



## **FACTUAL HISTORY**

On June 7, 2004 appellant, a 51-year-old entry specialist, filed a traumatic injury claim alleging that she sustained a rotator cuff tear while pushing file cabinets in the performance of duty on June 3, 2004. She stopped work on June 7, 2004 and returned to her regular duties on June 14, 2004. Appellant did not initially submit any medical documentation with her claim. On June 21, 2004 the Office advised appellant of the need for additional factual and medical evidence. The Office noted that there was insufficient evidence to establish that appellant actually experienced the incident alleged to have caused her injury. Additionally, the Office stated that the record did not include a medical diagnosis of any condition resulting from the alleged June 3, 2004 injury. The Office afforded appellant 30 days within which to submit the requested factual and medical information.

Appellant responded on July 6, 2004 explaining that at the time of her injury she had been filing in the rotating file cabinets, which were not working properly. She stated that the filing cabinet would not move freely so she pushed real hard; then harder with her shoulder until the cabinet finally turned. Appellant explained that her arm ached afterwards, but she paid it no attention. Later that same afternoon she applied some muscle pain cream, but this did not provide any relief. Appellant stated that her arm ached all night and that about 5:00 a.m. the following morning she went to the hospital emergency room. At that time, appellant could not raise her arm and she was in severe pain.

On July 19, 2004 the Office received a copy of appellant's June 4, 2004 discharge instructions from East Jefferson General Hospital. The document provided general information about rotator cuff tears and treatment. The discharge instructions also reported an additional diagnosis of right arm pain. Appellant was prescribed pain medication and advised to follow-up with her personal physician.

Dr. Melvin L. Parnell, Jr., a Board-certified orthopedic surgeon, examined appellant on June 8, 2004. He noted that appellant had reportedly sustained trauma to her right shoulder on June 3, 2004 when she was pushing on a file cabinet that was jammed. Dr. Parnell also stated that appellant initially noted some discomfort in her right arm, but she did not really think much of it at the time. The following day, appellant reportedly awoke experiencing severe pain in her right hand and upper arm. She stated that her arm felt heavy and she could not do normal things. Dr. Parnell noted that appellant had been seen in the emergency room and started on Naprosyn and Flexeril. His own physical examination on June 8, 2004 revealed mild decreased range of motion of the right shoulder with some discomfort at the extremes of motion. Dr. Parnell found no evidence of instability or internal derangement of the right shoulder joint. He also noted no loss of muscle strength. X-rays of the right shoulder showed some calcification in the region of the supraspinatus tendon insertion, which Dr. Parnell stated was more suggestive of chronic tendinitis rather than an acute abnormality. Additionally, Dr. Parnell indicated that appellant reported that she had a bruise around her shoulder. He stated that he told her "she probably just strained things." Dr. Parnell also stated that, as the swelling and inflammation subsided and the symptoms subsided, appellant's motion and function had improved. He advised that appellant continue with her medication.

In a decision dated July 22, 2004, the Office denied appellant's claim on the basis that she failed to establish fact of injury. The Office stated that appellant had been afforded the opportunity to submit additional evidence on June 21, 2004, but "[n]o further evidence was received."

### **LEGAL PRECEDENT**

To determine if 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. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.<sup>2</sup> The second component is whether the employment incident caused a personal injury.<sup>3</sup> Causal relationship is a medical question that generally can be resolved only by rationalized medical opinion evidence.<sup>4</sup>

### **ANALYSIS**

On June 21, 2004 the Office advised appellant of the need for additional factual and medical evidence. Although the Office received additional evidence on July 19, 2004, the July 22, 2004 decision makes no reference to this evidence. As noted previously, appellant submitted a July 6, 2004 statement as well as medical documentation dated June 4 and 8, 2004. The Office's decision incorrectly stated that appellant did not submit any evidence in response to the June 21, 2004 request for additional factual and medical information.

The Board's jurisdiction over a case is limited to reviewing the evidence that was before the Office at the time of its final decision.<sup>5</sup> Inasmuch as the Board's decisions are final as to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>6</sup> In this instance, the Office neglected to consider appellant's July 6, 2004 statement as well as medical documentation dated June 4 and 8, 2004, which it received on July 19, 2004. Whether the Office receives relevant evidence on the date of the decision or several days prior, such evidence must be reviewed by the Office.<sup>7</sup> As the Office failed to address all the relevant evidenced before it at

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the 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 claimant's specific employment factors. *Id.*

<sup>5</sup> 20 C.F.R. § 501.2(c).

<sup>6</sup> 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>7</sup> *Willard McKennon*, 51 ECAB 145 (1999).

the time of its July 22, 2004 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 22, 2004 decision to the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 19, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
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