



## **FACTUAL HISTORY**

On July 16, 2006 appellant, then a 58-year-old flat sorter machine clerk, filed a traumatic injury claim (Form CA-1) assigned number 01-2040602. She alleged that on March 3, 2006 she reinjured her left shoulder as a result of being forced to repetitively pitch flats in the manual flats section. Appellant stated that she was required to work outside the restrictions set forth by her attending physician. By letter dated July 24, 2006, the employing establishment controverted the claim because it was not filed within 30 days of the alleged injury.

Prior to filing the instant claim, the Board notes that appellant, on November 28, 2005, filed a CA-1 form assigned number 01-2035689 alleging that she injured her left shoulder on that date while picking up a flat box with her left hand. By letter dated March 27, 2006, the Office accepted the claim for sprains of the left shoulder and upper arm.<sup>1</sup>

By letter dated July 26, 2006, the Office advised appellant that the evidence submitted, for the alleged March 3, 2006 employment incident, was insufficient to establish her claim. It addressed the factual and medical evidence she needed to submit.

In a May 15, 2006 report, Dr. Donald H. Hangen, an attending Board-certified orthopedic surgeon, stated that appellant was being evaluated for a work-related left shoulder injury. He reviewed a history that she sustained an employment-related right wrist injury on March 18, 2003<sup>2</sup> and an employment-related left shoulder injury on November 28, 2005. Dr. Hangen stated that a magnetic resonance imaging (MRI) scan of the shoulder demonstrated supraspinatus tendinopathy. No rotator cuff tear was noted. Appellant returned to full-duty work although she believed that light-duty work was more appropriate for her condition. Dr. Hangen stated that on March 3, 2006 appellant reinjured her left shoulder and had been experiencing increased pain since that time. On physical examination, he reported good range of motion of the cervical spine, some diffuse tenderness around the shoulder, full passive and active range of motion and rotator cuff strength that was fine. There was some subacromial crepitance and pain with resisted motion and intact sensation and distal motor function. Appellant had a normal vascular examination. Dr. Hangen opined that appellant continued to have some mild left shoulder tendinitis and that no instability was detected. He concluded that her left shoulder condition was due to repetitive motion.

In an August 24, 2006 letter, appellant addressed the difficult process she experienced in filing her claim. She contended that the claim was timely filed, contending that her work duties caused a reinjury of her November 28, 2005 employment-related left shoulder condition.

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<sup>1</sup> On March 16, 2006 appellant filed a claim for an occupational disease alleging that she first became aware of her sore and aching left shoulder on November 28, 2005. She stated that on March 3, 2006 she first realized that her injury was caused by factors of her federal employment. On March 17, 2006 appellant filed a claim alleging that she sustained a recurrence of disability on March 3, 2006 causally related to her November 28, 2005 employment-related injury. By letter dated June 27, 2006, the Office advised appellant to file a CA-1 form as it appeared that she had sustained a new injury on March 3, 2006. Accordingly, appellant filed the instant claim on July 16, 2006.

<sup>2</sup> Appellant filed a CA-1 form assigned number 01-2015194 for a right wrist injury she sustained on March 18, 2003 as a result of lifting a flat box at work. The Office accepted the claim for a right wrist sprain.

By decision dated September 5, 2006, the Office denied appellant's claim, finding the medical evidence of record insufficient to establish that she sustained a left shoulder injury causally related to the March 3, 2006 employment incident.

On June 25, 2007 appellant requested an oral hearing before an Office hearing representative regarding the Office's September 5, 2006 decision.

By decision dated July 24, 2007, the Office denied appellant's request for a hearing under 5 U.S.C. § 8124 as untimely. It stated that her request was postmarked June 25, 2007, which was more than 30 days after the issuance of its September 5, 2006 decision, and therefore, she was not entitled to a hearing as a matter of right. The Office nonetheless considered the matter in relation to the issue involved and determined that it could be addressed equally well on reconsideration, by submitting evidence establishing that her claimed medical condition was caused by the accepted employment incident.

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

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 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>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>5</sup>

To determine whether an employee actually sustained an injury in the performance of duty, the Office must determine whether fact of injury has been established. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>6</sup>

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>7</sup> An injury does not have to be confirmed by eyewitnesses in order to establish that an employee

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and the circumstances and his or her subsequent course of action.<sup>8</sup> An employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.<sup>9</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>10</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>11</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>12</sup>

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

The record supports that on March 3, 2006 appellant pitched flats while working as a flat sorter machine clerk at the employing establishment. The Board finds that the case is not in posture for decision as to whether the accepted employment incident caused or aggravated appellant's left shoulder condition.

In a May 15, 2006 report, Dr. Hangen reviewed a history of appellant's November 28, 2005 employment-related left shoulder injury. He stated that an MRI scan of the shoulder demonstrated supraspinatus tendinopathy. Dr. Hangen indicated that appellant returned to full-duty work although she believed that light-duty work was more appropriate for her condition. He stated that on March 3, 2006 she reinjured her left shoulder and that she had been experiencing increased pain since that time. Dr. Hangen's vascular examination was normal. On physical examination, he reported his essentially normal findings with the exception of diffuse tenderness around the shoulder, subacromial crepitance and pain with resisted motion, and mild left shoulder tendinitis. Dr. Hangen opined that appellant's left shoulder condition was due to repetitive motion.

The Board finds that appellant's allegation that she had ongoing problems with her November 28, 2005 employment-related left shoulder condition and Dr. Hangen's uncontroverted opinion that the accepted March 3, 2006 employment incident aggravated this employment-related condition are sufficient to require further development of the claim.<sup>13</sup>

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<sup>8</sup> See *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>10</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

<sup>11</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>12</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>13</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, *supra* note 10.

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>14</sup> On remand the Office should double this case file assigned number 01-2040602 with any other injury claim appellant has filed for the same part of the body, including case file assigned number 01-2035689.<sup>15</sup> It should also prepare a statement of accepted facts and refer appellant for a second opinion examination to obtain a rationalized opinion as to whether factors of her federal employment aggravated her preexisting employment-related left shoulder condition. Following this and any other further development as the Office deems necessary, an appropriate final decision should be issued on appellant's claim.

### **CONCLUSION**

The Board finds that this case is not in posture for decision as to whether appellant sustained a left shoulder injury on March 3, 2006 in the performance of duty.<sup>16</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 5, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this decision.

Issued: June 19, 2008  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>15</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000).

<sup>16</sup> In light of the Board's disposition of the first issue, the second issue regarding the Office's denial of appellant's request for an oral hearing is moot.