



shoulder due to holding a telephone receiver with her right shoulder while typing on a computer. She was off work from November 7 to 27, 2005.

In a January 25, 2006 letter, the Office advised appellant of the type of medical and factual evidence needed to establish her claim. The Office requested that appellant explain how holding the receiver with her right shoulder would cause a left shoulder injury. The Office also emphasized the need for her physician to submit a report explaining how and why the alleged November 2, 2005 incident would cause the claimed left shoulder injury.

In a November 10, 2005 slip, Dr. Carroll G. Odem, an attending Board-certified internist, diagnosed carpal tunnel syndrome and prescribed a wrist splint.<sup>1</sup> On December 5, 2005 she noted work restrictions and held appellant off work through December 4, 2005.<sup>2</sup>

By decision dated March 1, 2006, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that she submitted insufficient information to establish the November 2, 2005 incident as factual. The Office further found that appellant failed to explain why she waited two months to file her claim.

On March 29, 2006 appellant requested a review of the written record by a representative of the Office's Branch of Hearings and Review. She submitted her April 5, 2006 letter asserting that a problem with electronic signature codes caused the delay in filing her claim. Appellant described the November 2, 2005 incident as trying to type while holding a telephone receiver with her right shoulder. She provided a list of medical appointments through November 17, 2005. Appellant also submitted leave records showing intermittent absences from December 3, 2005 to February 10, 2006.<sup>3</sup>

By decision dated June 21, 2006, the Office hearing representative affirmed the March 1, 2006 decision as modified, finding that the November 2, 2005 incident occurred at the time, place and in the manner alleged. The Office found, however, that appellant did not submit sufficient rationalized medical evidence to establish that the accepted incident caused the claimed left shoulder injury.

In an August 15, 2006 letter, appellant requested reconsideration. She submitted additional evidence.

In a November 7, 2005 chart note, Dr. Mary K. McDonald, an attending Board-certified psychiatrist, stated that appellant complained of left shoulder and arm pain for the past five days. She obtained imaging and diagnostic studies demonstrating left-sided C6-7 radiculopathy due to a protruding disc. In an April 14, 2006 report, Dr. McDonald diagnosed cervical spine pain, subacromial bursitis, degenerative disc disease of the cervical spine at C6-7, myofascial pain

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<sup>1</sup> A November 11, 2005 cervical magnetic resonance imaging scan showed degenerative disc disease with disc bulging at C5-6 and C6-7. November 11, 2005 electromyography and nerve conduction velocity studies showed moderate left carpal tunnel syndrome and a possible cervical radiculopathy.

<sup>2</sup> Appellant also submitted insurance billing statements and unsigned forms.

<sup>3</sup> Appellant also submitted copies of test results previously of record and insurance billing statements.

syndrome of the left neck and shoulder and left arm paresthesias. She provided April 16, 2006 work restrictions. Dr. McDonald administered trigger point injections to the left shoulder on April 12, May 1 and 12, 2006. In a May 12, 2006 report, she attributed appellant's left shoulder and neck symptoms to cervical radiculopathy. Dr. McDonald prescribed physical therapy for cervical decompression. She submitted periodic treatment notes through August 2006 noting a good response to pain management.

Appellant also submitted insurance billing statements and medical appointment slips.

By decision dated October 26, 2006, the Office denied reconsideration on the grounds that the evidence submitted was insufficient as it did not contain medical rationale explaining how and why the accepted November 2, 2005 incident would cause the claimed shoulder injury.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</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>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

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

Appellant asserted that she sustained a left shoulder injury on November 2, 2005 due to typing while holding a telephone receiver with her right shoulder. The Office accepted that this incident occurred as alleged, but the Office denied the claim on the grounds that the medical evidence submitted was insufficiently rationalized to establish that the accepted incident caused a right shoulder injury.

Appellant submitted medical evidence in support of her claim from Dr. Odem, an attending Board-certified internist, who diagnosed carpal tunnel syndrome and prescribed a wrist splint. Dr. Odem noted work restrictions and held appellant off work through December 4, 2005, but she did not mention the accepted November 2, 2005 incident. Without medical rationale explaining how and why the accepted incident would cause the claimed left shoulder injury, her opinion is of insufficient probative value to establish causal relationship in this case.<sup>9</sup>

Appellant also submitted her April 5, 2006 statement and employing establishment leave records. As there is no evidence these documents were reviewed or signed by a physician, they are of no probative value in establishing causal relationship in this case.<sup>10</sup>

The Board finds that appellant submitted insufficient rationalized medical evidence to establish the causal relationship asserted in this case. Therefore, the Office's March 1 and June 21, 2006 decisions denying appellant's claim are proper under the law and facts of this case.

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

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>11</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>12</sup> Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>13</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> See *James A. Long*, 40 ECAB 538 (1989); *Susan M. Biles*, 40 ECAB 420 (1988) (where the Board held that the statement of a layperson is of not competent evidence on the issue of causal relationship).

<sup>11</sup> 5 U.S.C. § 8128(a).

<sup>12</sup> 20 C.F.R. § 10.606(b)(2) (2003).

<sup>13</sup> *Id.* at § 10.608(b) (2003).

In support of his or her request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>14</sup> Appellant need only submit relevant, pertinent evidence not previously considered by the Office.<sup>15</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>16</sup>

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

The Office denied appellant's traumatic injury claim by decisions dated March 1 and June 21, 2006, finding that she submitted insufficient evidence to establish causal relationship. Appellant then requested reconsideration by an August 15, 2006 letter. The critical issue at the time of the last merit decision in the case was whether appellant established a pathophysiologic causal relationship between the accepted November 2, 2005 incident and the claimed left shoulder injury. To be relevant, the evidence submitted in support of the August 15, 2006 request for reconsideration must address that issue.<sup>17</sup>

In support of appellant's request, she submitted reports from Dr. McDonald, an attending Board-certified physiatrist. In a November 7, 2005 chart note, Dr. McDonald mentioned appellant's five-day history of left shoulder and arm pain. However, she did not mention the accepted November 2, 2005 incident. In reports from April 14 through August 2006, Dr. McDonald mentioned appellant's symptoms and diagnosed cervical spine pain, subacromial bursitis, degenerative disc disease of the cervical spine at C6-7, myofascial pain syndrome of the left neck and shoulder and left arm paresthesias. She did not explain how or why the accepted November 2, 2005 incident would cause any of the diagnosed conditions.

As Dr. McDonald failed to provide medical rationale addressing causal relationship, her reports are irrelevant to the critical issue in the claim. Similarly, the billing statements and appointment slips are also irrelevant as they do not address the critical issue of causal relationship. The Board has held that the submission of evidence which does not address the particular issue involved does not comprise a basis for reopening a case.<sup>18</sup>

Thus, appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act, because she did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office.

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<sup>14</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>15</sup> *See* 20 C.F.R. § 10.606(b)(3). *See also Mark H. Dever*, 53 ECAB 710 (2002).

<sup>16</sup> *Annette Louise*, 54 ECAB 783 (2003).

<sup>17</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>18</sup> *Joseph A. Brown, Jr.*, *supra* note 17.

**CONCLUSION**

The Board finds that appellant has not established that she sustained a left shoulder injury in the performance of duty. The Board further finds that the Office properly denied appellant's August 15, 2006 request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 26, June 21 and March 1, 2006 are affirmed.

Issued: June 7, 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