



In a progress note dated September 21, 2004, Dr. Daryle Ruark, a Board-certified orthopedic surgeon, assessed appellant with left shoulder pain and mild weakness most likely due to acromioclavicular (AC) joint arthritis, impingement syndrome, possible biceps tendinitis and possible rotator cuff tendinitis.

An x-ray of appellant's left shoulder on September 28, 2004 was interpreted by Dr. Gregory Blackman, a Board-certified radiologist, as evidencing: "Moderate supraspinatus tendinopathy without frank tearing. Minimal hypertrophic change about the AC joint without significant deformity of the supraspinatus tendon."

By letter dated October 18, 2004, the Office asked appellant for further information. On November 11, 2004 he responded to the Office's questions. Appellant indicated that on the date of his injury, it was an extremely busy morning and he was lifting heavy baggage, which he had not done for several months. He noted that he began feeling pain in both his left and right shoulders.

In a medical report dated November 2, 2004, Dr. Gary P. Jacobson, an osteopath, summarized his treatment of appellant. He saw appellant on July 19, 2004, who indicated that he injured himself on June 10, 2004 when he was working bags at the airport all day and noted progressive soreness in the bilateral deltoid area. Dr. Jacobson diagnosed bilateral shoulder tendinitis. When appellant returned on August 2, 2004, Dr. Jacobson noted that appellant was slightly improved, but there was tenderness with the left and right bicep tendon. He diagnosed bicep tendinitis/bursitis. Dr. Jacobson next saw appellant on August 24, 2004 and found that appellant was getting better and recommended that he continue light duty. Dr. Jacobson treated appellant on September 7, 2004, when appellant indicated that he was working out with rubber bands and experienced recurrent tenderness in the left deltoid area. Dr. Jacobson diagnosed left shoulder rotator cuff tendinitis and recommended that he continue light duty.

By decision dated November 17, 2004, the Office denied appellant's claim, finding that the medical evidence did not establish that appellant sustained a medical condition causally related to the work incident.

In an October 4, 2004 progress note, submitted after the November 17, 2004 decision, Dr. Ruark indicated that the magnetic resonance imaging scan of the left shoulder showed "mild to moderate AC joint arthritis, Type 2 acromion, signal change within the anterior aspect of his supraspinatus tendon, consistent with tendopathy [versus] partial thickness tear." He noted that appellant will continue light duty. In a February 22, 2005 note, Dr. Ruark indicated that appellant's bilateral shoulder pain was improving. On May 24, 2005 he indicated that appellant was much improved and now cleared for full duty.

On December 6, 2004 appellant requested an oral hearing, held on July 14, 2005. He described his job duties, noted that June 10, 2004 was an extremely busy day and that they were short of personnel. He first saw Dr. Jacobson on July 19, 2004 because he initially thought the pain would go away. The hearing representative left the record open for 30 days for appellant to submit further medical evidence.

In a July 18, 2005 report, Dr. Ruark opined:

“The first question to be addressed is the history of [appellant’s] injury. The patient states that he had no shoulder pain prior to June 10, 2004. He states that on that date he was doing more lifting than usual. [Appellant] states that he had worked for approximately 10 hours lifting heavy luggage. At that time, he reported bilateral shoulder pain. By the time [appellant] was examined by myself, he had minimal right shoulder pain but significant left shoulder pain. Because he was asymptomatic prior to that day at work, it is clear that his symptoms are due solely to injury at work.

“The next question to be answered is in regard to ‘firm diagnoses of any conditions resulting from this injury.’ As per my subsequent office notes, the patients’ firm diagnoses resulting from this injury include: aggravation of left shoulder AC degenerative joint disease, ICD-9 code 715.11; left shoulder impingement syndrome, ICD-9 code 726.2; and left shoulder rotator cuff syndrome, ICD-9 code 726.10.”

Dr. Ruark noted that he cleared appellant for full duty on May 24, 2005.

By decision dated September 8, 2005, the hearing representative affirmed the November 17, 2004 decision.

### **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 filed within the applicable time limitation; that an injury was sustained while 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>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or on an occupational disease.<sup>3</sup>

To determine whether an employee has sustained a traumatic injury in the performance of duty, “fact of injury” must first be established.<sup>4</sup> The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

<sup>4</sup> *Neal C. Evins*, 48 ECAB 242 (1996).

<sup>5</sup> *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

the form of medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence.<sup>7</sup>

### ANALYSIS

The record establishes that appellant experienced pain in his shoulders after lifting luggage on June 10, 2004 in the performance of his duties as a screener. Although Dr. Jacobson related appellant's history of the injury in his report, he never connected appellant's tendinitis to his employment. However, Dr. Ruark did indicate that appellant's symptoms were due to the incident at work. He examined appellant on four different occasions. He discussed appellant's employment history and concluded that appellant's shoulder injury was causally related to the work injury. The Board notes that this case record contains no medical opinion contrary to Dr. Ruark's position.

The Board finds that Dr. Ruark's opinion that appellant's symptoms were due to his work injury is sufficient to require further development of the case record by the Office. The Board has held that the mere fact that a condition manifests itself or is worsened during a period of employment does not raise an inference of causal relationship between the two.<sup>8</sup> Accordingly, Dr. Ruark's opinion that appellant's symptoms were due to the injury at work because he was asymptomatic prior to that day at work is insufficient, in itself, to meet appellant's burden of proof. However, 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, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>9</sup> Although Dr. Ruark's opinion is insufficient to establish causal relationship, it is sufficient to require the Office to further develop the evidence.

On remand the Office should refer appellant, together with a statement of accepted facts, the complete case record and specific questions to be answered, to an appropriate Board-certified specialist for a rationalized opinion as to whether appellant sustained an injury to his shoulder in the performance of duty on June 10, 2004.

### CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant has established that he sustained an injury in the performance of duty on June 10, 2004, as alleged.

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<sup>6</sup> 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (defining traumatic injury).

<sup>7</sup> *Michael E. Smith*, *supra* note 3.

<sup>8</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>9</sup> *See Phillip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No. 02-1441, issued March 31, 2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated September 8, 2005 and November 17, 2004 are hereby vacated and this case is remanded for further consideration consistent with this opinion.

Issued: March 3, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board