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

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| **KATHLEEN M. LONGWORTH, Appellant** | ) | |
| **and** | ) | **Docket No. 04-1363** |
| | ) | **Issued: September 20, 2004** |
| **U.S. POSTAL SERVICE, POST OFFICE, Northfield, VT, Employer** | ) | |

*Appearances:*
*Kathleen M. Longworth, 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
MICHAEL E. GROOM, Alternate Member

### ***JURISDICTION***

On April 26, 2004 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated August 1 and December 1, 2003, finding that she had not established that she sustained an injury on March 14, 2003 and a nonmerit Office decision dated February 3, 2004 denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case and over the later nonmerit decision.

### ***ISSUES***

The issues are: (1) whether appellant has established that she sustained an injury in the performance of duty on March 14, 2003; and (2) whether the Office properly refused to reopen her case for further review of the merits of her claim.

### ***FACTUAL HISTORY***

On March 16, 2003 appellant, then a 44-year-old mail carrier, filed a claim for compensation for a traumatic injury to her shoulder sustained on March 14, 2003 when she slipped and fell on ice at 87 Central Street while delivering mail. In an accident report prepared

on March 18, 2003, the employing establishment stated that appellant encountered ice at 87 Central Street and fell to the ground hitting her elbow. She finished her route and lost no time from work. It was noted that appellant had injured the same arm in a December 2000 fall on ice. In a May 12, 2003 letter, an injury compensation specialist at the employing establishment stated that appellant initially did not seek medical attention but that she was experiencing pain in her shoulder and had since sought medical treatment.

In a June 9, 2003 letter, the Office advised appellant that she needed to submit a physician's opinion as to how her injury resulted in the condition diagnosed. Appellant submitted a copy of a May 13, 2003 report of a magnetic resonance imaging (MRI) scan of her right shoulder, which revealed tendinitis and/or a mild partial tear of the distal infraspinatus supraspinatus tendon and tendinosis and/or a chronic tear of the distal subscapularis tendon. Appellant also submitted notes from a physical therapist describing June 12 and 18, 2003 treatment of her right shoulder.

By decision dated August 1, 2003, the Office denied appellant's claim on the basis that there was no medical evidence establishing a causal relationship between the diagnosed condition and her accepted employment activity.

By letter dated August 20, 2003, appellant requested reconsideration. She submitted additional notes from physical therapy treatments in August 2003 and an August 15, 2003 report from Dr. Craig D. Sullivan, a Board-certified family practitioner, who stated:

> "[Appellant] injured her right shoulder while she was working for the postal service on March 14, 2003. She slipped on the ice while she was delivering mail and fell onto her right elbow forcing her humerus into her glenohumeral joint. She had immediate pain and discomfort with decreased strength in her right upper extremity. She was not seen by our practice until April 21, 2003, at which time she was still experiencing decreased range of motion in her right shoulder with pain at night. She was diagnosed with right shoulder pain secondary to impingement syndrome questioning an underlying rotator cuff tear. X-rays of the right shoulder demonstrated arthritic changes at the acromioclavicular joint otherwise they were within normal limits. The MRI [scan] on May 13, 2003 demonstrated a possible tear vs. tend[i]nitis of the infraspinatus and subscapularis tendons with a well defined cystic lesion in the upper aspect of the acromion (cystic structure was chronic). She was referred to physical therapy, which started on June 12 2003 and was scheduled an appointment with Dr. Stephanie Landvater. She was seen by Dr. Landvater on August 12, 2003, at which time she was diagnosed with a partial rotator cuff tear which was healing. She was referred back to physical therapy."

By decision dated December 1, 2003, the Office found that appellant had not met her burden of proof because Dr. Sullivan's report "contained no opinion as to the causal relationship between the diagnosed right shoulder partial rotator cuff tear and the incident of injury on March 14, 2003, as described."

On January 14, 2004 appellant again requested reconsideration. By decision dated February 3, 2004, the Office found appellant's request insufficient to warrant review of its prior decisions.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] 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.[5]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.[6] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[7]

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[8]

## ***ANALYSIS***

The evidence establishes that appellant was an employee of the United States, that she timely filed a claim for a March 14, 2003 traumatic injury on March 16, 2003 and that the March 14, 2003 incident occurred as alleged: she slipped and fell on ice while delivering mail, striking her right elbow.

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[1] 5 U.S.C. § 8101 *et seq.*

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.115.

[3] *James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Daniel R. Hickman*, *supra* note 2.

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Isidore J. Gennino*, 35 ECAB 442 (1983).

The Office denied appellant's claim for the reason that the medical evidence did not contain an opinion on causal relation between appellant's March 14, 2003 injury and her shoulder condition. However, Dr. Sullivan, in an August 15, 2003 report, stated that appellant "injured her right shoulder while she was working for the postal service on March 14, 2003," accurately described the March 14, 2003 incident and explained the mechanism by which falling onto her right elbow injured appellant's right shoulder. Dr. Sullivan also noted that appellant had immediate pain and discomfort and that she still had decreased motion and pain when he first saw her on April 21, 2003, at which time he diagnosed impingement syndrome.

While Dr. Sullivan did not expressly state that the impingement syndrome was related to the March 14, 2003 slip and fall, this is the clear implication of his report. Some questions still remains as to why appellant did not seek medical care for five weeks, the contribution, if any, to appellant's right shoulder condition of the prior injury to the right arm in December 2000, that was reported by the employing establishment and whether Dr. Sullivan is attributing the partial rotator cuff tear diagnosed by another physician to the March 14, 2003 injury. These are questions the Office should develop following return of the case record.[9] The case will be remanded to the Office for this purpose.

## ***CONCLUSION***

The case is not in posture for a decision and will be remanded to the Office for further development of the medical evidence,[10] to be followed by an appropriate decision.

[9] *See Delores C. Ellyett*, 41 ECAB 992 (1990); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5b (September 1993) states: "If reports from the claimant's physician lack needed details and opinion, the [Office] should always write back to the doctor, clearly state what is needed and request a supplemental report."

[10] On appeal, appellant submitted additional evidence, but the Board's review is limited by 20 C.F.R. § 501.2(c) to the evidence that was before the Office at the time of its final decision.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 1 and August 1, 2003 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to the Office for further development of the evidence. Given this disposition of the case the Board will not address the Office's February 3, 2004 nonmerit decision.

Issued: September 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member