

**United States Department of Labor
Employees' Compensation Appeals Board**

D.T., Appellant

and

**DEPARTMENT OF THE ARMY, BLUEGRASS
ARMY DEPOT, Richmond, KY, Employer**

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**Docket No. 07-1109
Issued: September 4, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 19, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 16, 2007 merit decision, denying his claim for a November 30, 2006 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a right shoulder injury in the performance of duty on November 30, 2006.

FACTUAL HISTORY

On December 6, 2006 appellant, then a 54-year-old explosives operator, filed a traumatic injury claim, alleging that he sustained a right shoulder injury on November 30, 2006. He indicated that he heard his shoulder pop when he pulled a 30 millimeter (mm)

munitions container in an attempt to pin it to another munitions container.¹ Appellant stopped work on December 1, 2006 and returned to light-duty work for the employing establishment on December 5, 2006.²

In a December 12, 2006 letter, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

In a December 5, 2006 (Form CA-16) report, Dr. Gene Dillman, II, an attending Board-certified family practitioner, stated that appellant reported that on November 30, 2006 he injured his right shoulder when he was putting cans together end-to-end and pulled one out. He noted that appellant reporting hearing a pop in his shoulder and experiencing right shoulder and arm pain. Dr. Dillman indicated that on examination appellant could not externally or internally rotate his right upper arm and diagnosed right infraspinatus injury. He checked a “yes” box indicating that the diagnosed condition was caused or aggravated by the reported employment injury and determined that he was totally disabled from December 5 to 12, 2006. In a December 5, 2006 note, Dr. Dillman stated that appellant should not lift, pull or push with his right arm/shoulder until cleared by an orthopedic consultant. He indicated that appellant had an injury of the infraspinatus muscle and might have a tear or rupture.

On December 11, 2006 Dr. Philip F. Corbett, an attending Board-certified orthopedic surgeon, stated that appellant reported that he injured his right shoulder on November 30, 2006 when he was pulling a “fairly significant weight.” He noted that appellant reported that he heard a pop in his shoulder and experienced severe pain which radiated into his neck and right arm. Dr. Corbett indicated that on examination of the right shoulder appellant appeared to have full range of motion and negative drop arm sign, but had shoulder pain on active and passive motion, exquisite tenderness over the biceps tendon, positive cross arm sign and positive impingement sign.³

In a January 16, 2007 decision, the Office denied appellant’s claim finding that he did not meet his burden of proof to establish that he sustained a right shoulder injury in the performance of duty on November 30, 2006. The Office accepted that the November 30, 2006 employment incident occurred when appellant moved a heavy munitions canister while attempting to pin it to another canister, but found that he did not submit sufficient medical evidence to show that he sustained injury as a result.

¹ The record contains an accident report, updated on April 21, 2006, indicating that appellant’s right shoulder popped when he positioned a 30 mm can weighing about 75 pounds by sliding it approximately four inches in order to pin it to another can.

² The record contains a December 5, 2006 “sick slip” indicating that appellant should not lift, pull or push with his right arm due to a November 30, 2006 injury, but the note does not appear to be signed by a physician.

³ The record contains the findings of December 27, 2006 venous ultrasound testing of the right upper extremity revealed no evidence of right upper extremity thrombus.

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his claim.⁵ The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁶ However, 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.⁷

ANALYSIS

Appellant alleged that he injured his right shoulder on November 30, 2006 while moving a heavy munitions canister. The Office accepted that an employment incident occurred when appellant moved a heavy munitions canister while attempting to pin it to another canister, but found that he did not submit sufficient medical evidence to show that he sustained a right shoulder injury in the performance of duty on November 30, 2006.

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury on November 30, 2006 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 between appellant's claimed condition and the employment incident of November 30, 2006 and are sufficient to require the Office to further develop the medical evidence and the case record.⁸

Appellant submitted a December 5, 2006 Form CA-16 in which Dr. Dillman, an attending Board-certified family practitioner, stated that appellant reported that on November 30, 2006 he injured his right shoulder when he was putting cans together. Dr. Dillman indicated that on examination appellant could not externally or internally rotate his right upper arm and diagnosed right infraspinatus injury. He checked a "yes" box indicating that the diagnosed condition was caused or aggravated by the reported employment injury and determined that he was totally disabled from December 5 to 12, 2006. In a December 5, 2006 note, Dr. Dillman stated that appellant should not lift, pull or push with his right arm/shoulder and indicated that he might have a tear or rupture.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁶ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁷ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁸ *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

Appellant also submitted a December 11, 2006 report in which Dr. Corbett, an attending Board-certified orthopedic surgeon, stated that appellant reported that he injured his right shoulder on November 30, 2006 when he was pulling a “fairly significant weight.” Dr. Corbett did not provide an opinion that appellant sustained an employment injury on November 30, 2006, but he noted several positive right shoulder findings, indicating that appellant had shoulder pain on active and passive motion, exquisite tenderness over the biceps tendon, positive cross arm sign and positive impingement sign.

The case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury on November 30, 2006. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained a right shoulder injury in the performance of duty on November 30, 2006. The case will be remanded to the Office for further development of this matter to be followed by an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers’ Compensation Programs’ January 16, 2007 decision is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: September 4, 2007
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