



## **FACTUAL HISTORY**

On November 28, 2005 appellant, then a 53-year-old letter carrier, filed an occupational disease claim alleging that on October 1, 2005 she first realized that the torn tendon in her left shoulder was caused by the performance of her duties. In an attached statement, she stated that her injury was work related because of the continuous twisting and pulling she does while reaching for mail in the back seat of her vehicle.

The Office received a medical report dated November 16, 2005 from Dr. Barry J. Collins, Board-certified orthopedic surgeon. In the report, Dr. Collins diagnosed appellant with a rotator cuff tear as well as left and right shoulder rotator cuff impingement bursitis. The report also referenced an MRI scan of the left shoulder. There is no MRI scan report in the record.

In a December 7, 2005 letter, the Office requested additional information from appellant, specifically a comprehensive medical report from appellant's physician. Appellant did not respond.

By decision dated January 10, 2006, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the claimed medical condition is related to the established work-related events.

On March 2, 2006 appellant requested a review of the written record. The Office denied appellant's request on April 14, 2006, noting that appellant was not entitled to a hearing as a matter of right because the request was made after 30 days. The hearing representative also indicated that the issue in the case could equally well be addressed by appellant requesting reconsideration and submitting evidence establishing that her condition was causally related to factors of her employment. The Office also received additional documentation after the January 10, 2006 decision.

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

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors identified by the claimant were the proximate cause of the condition for which compensation is

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<sup>2</sup> *Anthony P. Silva*, 55 ECAB 179 (2003).

claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant.<sup>3</sup>

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

Appellant alleged that her medical condition of torn tendon and rotator cuff in her left shoulder was causally related to factors of her federal employment. The issue turns on whether the medical evidence submitted established that the condition is causally related to the identified factors.

Appellant submitted medical evidence of her condition in the form of a report from Dr. Collins dated November 16, 2005. In the report Dr. Collins diagnosed a left rotator cuff tear and both left and right shoulder rotator cuff impingement bursitis. He offered no opinion in his report about the cause of appellant's condition. 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>4</sup> Appellant's burden of proof includes the submission of rationalized medical evidence addressing causal relationship. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.<sup>5</sup> Dr. Collin's report did not review appellant's employment factors nor did it present any opinion as to the cause of appellant's condition.

Appellant believes that her condition was caused by factors of her employment. Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>6</sup>

Appellant failed to submit medical evidence to establish causal relationship and, therefore, has failed to discharge her burden of proof to establish that she sustained a condition due to factors of her federal employment.

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

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing or review of the written record is sought.<sup>7</sup> If the request

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<sup>3</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB \_\_\_\_ (Docket No. 05-715, issued October 6, 2005).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Calvin E. King*, 51 ECAB 394 (2000).

<sup>6</sup> *John F. Glynn*, 53 ECAB 562 (2002).

<sup>7</sup> 20 C.F.R. § 10.616(a) (1999).

is not made within 30 days, a claimant is not entitled to a hearing or a review of the written record as a matter of right. Office regulations further provide that the “claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.”<sup>8</sup> Although a claimant may not be entitled to a review of the written record as a matter of right, the Office has discretionary authority with respect to granting a review and the Office must exercise such discretion.<sup>9</sup>

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

Appellant’s request for review of the written record was untimely. The Office denied her claim on January 10, 2006 and she filed her request for a review of the written record on March 2, 2006. Because appellant requested a review of the record more than 30 days after the merit decision was issued she is not entitled to a review as a matter of right. In its April 14, 2006 decision the Office also denied her request on the grounds that the pertinent issue could be addressed by requesting reconsideration and submitting additional relevant evidence. This is considered a proper exercise of the Office’s discretionary authority.<sup>10</sup> Moreover, there is no evidence in the case record to establish that the Office otherwise abused its discretion in denying appellant’s review of the written record request. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant’s request for a review of the written record.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained an occupational disease in the performance of duty. Additionally, the Office properly denied her request for a review of the written record.

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<sup>8</sup> *Id.*

<sup>9</sup> *See Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>10</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 14 and January 10, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 13, 2007  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board