



light duty beginning February 21, 2003 and returned to regular duty on March 27, 2003. The Office accepted his claim for a sprain/strain of his right shoulder and upper arm.

In a report dated March 14, 2003, Dr. Jaime Ortiz-Toro, an employing establishment physician,<sup>1</sup> stated that on February 14, 2003 appellant sustained a right shoulder strain while pushing a loaded supply cart. He noted that appellant was treated with analgesic balm and placed on light duty. Dr. Ortiz-Toro stated that appellant was last seen on March 13, 2003 and had decreased range of motion of the right shoulder at that time. He recommended physical therapy and continued light duty.

A report of a magnetic resonance imaging (MRI) scan of appellant's right shoulder performed on April 30, 2003 indicated degenerative changes in the acromioclavicular (AC) joint with impingement on the supraspinatus muscle and a complete tear of the supraspinatus tendon.

On May 13, 2003 appellant filed a claim for a recurrence of disability on April 30, 2003.

In a report dated May 9, 2003, Dr. Mark E. Johnson, an osteopath specializing in orthopedic surgery and an employing establishment physician, stated that appellant had experienced right shoulder pain and limited range of motion since February 2003 following an incident of heavy lifting at work. He noted that an MRI scan indicated a complete tear of the supraspinatus muscle in the right shoulder. Dr. Johnson recommended surgical repair of the torn rotator cuff.<sup>2</sup>

In a May 20, 2003 report, Dr. Dean W. Smith, a Board-certified orthopedic surgeon, stated that an MRI scan revealed AC joint arthritis with impingement and a tear of the supraspinatus muscle. He diagnosed a "large to massive" right rotator cuff tear and recommended surgery.

On June 11, 2003 appellant requested permission to change his attending physician from Dr. Ortiz-Toro to Dr. Smith. He stated that he preferred that Dr. Smith treat his right rotator cuff tear and perform surgery.

In a decision dated June 23, 2003, the Office denied appellant's request to change his treating physician from Dr. Ortiz-Toro to Dr. Smith, stating that review of the file indicated that he was under the care of a qualified specialist and his treatment had been appropriate.

By decision dated August 20, 2003, the Office denied appellant's claim for a recurrence of disability on April 30, 2003 on the grounds that the medical evidence failed to establish that appellant's recurrence was caused or aggravated by his February 18, 2003 employment injury.

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<sup>1</sup> Dr. Ortiz-Toro's medical specialty is not indicated in the record.

<sup>2</sup> A "rotator cuff" consists of the supraspinatus, subscapularis and teres major muscles and associated tendons. It holds the humerus (the bone that extends from the shoulder to the elbow) in the hollow area (glenoid fossa) of the shoulder blade (scapula bone). See *The Merck Manual of Diagnosis and Therapy* (16<sup>th</sup> ed. 1992), 2564; *DORLAND'S Illustrated Medical Dictionary* (27<sup>th</sup> ed. 1988), 779 (humerus), 1489 (scapula).

By letter dated August 25, 2003, appellant requested an oral hearing. By decision dated January 28, 2004, an Office hearing representative, based on a review of the written record, affirmed the August 20, 2003 Office decision.

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

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>3</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>4</sup> *Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. (Emphasis in the original.)<sup>5</sup>

Although an employee who claims benefits under the Federal Employees' Compensation Act<sup>6</sup> has the burden of establishing the essential elements of his claim, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>7</sup>

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

Appellant alleged that he sustained a recurrence of disability on April 30, 2003 causally related to his February 18, 2003 employment injury, a right shoulder and arm strain.

In a report dated May 9, 2003, Dr. Johnson stated that appellant had experienced right shoulder pain and limited range of motion since February 2003 following an incident of heavy lifting at work. He noted that an MRI scan indicated a complete tear of the supraspinatus muscle in the right shoulder and recommended surgical repair of the torn rotator cuff.

In a May 20, 2003 report, Dr. Smith stated that an MRI scan revealed AC joint arthritis with impingement and a tear of the supraspinatus muscle. He diagnosed a "large to massive" right rotator cuff tear and recommended surgery.

Both Dr. Johnson and Dr. Smith are specialists in orthopedic surgery. While their medical reports do not contain sufficient medical rationale explaining how appellant's April 30,

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<sup>3</sup> *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

<sup>4</sup> *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>5</sup> 20 C.F.R. § 10.5(x).

<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *See Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

2003 recurrence of disability was causally related to his February 18, 2003 employment injury, they are consistent in indicating that appellant had a torn rotator cuff following his February 18, 2003 employment injury and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference of causation between appellant's February 18, 2003 employment injury and his torn rotator cuff and claimed recurrence of disability on April 30, 2003, and are sufficient to require further development of the medical evidence.<sup>8</sup>

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

Section 8103(a) of the Act provides for furnishing to an injured employee "the services, appliances and supplies prescribed or recommended by a qualified physician," which the Office, under authority delegated by the Secretary of Labor, "considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation."

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

The Board finds that further development is needed regarding the Office's June 23, 2003 decision, denying appellant's request to change his treating physician from Dr. Ortiz-Toro to Dr. Smith.

Section 10.316 of the Code of Federal Regulations<sup>9</sup> provides that, after initially selecting a treating physician, an employee who wishes to change to another treating physician must submit a written request to the Office explaining his reasons for desiring a change of physician. The regulation states, "Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work-related one...." In its June 23, 2003 decision, the Office stated that review of the file indicated that appellant was under the care of a qualified specialist and his treatment had been appropriate. However, the record does not indicate whether Dr. Ortiz-Toro specializes in an area of medicine appropriate for the treatment of appellant's right shoulder and arm condition. According to the American Board of Medical Specialties of the American Medical Association, Dr. Smith is Board-certified in orthopedic surgery, a medical specialty appropriate for treating appellant's right shoulder and arm condition. On remand, after such further development as it deems necessary, the Office should make a new determination regarding appellant's request for a change of his treating physician.

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<sup>8</sup> See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978). The Board notes that, in the present case, the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. Additionally, the Office's procedure manual provides that a claims examiner may need to seek clarification from an attending physician in order to fully develop and evaluate the medical evidence. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8 (April 1993).

<sup>9</sup> 20 C.F.R. § 10.316.

**CONCLUSION**

The Board finds that this case requires further evidentiary development on the issue of whether appellant sustained a recurrence of disability on April 30, 2003 causally related to his February 18, 2003 employment injury. The case also requires further development regarding appellant's request for a change of physician. After such development as the Office deems necessary, a *de novo* decision shall be issued.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs' dated January 28, 2004 and August 20 and June 23, 2003 are set aside and the case is remanded for further development consistent with this decision.

Issued: May 12, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member