



## **FACTUAL HISTORY**

Appellant, a 48-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging she injured her left upper extremity on or about June 29, 2009. She described her condition as soreness in the left biceps and left shoulder. Appellant attributed her condition to sweeping mail and lifting heavy trays from top stackers. She also indicated that she had been placing trays of mail on top of racks, as well as removing them. The racks and top stackers were above shoulder level and the mail trays weighed upwards of 25 pounds.

Appellant's supervisor, Loretta I. Tillman, acknowledged that appellant told her on June 29, 2009 that she was experiencing soreness in her left arm. However, there was no specific injury or accident reported. Appellant stated that she was unusually sore from processing heavy tray volumes and she wanted Ms. Tillman to be aware of the situation. On July 14, 2009 she advised Ms. Tillman that she was scheduling an appointment with her primary care physician. Appellant reportedly told Ms. Tillman that her condition had not improved and she was experiencing pain when extending her arm in an outward motion.

On August 5, 2009 Dr. Ian D. Archibald, a Board-certified orthopedic surgeon, examined appellant and diagnosed left shoulder pain with adhesive capsulitis. However, his August 5, 2009 report did not include a specific history of injury or an opinion regarding the etiology of the diagnosed condition. Appellant reportedly had been complaining of some shoulder pain for a couple of months. The report further noted that she did "not remember any specific injuries, although it ... bother[ed] her at work." Other than noting appellant worked as a "mail clerk," there was no description of her particular duties. The August 5, 2009 report also noted that there might have been a history of some tendinitis back in the 1990s. Dr. Archibald recommended physical therapy.

By decision dated October 2, 2009, the Office denied appellant's claim because it had not been established that her left shoulder condition was employment related.

Appellant requested reconsideration and submitted a November 2, 2009 report from Dr. Christopher A. Prato, a Board-certified orthopedic surgeon, who diagnosed left shoulder impingement with some degenerative changes at the acromioclavicular (AC) joint. Dr. Prato noted that appellant believed her condition was employment related. She reported doing some work overhead, which involved getting 20- to 25-pound trays off of a shelf. Appellant initially experienced some pain and soreness, which she reported to her supervisor. Her problems reportedly persisted with shoulder-level activity, as well as with activity involving internal rotation. Dr. Prato indicated that "given what [appellant] ... told me, it is likely that this was [a] [w]orkmen's ... injury in that she did not have any problems before and recall[ed] a specific incident at work and ... reported [it] to her supervisor."

In a decision dated February 1, 2010, the Office reviewed the claim on the merits, but denied modification. It found Dr. Prato's November 2, 2009 opinion unpersuasive because the record established that appellant had previous left shoulder problems of which Dr. Prato was apparently unaware. The Office referenced a June 26, 2003 follow-up report from Dr. Robert R. Riedle, a Board-certified orthopedic surgeon, who had treated appellant for "neck and shoulder problems." Dr. Riedle noted, *inter alia*, that appellant had a "couple of 'knots' along the muscles

adjacent to the vertebral border of the right scapula....” He diagnosed “some overuse muscle soreness and tightness at the posterior shoulder girdle.” Dr. Riedle’s June 26, 2003 report was originally associated with an earlier claim (xxxxxx481) for an alleged October 28, 2001 traumatic injury. Appellant had also filed a claim for an alleged April 30, 2003 traumatic injury (xxxxxx537).

On May 11, 2010 appellant requested reconsideration. She claimed that her current injury was different from her 2003 injury, which involved the upper back, not the shoulder joint. Appellant did not submit any evidence with her request for reconsideration.

By decision dated May 21, 2010, the Office denied appellant’s request for reconsideration.

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

A claimant seeking benefits under the Act has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>3</sup>

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

In a report dated August 5, 2009, Dr. Archibald diagnosed left shoulder pain with adhesive capsulitis. However, he did not specifically attribute the diagnosed condition to appellant’s duties as a mail processing clerk. Dr. Archibald’s report did not include either a history of injury or an opinion regarding the etiology of the diagnosed condition. Consequently, his April 5, 2009 report is insufficient to establish that appellant’s left shoulder condition is employment related.

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<sup>2</sup> 20 C.F.R. § 10.115(e), (f) (2010); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors. *Id.*

<sup>3</sup> *Victor J. Woodhams*, *supra* note 2.

Dr. Prato's November 2, 2009 report is also insufficient to satisfy appellant's burden of proof. He diagnosed left shoulder impingement with some degenerative changes at the AC joint. Dr. Prato stated that it was "likely ... [a] [w]orkmen's ... injury." He appears to have based his opinion regarding the cause of appellant's injury on her belief that the left shoulder condition was employment related. Besides noting a temporal relationship, Dr. Prato did not otherwise explain how performing overhead work and getting 20- to 25-pound trays off a shelf either caused or contributed to appellant's diagnosed left shoulder condition.<sup>4</sup> Neither the fact that appellant's condition manifested itself during a period of employment, nor her belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>5</sup>

Lastly, Dr. Riedle's June 26, 2003 report is not sufficiently probative with respect to appellant's current left shoulder condition. Although he previously treated appellant for "neck and shoulder problems," the June 26, 2003 report does not clearly indicate which shoulder was involved. Dr. Riedle diagnosed "some overuse muscle soreness and tightness at the posterior shoulder girdle." He did not specifically indicate that it was appellant's left shoulder.

The Board finds that appellant failed to establish that her current left shoulder condition is causally related to her duties as a mail processing clerk. As previously discussed, the reports of Dr. Archibald, Dr. Prato and Dr. Riedle are individually and collectively insufficient to satisfy appellant's burden of proof.

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

The Office has the discretion to reopen a case for review on the merits.<sup>6</sup> Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>7</sup> When an application for reconsideration 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>8</sup>

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<sup>4</sup> A temporal relationship alone is insufficient to establish causal relationship. *Louis T. Blair Jr.*, 54 ECAB 348, 350 n.7 (2003).

<sup>5</sup> *D.I.*, 59 ECAB 158, 162 (2007).

<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> *Id.* at § 10.608(b).

## ANALYSIS -- ISSUE 2

Appellant's May 11, 2010 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Appellant argued that her current left shoulder injury was different from the injury for which Dr. Riedle treated her in 2003. The Office relied upon Dr. Riedle's June 26, 2003 report to discredit Dr. Prato's November 2, 2009 report on the basis that Dr. Prato was unaware of appellant's previous left shoulder problems. Contrary to the Office's finding, Dr. Riedle's report does not establish that appellant previously had left shoulder problems. He did not specifically reference appellant's left shoulder in his June 26, 2003 report. In fact, Dr. Riedle reported findings with respect to appellant's "right scapula," but made no specific reference to the left side. While the Office may have been mistaken about whether appellant previously injured her left shoulder, this does not erase or otherwise rectify the previously noted deficiencies with respect to the reports of Dr. Archibald and Dr. Prato. Merely pointing out that she sustained different injuries in 2003 and 2009 does not entitle appellant to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>9</sup> The Board further notes that appellant did not submit any "relevant and pertinent new evidence" with her May 11, 2010 request for reconsideration. Therefore, she is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).<sup>10</sup>

Because appellant's application for reconsideration did not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office properly denied the May 11, 2010 request for reconsideration without reopening the case for a review on the merits.

## CONCLUSION

Appellant did not establish that her claimed left shoulder condition is employment related. The Board further finds that the Office properly denied her May 11, 2010 request for reconsideration.

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<sup>9</sup> *Id.* at § 10.606(b)(2)(i) and (ii).

<sup>10</sup> *Id.* at § 10.606(b)(2)(iii).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21 and February 1, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 4, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board