



The record indicates that appellant returned to work on April 26, 2001 and then began using annual and sick leave as of June 8, 2001.

In a letter dated July 17, 2001, appellant stated that she was having shoulder surgery due to a motor vehicle accident and was taken off duty since July 2, 2001. Appellant indicated that her sick and annual leave would be exhausted after July 23, 2001.

By letter dated August 9, 2001, the Office advised appellant that it accepted the claim for a right shoulder contusion. Appellant was advised to submit a Form CA-7 (claim for compensation) for periods of disability. On October 30, 2001 appellant submitted a Form CA-7 for the period July 25 to October 15, 2001.

By decision dated June 19, 2002, the Office denied the claim for compensation from July 25 to October 15, 2001. Appellant requested a hearing, which was held on March 26, 2003. Appellant submitted a report dated September 18, 2001 from Dr. Wayne Alani, an orthopedic surgeon, who stated that appellant was seen on July 3, 2001 with right shoulder pain. He stated that a magnetic resonance imaging (MRI) scan showed subacromial impingement and partial rotator cuff tear, and appellant underwent surgery on July 26, 2001. Dr. Alani indicated that appellant was disabled since July 3, 2001. In a report dated March 20, 2003, Dr. S. Mohammed, an internist, stated that appellant was seen on June 29, 2001. Dr. Mohammed stated that he was not aware of an April 22, 2001 assault and he “felt that the shoulder was not disabling, hence an x-ray was taken of the right shoulder, which showed calcific tendinitis.”

By decision dated June 17, 2003, the hearing representative affirmed the prior decision, finding that appellant had not established disability from July 25 to October 15, 2001 causally related to the employment injury. Appellant requested reconsideration and submitted a February 9, 2004 report from Dr. Alani. Dr. Alani stated that appellant sustained a traumatic injury to her right shoulder on April 22, 2001 when she was assaulted by a physician, and “in relation to this injury had to undergo an arthroscopy of her right shoulder with an incomplete rotator cuff tear.” He further stated, “The patient, in my opinion, and medical reasons as to having the surgery, is related to the admitted assault on April 22, 2001.”

By decision dated September 29, 2004, the Office denied modification of the prior decisions. The Office found that appellant had not established a recurrence of disability.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her 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 for which compensation is claimed is causally related to the employment injury.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

### ANALYSIS

Although the September 29, 2004 decision referred to a recurrence of disability, appellant did not file a Form CA-2a (notice of recurrence of disability and claim for compensation), nor did it appear that the Office paid any compensation for wage loss. The Office accepted the claim for right shoulder contusion and requested that appellant claim a period of disability by filing a Form CA-7. Appellant filed a Form CA-7 claiming compensation for the period July 25 to October 15, 2001. As noted above, it is appellant's burden of proof to establish that she was disabled for the period claimed due to the employment injury.

The record indicated that appellant was treated on June 29, 2001 by Dr. Mohammed, who indicated that he was not aware of an April 22, 2001 assault and found that the shoulder condition was not disability. Dr. Alani opined that the surgery performed on July 26, 2001 was related to the employment injury, but his report is of diminished probative value without a proper factual and medical background and medical reasoning to support the opinion. Dr. Alani did not provide a history discussing the employment incident and appellant's medical treatment, nor did he discuss a reported motor vehicle accident or provide other relevant details. He did not provide a reasoned medical opinion as to how the April 22, 2001 employment incident contributed to the need for surgery and resulted in disability from July 25 to October 15, 2001. The Board therefore finds that appellant did not meet her burden of proof in this case.

### CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish entitlement to compensation for wage loss from July 25 to October 15, 2001.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 29, 2004 is affirmed.

Issued: May 18, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member