



## **FACTUAL HISTORY**

On June 3, 1998 appellant, then a 43-year-old maintenance worker, filed a traumatic injury claim alleging that he sustained a pulled muscle in his right shoulder when he lifted a manhole cover and camera at work on June 1, 1998. Appellant did not stop work.<sup>1</sup>

Appellant submitted several notes dated between June and August 1998 which were completed by medical officers at the employing establishment.<sup>2</sup> One of these notes indicated that appellant should avoid repetitive use of his right shoulder between June 3 and 9, 1998.

In a letter dated March 18, 2004, the Office requested that appellant submit rationalized medical evidence in support of his claim.

By decision dated April 20, 2004, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a right shoulder injury in the performance of duty on June 1, 1998. The Office noted that it had accepted the occurrence of the employment incident on June 1, 1998.<sup>3</sup>

Appellant submitted an April 9, 2004 report in which Dr. Adrian B. Obuch, an attending Board-certified orthopedic surgeon, stated that he reported having shoulder pain since sustaining a right shoulder strain in June 1998. Dr. Obuch noted that diagnostic testing showed arthralgia, Bankart lesion, loose bodies and possible glenohumeral changes of the right shoulder.<sup>4</sup> In a report dated May 17, 2004, Dr. Obuch indicated that on May 6, 2004 he performed a right shoulder slap lesion repair and extensive debridement secondary to degenerative changes and loose body removal.

Appellant also submitted a September 24, 2002 report of Helen L. Monnens, a nurse at the employing establishment, and notes and form reports of several other nurses, medical officers and physician's assistants dated between September 1998 and May 2004. He also submitted numerous notes of several physical therapists, including Rebecca Tober and Thomas Balcom, which were completed between September 1998 and April 2003. A number of these notes and reports indicated that appellant reported right shoulder pain. The findings of August 6, 1998 x-ray testing of appellant's right shoulder revealed normal results with no fractures, osseous abnormalities or soft tissue calcifications.

By decision dated August 31, 2004, the Office affirmed its April 20, 2004 decision.

---

<sup>1</sup> A nonmedical document from the occupational health clinic at the employing establishment indicates that it was recommended that appellant perform light-duty work between June 3 and 9, 1998 and then return to his regular work.

<sup>2</sup> The individuals who completed these reports signed the portion of the form reports entitled "medical officer," but they did not provide any further notation of their status and there is no indication that any of them are physicians.

<sup>3</sup> The Office indicated that it was unclear why there was a delay in receiving appellant's claim.

<sup>4</sup> The record contains the results of October 4, 2002 x-ray testing which show degenerative changes in appellant's acromioclavicular joint.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>5</sup> has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.<sup>6</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>8</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup> The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>10</sup>

## ANALYSIS

Appellant claimed that he sustained a pulled muscle in his right shoulder when he lifted a manhole cover and camera at work on June 1, 1998. The Office accepted the occurrence of the June 1, 1998 employment incident as alleged, but determined that appellant did not submit sufficient medical evidence to establish that he sustained a right shoulder injury in the performance of duty on June 1, 1998.

Appellant submitted an April 9, 2004 report in which Dr. Obuch, an attending Board-certified orthopedic surgeon, noted that diagnostic testing showed arthralgia, Bankart lesion, loose bodies and possible glenohumeral changes of the right shoulder. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an

---

<sup>5</sup> 5 U.S.C. § 8101 *et seq.*

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>8</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>10</sup> *Elaine Pendleton*, *supra* note 6; 20 C.F.R. § 10.5(a)(14).

opinion on causal relationship.<sup>11</sup> Although Dr. Obuch stated that appellant reported having shoulder pain since experiencing a right shoulder strain in June 1998, he provided no opinion that appellant sustained an employment-related right shoulder injury on June 1, 1998 as alleged. In a report dated May 17, 2004, Dr. Obuch indicated that on May 6, 2004 he performed a right shoulder slap lesion repair, loose body removal and extensive debridement secondary to degenerative. However, he did not provide any indication that appellant sustained an injury to his right shoulder due to the June 1, 1998 employment incident or any other employment factor.<sup>12</sup>

Appellant submitted numerous notes and form reports of attending nurses, medical officers and physician's assistants dated between June 1998 and May 2004. However, none of these individuals qualifies as a "physician" as defined under the Act. Therefore, they cannot render a medical opinion on the causal relationship between a given physical condition and implicated employment factors.<sup>13</sup>

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a right shoulder injury in the performance of duty on June 1, 1998.

---

<sup>11</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>12</sup> In fact, the record suggests that the surgery was necessitated by nonwork-related degenerative disease. The record does contain any diagnostic testing showing that appellant suffered from degenerative disease of his right shoulder prior to 2002.

<sup>13</sup> See 5 U.S.C. § 8101(2); *Bertha L. Arnold*, 38 ECAB 282, 285 (1986).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decisions dated August 31 and April 20, 2004 are affirmed.

Issued: March 21, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member