



## **FACTUAL HISTORY**

On November 1, 2006 appellant, then a 49-year-old laborer custodian, filed an occupational disease claim, Form CA-2, alleging that he sustained a left shoulder condition in November 2003. He stated that he did not file a claim within 30 days of his realization of his condition because he was under a 90-day probation period and could not miss days from work for injuries. On an insurance form dated October 26, 2006, appellant stated that his job duties consisted of sweeping, mopping and overhead dusting. He identified his injury as a spur in his right shoulder.<sup>2</sup> On October 27, 2006 Dr. Todd Pope, a Board-certified internist, stated that appellant's shoulder impingement symptoms had appeared a year previously and that his first consultation was on October 12, 2006. He stated that appellant was disabled from work from October 6 to November 30, 2006.

The employing establishment controverted appellant's claim. In a letter dated November 1, 2006, Bonnie Noble, the supervisor of maintenance operations, stated that appellant had been detailed as an acting supervisor from May 20 to October 7, 2006. In that position, appellant would not have done sweeping, mopping or overhead dusting. When he was told that he would be returning to his regular position, he became stressed and sought counseling from the Employee Assistance Program. Appellant did not return to his normal assignment and was on leave from October 7, 2006. Ms. Noble stated that appellant informed her on November 1, 2006 that he felt pain in late November 2003 while performing his duties, but was afraid to report his condition during probation for fear of termination. Appellant felt better with medication and home remedies. When his condition intensified, approximately three years later, he went to the doctor and reported his injury to the employing establishment. The employing establishment and Ms. Noble stated that appellant's workers' compensation claim appeared to be retaliation for being returned to his custodial duties.

On November 13, 2006 the Office requested additional factual and medical information about appellant's claim.

In a work release form dated October 6, 2006, Dr. Pope stated that appellant was under significant stress from having his work shift changed. Appellant was active as a deacon in his church, which would be impossible if his schedule was changed. Dr. Pope requested that appellant be allowed to work his previous schedule, as he would benefit from continuing church activity. On October 12, 2006 he indicated that appellant would be unable to work from October 16 to 27, 2006. Dr. Pope did not provide any explanation. On October 24, 2006 he stated that appellant would be unable to work from October 24 to November 30, 2006. On November 8, 2006 Dr. Pope provided the employing establishment with a duty status report indicating that, because of appellant's left shoulder impingement syndrome, he was limited to lifting 10 pounds and prohibited from pushing, pulling, reaching above his shoulder, driving a vehicle or operating machinery. Despite providing these limitations, he did not then recommend that appellant return to work.

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<sup>2</sup> The Board notes that this appears to be an error, as his treating physicians consistently diagnosed a left shoulder condition.

On November 14, 2006 the employing establishment offered appellant a light-duty job based on the physical limitations indicated by Dr. Pope. The position involved wiping clean door frames, door jams, window ledges, bathroom sinks and mirrors and restocking paper supplies and soap in restrooms. The Office sent a copy of the job description to Dr. Pope for his approval.

On November 24, 2006 Dr. Pope stated that appellant would be out of work through December 24, 2006. On November 29, 2006 Susan Bolton, a nurse case manager assigned to appellant, memorialized a telephone conversation she had with Dr. Pope who stated that appellant was placed off work starting October 24, 2006 for a torn rotator cuff. Dr. Pope stated that it was not clear that the tear was associated with appellant's employment, but that he had encouraged him to report the condition, as it could have some relationship to his work. On November 29, 2006 he agreed that Ms. Bolton had accurately memorialized the conversation.

On November 29, 2006 the employing establishment stated that appellant had not yet returned to work. Appellant reported that his physician had not yet released him to work and that he would need surgery.

On December 1, 2006 appellant stated that his workers' compensation claim was not made in retaliation against the employing establishment's decisions. As an acting supervisor, his duties included showing new employees cleaning duties such as sweeping, mopping, and overhead dusting. Appellant was scheduled for shoulder surgery in January 2007.

