

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

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**VALERIE L. PRICE, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Atlanta, GA, Employer**

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**Docket No. 04-1022  
Issued: July 20, 2004**

*Appearances:*  
*Valerie L. Price, pro se*  
*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 March 8, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' decision dated January 13, 2004. The record also contains a February 26, 2004, nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has merit jurisdiction over the case and jurisdiction of the nonmerit decision.

**ISSUES**

The issues are: (1) whether appellant sustained an injury on November 1, 2003 causally related to factors of her employment; and (2) whether the Office properly refused to reopen her case for further review of the merits of appellant's claim pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On November 9, 2003 appellant, then a 39-year-old mail processor, filed a claim for an occupational disease claim alleging that on November 1, 2003 she injured her right arm and shoulder while lifting heavy boxes of mail.

In clinical notes dated November 7, 2003, Dr. Matthew B. Jaffe, an orthopedist, related that appellant had been experiencing pain in her right shoulder for approximately three weeks. He indicated that there was no specific event that caused the condition. In form reports dated November 7 and 12, 2003, Dr. Jaffe diagnosed bicipital tenosynovitis sustained on November 1, 2003 and caused by repetitive lifting.

By decision dated January 13, 2004, the Office denied appellant's claim for a right arm injury on the grounds that the medical evidence of record did not establish that her injury was causally related to her employment.

By letter dated February 5, 2004, appellant requested reconsideration and submitted additional evidence.

Appellant submitted a copy of a November 26, 2003 employing establishment letter controverting her claim, a copy of an employing establishment accident report, a copy of a November 2, 2003 hospital report and a copy of a magnetic resonance imaging (MRI) report dated December 29, 2003. None of this evidence explained the cause of her right shoulder condition.

In a January 9, 2004 report, received by the Office on January 19, 2004, Dr. Jaffe diagnosed right shoulder impingement/overuse. He indicated that appellant's symptoms were not consistent with the objective findings.

In an undated CA-20 form report received by the Office on February 25, 2004, Dr. Jaffe diagnosed right shoulder impingement/overuse caused by repetitive lifting. In response to the form question regarding causal relationship to employment, he wrote, "see notes."

By decision dated February 26, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted did not constitute relevant and pertinent evidence not previously considered by the Office.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish that, an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (2) medical evidence establish the presence or existence of the disease or condition for which compensation is claimed; (2) a 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 diagnosed condition is causally related to the employment factors identified by appellant. Appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such causal relationship. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and 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>1</sup>

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>2</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that she sustained an injury in the performance of duty and that her disability was caused or aggravated by her employment.<sup>3</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>4</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated her condition is sufficient to establish causal relationship.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

In clinical notes dated November 7, 2003, Dr. Jaffe related that appellant had been experiencing pain in her right shoulder for approximately three weeks. He indicated that there was no specific event that caused the condition. In form reports dated November 7 and 12, 2003, Dr. Jaffe diagnosed bicipital tenosynovitis sustained on November 1, 2003, caused by repetitive lifting. These reports contain a conflicting history as to when appellant's shoulder injury was sustained. Furthermore, the reports do not contain sufficient explanation as to how her shoulder condition was causally related to factors of her employment. Although Dr. Jaffe indicated in the two form reports that repetitive lifting caused appellant's shoulder condition, he did not indicate that the condition occurred at work or knowledge of appellant's specific work duties. Moreover, in his November 7, 2003 notes, Dr. Jaffe indicated that there was no specific cause for appellant's shoulder condition. Due to these deficiencies, these reports are insufficient to establish that appellant's right shoulder condition was sustained on November 1, 2003 and was causally related to factors of her employment.

### **LEGAL PRECEDENT -- ISSUE 2**

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>6</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant

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<sup>1</sup> *Gloria J. McPherson*, 51 ECAB 441 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>2</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>3</sup> *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>4</sup> *Edward E. Olson*, 35 ECAB 1099 (1984).

<sup>5</sup> *Robert A. Boyle*, 54 ECAB \_\_ (Docket No. 02-2177, issued January 27, 2003); *Donna L. Mims*, 53 ECAB \_\_ (Docket No. 01-1835, issued August 13, 2002).

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

also must file his or her application for review within one year of the date of that decision.<sup>7</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reviewing the merits of the claim.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

In support of her reconsideration request, appellant submitted a copy of a November 26, 2003 employing establishment letter controverting her claim, a copy of an employing establishment accident report, a copy of a November 2, 2003 hospital report and a copy of a December 29, 2003 MRI report. Appellant's claim was denied because the medical evidence did not establish that her right shoulder condition was causally related to factors of her employment. The evidence submitted by appellant in support of her reconsideration request does not address the issue of causal relationship. Therefore, it does not constitute pertinent and relevant evidence not previously considered by the Office and the Office properly denied further merit review of her claim.

As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent evidence not previously considered by the Office, the Office properly denied her request for reconsideration

On appeal, appellant asserts that the Office failed to consider the undated CA-20 form from Dr. Jaffe in which he provided a diagnosis but no explanation for the cause of appellant's right shoulder condition. The Board notes that the Office did not specifically address Dr. Jaffe's undated report, received prior to issuance of the February 26, 2004 decision. However, the Board finds that this is harmless error as this report did not contain an explanation of the causal relationship between appellant's right shoulder condition and her employment. As this report did not address the issue for which appellant's claim was denied, causal relationship, it does not constitute relevant and pertinent evidence not previously considered by the Office and is not sufficient to warrant further merit review.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a right shoulder injury on November 1, 2003 causally related to factors of her employment. It further finds that the Office properly refused to reopen her claim for further merit review.

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<sup>7</sup> 20 C.F.R. § 607(a).

<sup>8</sup> 20 C.F.R. § 10.608(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 26 and January 13, 2004 are affirmed.

Issued: July 20, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member