

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

GLEND A GOODE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sanburn, NY Employer**

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**Docket No. 03-1626
Issued: January 7, 2004**

Appearances:
David W. Covino, for appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On June 16, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs decision dated May 15, 2003 in which the Office found that appellant's left shoulder condition was not causally related to factors of her federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant's left shoulder condition was causally related to factors of her federal employment.

FACTUAL HISTORY

The case is on appeal to the Board for the second time.¹ The Board found that the opinion of appellant's treating physician, Dr. Frank J. Schlehr, a Board-certified

¹ Docket No. 02-295 (issued July 8, 2002). The facts and history surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

orthopedic surgeon, while not sufficient in itself to establish a causal relationship between appellant's condition and employment factors, constituted sufficient evidence to require further development of the record by the Office. The Board, therefore set aside the Office's August 3 and December 6, 2001 decisions and remanded the case for the Office to refer appellant, with the case record and a statement of accepted facts, to an appropriate medical specialist to determine whether appellant's shoulder condition was caused by factors of employment.

By letters dated August 19 and October 14, 2002, appellant's attorney indicated that he requested and obtained Dr. James E. Hohensee, a Board-certified family practitioner's, records and requested that the Office schedule the appointment with the second opinion physician pursuant to the Board's decision.

By decision dated September 23, 2002, the Office denied appellant's claim, stating that, in failing to provide the reports of Dr. Hohensee in a timely fashion according to the July 29, 2002 letter, appellant did not provide a complete record and precluded the Office from finding that her left shoulder was work related.

By letter dated September 30, 2002, appellant's attorney stated that he had requested the relevant medical evidence from Dr. Hohensee but had not yet received any documents from him. The attorney reiterated his request that the Office should proceed to obtain a second opinion physician examination per the Board's decision.

Appellant requested an oral hearing before an Office hearing representative.

By decision dated March 3, 2002, the Office hearing representative noted that appellant submitted the medical notes from Dr. Hohensee with his hearing request, but found that the case was not in posture for a hearing because the Office failed to obtain a second opinion physician's report as directed by the Board. The Office hearing representative therefore remanded the case for the Office to obtain the second opinion physician's report as instructed by the Board, to be followed by a *de novo* decision.

In a report dated April 28, 2003, the referral physician, David P. Nichols, a Board-certified orthopedic surgeon, considered appellant's history of injury, reviewed a magnetic resonance imaging (MRI) scan dated February 9, 2000 and performed a physical examination. He diagnosed chronic left rotator cuff tendinitis with osteoarthritis of the left shoulder acromioclavicular joint. Dr. Nichols opined that there was no direct causal relationship between appellant's job requirements and her development of the left shoulder problem. He stated that the MRI scan documented degenerative changes in the acromioclavicular joint and in the rotator cuff tendon but that appellant had no temporal relationship of her symptoms to work. Dr. Nichols stated that she had pain while working but also had pain doing any type of shoulder elevation activity. He stated that there was a direct temporal relationship of the onset of her pain to her injury of January 11, 2000 when she fell while walking her dog. Dr. Nichols stated that there was no traumatic component to appellant's job description. He stated that her job required

her to hold onto the steering wheel and to reach backward to pick up letters and objects for delivery. Dr. Nichols stated that there was no direct trauma to the shoulder from simply lifting and moving the shoulder. Further, Dr. Nichols stated that degenerative changes in the acromioclavicular joint and in the rotator cuff tendon were related to the aging process with stiffening of connective tissue and wearing away of articular cartilage. He opined that appellant could perform her regular work without restrictions.

By decision dated May 15, 2003, the Office denied appellant's claim, stating that Dr. Nichols' report was well rationalized and established that appellant's left shoulder condition was not causally related to her federal employment.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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, generally, is rationalized medical 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 appellant'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 appellant.²

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.³

² See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is a 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.⁴

ANALYSIS

In this case, a conflict exists between the opinion of appellant's treating physician, Dr. Schlehr, and the opinion of the referral physician, Dr. Nichols, regarding whether appellant's left shoulder condition is work related. Dr. Schlehr, who performed the surgery on appellant on July 5, 2000, opined that appellant's shoulder impingement syndrome, rotator cuff tear and superior labral fraying were consistent with repetitive motion injury rather than a traumatic episode. Dr. Schleh, therefore specifically found that her fall on February 11, 2002 did not cause her shoulder problem. Dr. Schlehr considered the work that appellant performed at the employing establishment and noted that her shoulder pain significantly increased as the workday went on and diminished with rest. He concluded that appellant's left shoulder condition was caused by the repetitive nature of her job. Dr. Nichols opined that there was no traumatic component to appellant's job description and the degenerative changes in the acromioclavicular joint and in the rotator cuff tendon were related to the aging process.

CONCLUSION

Due to the conflict in the evidence, the case must be remanded for the Office to refer appellant, with the case record and a statement of accepted facts, to an impartial medical specialist to determine whether appellant's left shoulder condition is work related. After any further development that the Office deems necessary, it shall issue a *de novo* decision.

⁴ *Henry W. Sheperd, III*, 48 ECAB 382, 385 n.6 (1997); *Wen Ling Chang*, 48 ECAB 272, 273-74 (1997).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2003 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with the decision.

Issued: January 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member