On December 6, 2006 Dr. Pope removed appellant from work until January 31, 2007.

By decision dated January 23, 2007, the Office denied appellant's claim on the grounds that he had not established employment exposure or an injury. It found that appellant had not adequately detailed his employment activities and that he did not establish how these employment factors affected his shoulders. The Office found further that the medical evidence was insufficient to establish the claim because Dr. Pope was uncertain as to whether appellant's left shoulder impingement was employment related.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

presence or existence of the disease or condition for which compensation is claimed;<sup>5</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

When determining whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors, the Office generally relies on the rationalized opinion of a physician.<sup>8</sup> To be rationalized, the opinion must be based on a complete factual and medical background of the claimant<sup>9</sup> and must be one of reasonable medical certainty,<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### ANALYSIS

The Office did not accept that appellant experienced the alleged employment factors or that he sustained an injury as a result of these factors. Therefore the issues are whether he has established mopping, sweeping and dusting overhead as employment factors and that he sustained a compensable injury.

Appellant attributed his left shoulder condition to his employment duties of sweeping, mopping and overhead dusting in November 2003. He did not report it at the time because he was in a probationary period and could not miss any days for accident or illness. Appellant treated his shoulder pain with medical and home remedies. The employing establishment controverted his claim on the grounds that he would not have dusted, mopped or swept when he was an acting supervisor from May to October 2006 and that he filed the claim in retaliation for the withdrawal of the supervisory position. However, the employing establishment did not controvert appellant's claim that his November 2003 duties included sweeping, mopping and dusting. The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>12</sup> The Board finds that appellant has established sweeping, mopping and overhead dusting as factors of his employment in November 2003. Appellant's description of his employment duties is consistent and there is no basis to refute it.

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<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>8</sup> *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>12</sup> *Constance G. Patterson*, 41 ECAB 206 (1989).

The issue is whether appellant has established that he sustained an injury causally related to the accepted factors of his federal employment. This issue is medical in nature.

On October 6, 2006 Dr. Pope, a Board-certified internist, stated that appellant was under significant stress from having his work shift changed, because the change would preclude him from participating as a deacon in his church. On an insurance claim form dated October 27, 2006, he stated that appellant first consulted him on October 12, 2006 for his shoulder impingement symptoms, which had appeared a year previously. In a November 8, 2006 duty status report, Dr. Pope stated that appellant's left shoulder impingement syndrome limited him to 10 pounds of lifting and prohibited him from pushing, pulling, reaching above his shoulder, driving a vehicle or operating machinery. He recommended that appellant not return to work at that time. On November 29, 2006 Dr. Pope informed a nurse case manager that appellant was placed off of work starting October 24, 2006 for a torn rotator cuff. He stated that it was not clear that the tear was work related, but that he had encouraged appellant to report the condition, as it might have some relationship to his employment. Dr. Pope removed appellant from work from October 16, 2006 to January 31, 2007. He did not provide an explanation for this period of disability.

The Board finds that the medical evidence of record is insufficient to establish that appellant's left shoulder condition is related to his mopping, sweeping and overhead dusting. The Board has held that a physician's opinion on causal relationship must be one of reasonable certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background.<sup>13</sup> Dr. Pope did not submit a rationalized medical opinion diagnosing appellant's condition, describing his accepted employment factors or explaining how the factors related to the left shoulder impingement. His opinion that there might be some relationship with appellant's employment is inadequate because it is equivocal.<sup>14</sup>

The Board finds that appellant has not met his burden of proof to establish fact of injury under the Act.

### **CONCLUSION**

The Board finds that appellant has established dusting, mopping, and sweeping as the implicated factors of his employment. However, he has not established that he was injured in the performance of duty causally related to these implicated employment factors.

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<sup>13</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>14</sup> *See Michael R. Schaffer*, 55 ECAB 386 (2004) (“[a]n opinion on causal relationship can be neither speculative nor equivocal”).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2007 is affirmed as modified.

Issued: February 26, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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