOST, Appellant

and

DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, TOLEDO EXPRESS  
AIRPORT, Toledo, OH, Employer

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Docket No. 04-1109  
Issued: August 11, 2004

*Appearances:*

Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On March 22, 2004 appellant timely appealed from the February 17, 2004 decision by an Office of Workers' Compensation Programs' hearing representative who found that appellant had not met her burden of proof in establishing that she was injured in the performance of duty. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on January 12, 2003.

**FACTUAL HISTORY**

In a January 17, 2003 claim for traumatic injury, appellant, then a 54-year-old passenger screener, stated that on January 15, 2003 she was lifting bins and pulling bags to make room for

other luggage when she felt pain in her neck. In an April 24, 2003 letter, the Office informed appellant that she needed to submit additional factual and medical evidence in support of her claim.

Appellant submitted several medical reports in response to the Office's letter. In a January 14, 2003 report, Dr. Shahiba Shaikh, a Board-certified family practitioner, stated that appellant had come for a post-hospital examination and follow-up on neck pain. He noted that appellant had neck pain but concluded that the pain had resolved. In a January 21, 2003 report, Dr. Kenneth Seo, a Board-certified neuroradiologist, stated that a magnetic resonance imaging (MRI) scan showed appellant had post-surgical changes involving the upper cervical region with placement of metal in the C3-4 region and an apparent fusion of C5-6 which seemed to be postsurgical. He also detected a mild degree of central canal narrowing at the C3-4 and C4-5 discs with some suggestion of flattening along the right posterior border of the spinal cord at the C4-5 disc level of uncertain significance.

In a May 29, 2003 decision, the Office denied appellant's claim on the grounds that she had not established that she had sustained an injury as defined by the Federal Employees' Compensation Act.

In a June 2, 2003 letter, appellant's attorney requested a hearing before an Office hearing representative. He submitted a February 10, 2003 report from Dr. Shaikh who stated that appellant had neck pain radiating into her arms. He indicated that appellant had an employment injury on January 12, 2003 while she was performing continuous repetitive movement with heavy lifting. He noted that she usually did such work routinely but on that day, she performed more heavy lifting. Her neck pain became worse and she was hospitalized. Dr. Shaikh reported that appellant had multiple tender spots on the neck and had tenderness in the trapezius muscles bilaterally. He indicated that the range of motion of the shoulder was within normal limits and appellant had no motor or sensory loss.

Appellant subsequently submitted a January 13, 2003 report from Dr. John A. Crayne, a Board-certified family practitioner, who stated that appellant had a history of neck difficulties, extending from a motor vehicle accident. He reported that appellant had a several day history of pain in the left shoulder, jaw and neck that was worse with exertion. He indicated that appellant had two prior neck surgeries.

In an April 4, 2003 memorandum, Janice Jagodzinski, appellant's supervisor, stated that appellant left work on January 12, 2003, because her blood pressure was high. She was scheduled to be off for the next two days. She returned to work on January 15, 2003 and complained that she was not feeling well. She was given lighter duty. On January 16, 2003 she left early for a doctor's appointment. On January 17, 2003 she came to work wearing a neck brace. Her doctor faxed a note stating that appellant could not lift more than five pounds. She was sent home because the employing establishment could not accommodate light duty at that time. Ms. Jagodzinski stated that she and other supervisors could not find anyone who witnessed the claimed injury or heard her complaining about an injury. She noted appellant returned to light duty on March 17, 2003 but stopped on April 4, 2003 and did not return thereafter.

In an April 16, 2003 report, Dr. Steven Habusta, a Board-certified osteopathic orthopedic surgeon, stated that appellant's shoulder pain was getting progressively worse. He noted that her pain was mainly subacromial. He suspected that appellant had referred pain and referred her for an MRI scan. In a May 30, 2003 report, Dr. Daniel Singer, a Board-certified neuroradiologist, stated that appellant had a tiny probable full thickness tear of the supraspinatus at the level of insertion on the humeral head of the left shoulder and degenerative pitting of the left humeral head. In a July 18, 2003 report, Dr. Habusta performed a left open acromioplasty on the left shoulder to repair a subacromial impingement of the left shoulder.

At the November 18, 2003 hearing, appellant clarified that she was injured on January 12, 2003. She stated that she felt pain in her neck and left shoulder after lifting a particularly heavy piece of luggage. Appellant noted that she had a history of neck pain since 1994. She testified that on January 15, 2003 she told her supervisor that she was injured on January 12, 2003 and requested a claim form. Appellant then wrote the wrong date of injury on the form. She indicated that subsequently she was diagnosed with a torn rotator cuff and underwent surgery to correct it.

In a February 17, 2004 decision, the Office hearing representative stated that appellant had established that she had experienced pain at work on January 12, 2003 while lifting. He found, however, that appellant had not established fact of injury because a physician had not offered a diagnosis based opinion on the relationship between appellant's left shoulder condition and surgery to the purported employment factors. He therefore affirmed the Office's May 29, 2003 decision.

### **LEGAL PRECEDENT**

To determine whether an 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>1</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>2</sup> An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.<sup>3</sup> A claimant seeking benefits under the Act<sup>4</sup> has the burden of establishing by reliable, probative and substantial evidence that any disability for work or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> To establish causal relationship between a

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<sup>1</sup> See *John J. Carlone*, 41 ECAB 354 (1989).

<sup>2</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>3</sup> As used in the Federal Employees' Compensation Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. See *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>4</sup> 5 U.S.C. § 8101-8193.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

condition, including any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup> Neither the fact that the condition manifests itself during a period of federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.<sup>7</sup>

### **ANALYSIS**

There is no dispute that appellant lifted a heavy piece of luggage on January 12, 2003, in the performance of duty. Appellant, however, failed to establish that the supraspinatus tear that Dr. Habusta and Dr. Singer diagnosed was caused by heavy lifting on January 12, 2003. Dr. Shaikh, Dr. Crayne, Dr. Seo, and Dr. Singer did not give any opinion relating the January 12, 2003 incident to appellant's neck and shoulder conditions. Dr. Habusta discussed appellant's employment incident and, based on Dr. Singer's report, diagnosed the torn supraspinatus tear. He gave no opinion on whether the incident was the cause of appellant's shoulder condition. Appellant, therefore, has not submitted any medical evidence that contain any opinion on whether the January 12, 2003 employment incident was the cause of her left shoulder condition and her periods of disability after January 12, 2003. She therefore has not met her burden of proof.

### **CONCLUSION**

Appellant established that an incident occurred at work at the time, place and in the manner that she claimed. However, appellant did not establish that the employment incident caused a left shoulder or cervical condition and disability for work.

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<sup>6</sup> *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

<sup>7</sup> 20 C.F.R. § 10.115(e).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 17, 2004 and May 29, 2003 be affirmed.

Issued: August 11, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member