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

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| **S.B., Appellant** | ) | |
| **and** | ) | **Docket No. 10-2008** |
| | ) | **Issued: June 7, 2011** |
| **U.S. POSTAL SERVICE, POST OFFICE, Lyons, MI, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### *JURISDICTION*

On August 3, 2010 appellant, through her representative, timely appealed the July 1, 2010 merit decision of the Office of Workers' Compensation Programs, which denied her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### *ISSUE*

The issue is whether appellant sustained an injury in the performance of duty on February 9, 2008.

### *FACTUAL HISTORY*

Appellant, then a 49-year-old rural carrier associate, filed a claim (Form CA-1) for injury to her right shoulder on February 9, 2008. She claimed to have been reaching for a mailbox when she felt a pinch in her shoulder. Appellant had to stretch to reach the mailbox due to

[1] 5 U.S.C. §§ 8101-8193.

excessive snow piled in front of it. She first sought treatment for her condition on February 19, 2008. Appellant identified Dr. Douglas W. Poff, a family practitioner, as her treating physician. However, she did not submit any medical evidence with her claim.

On December 29, 2008 the Office advised appellant of the need to submit medical evidence in support of her traumatic injury claim. In response, appellant submitted an April 1, 2008 right shoulder magnetic resonance imaging (MRI) scan that was interpreted as unremarkable and an April 11, 2008 x-ray of the right shoulder, cervical spine and thoracic spine. The right shoulder and thoracic spine films showed no acute findings. The cervical spine film revealed a "questionable defect" possibly on the left side at C1. Therefore, a cervical MRI scan was recommended. An April 23, 2008 cervical MRI scan revealed posterior bony spurring with associated hard disc at C4-5, which caused mild flattening of the thecal sac. There was also evidence of posterior broad-based disc bulging with spur at C5-6, which caused mild compression of the thecal sac. A May 1, 2008 cervical MRI scan addendum noted that C1 appeared to be preserved, and the C2 ring was definitely intact and the predental space was preserved. The Office also received physical therapy treatment notes from March through June 2008. Appellant was treated for upper back pain with a diagnosis of myositis.

In a report dated December 16, 2008, Dr. Raymond P. Allard, a Board-certified orthopedic surgeon, noted that he previously treated appellant for right knee problems, but had recently seen her for complaints of right shoulder pain. Appellant reported that she was delivering mail and felt something snap. Dr. Allard identified February 21, 2008 as the date of injury. He conducted a physical examination and reviewed appellant's cervical and right shoulder MRI scans. Dr. Allard diagnosed right shoulder impingement syndrome with acromiclavicular (AC) joint arthritis and spurs of the cervical spine. He planned to first treat appellant with anti-inflammatory drugs and if no improvement, then subacromial decompression surgery.

A January 9, 2009 prescription note of Dr. Allard recommended a subacromial decompression for an injury that occurred on February 9, 2008. The note included diagnoses of right shoulder impingement and AC joint arthritis.

In a decision dated January 29, 2009, the Office denied appellant's traumatic injury claim. It found that the February 9, 2008 employment incident was established, but the medical evidence did not establish that the diagnosed right shoulder condition was either caused or aggravated by the accepted incident.

On February 13, 2009 appellant requested reconsideration. Dr. Poff, appellant's treating physician, submitted reports dated February 11 and March 2, 2009. He noted that appellant was a rural carrier who reported injuring her right shoulder on February 9, 2008 while reaching to open a mailbox. Dr. Poff stated he initially believed appellant's injury caused upper thoracic myositis or strain; however, because of persistent symptoms he then thought she tore her rotator cuff. Based on negative findings on x-ray and MRI scan, he then focused on her cervical spine. Dr. Poff stated that, when the dust cleared, it seemed that appellant's most persistent problem was the right shoulder and that was why he referred her to Dr. Allard. He was not sure whether appellant's symptoms were from the neck or shoulder or a combination of both. Dr. Poff stated that her symptoms started after the injury and the "mechanism of injury could have certainly

caused the burning pain in the upper thoracic region with pain radiating into [appellant's] neck and shoulder."

In the March 2, 2009 report, Dr. Poff indicated that, from the initial visit on February 19, 2008, appellant stated she injured her right shoulder while reaching to open a mailbox. The pain seemed to localize to the upper right thoracic region. Dr. Poff stated he felt appellant had a thoracic myositis or strain that also caused her shoulder to ache. Due to persistence of pain after conservative therapy, an MRI scan of her shoulder was ordered. Dr. Poff noted that the point of pain had changed from her upper right thoracic region and moved toward the shoulder. Due to normal MRI scan of the shoulder, x-rays of the cervical and thoracic spine and right shoulder were ordered. However, questionable results of x-rays of the cervical spine caused Dr. Poff to order an MRI scan of appellant's neck. Unfortunately, the MRI scan did not show anything conclusively and appellant's symptoms never really subsided. Dr. Poff noted that, when he saw appellant on December 3, 2008, she continued to complain of right shoulder pain in spite of physical therapy, home exercises and trigger injections. Because of her persistent right shoulder pain, he referred appellant to Dr. Allard, who saw her on December 16, 2008 and diagnosed impingement syndrome of the right shoulder, AC joint arthritis and spurs of the cervical spine. Dr. Poff further noted that reaching backward to open a mailbox could certainly have placed strain on appellant's upper right back/shoulder/neck region. He indicated that he did not know if the February 9, 2008 injury caused the right shoulder impingement, but he believed it could have aggravated it. Dr. Poff also noted that appellant had no complaints until the injury. He believed the aggravation was temporary and should resolve in time.

By decision dated April 2, 2009, the Office denied modification of the January 29, 2009 decision.

On March 29, 2010 appellant requested reconsideration.

In a report dated April 16, 2010, Dr. Martin Fritzhand, a Board-certified urologist, noted that appellant's counsel had asked that he address the causal relationship between the accident occurring on February 9, 2008 and appellant's ongoing pain and discomfort involving the right shoulder girdle. He reviewed the medical records from Dr. Poff and Dr. Allard, as well as the Office's April 2, 2009 decision. Dr. Fritzhand obtained a history of injury from appellant *via* telephone on April 15, 2010 but did not conduct a physical examination. He quoted extensively from the medical reports he reviewed. On the issue of causal relationship, Dr. Fritzhand stated:

> "In summary, [appellant] was required to usually and repetitively stretch her right shoulder and arm on February 9, 2008. This eventually resulted in significant pain and discomfort in a region involving the right shoulder girdle, upper thoracic musculature and neck. Symptoms gradually localized to the right shoulder girdle itself and an [*sic*] MRI [scan] eventually documented an impingement syndrome. There is certainly a clear causal relationship between [appellant's] injury of February 9, 2008 and the impingement syndrome. Impingement is common with those workers who do repetitive activities with the right upper extremity. This is certainly well documented. [Appellant] has used her right upper extremity to case and deliver mail for years, and the usual stretching during her workday of

February 9, 2008 seemed to finally result in shoulder impingement with its attendant significant pain in the shoulder itself."

Dr. Fritzhand concluded that "[e]xcessive and strained right arm/shoulder movements while performing [appellant's] work demands ... resulted in the impingement syndrome which caused ongoing pain and discomfort involving the right shoulder girdle."

Appellant's counsel also solicited an April 21, 2010 report from Dr. Poff, who reiterated that, when he initially examined appellant on February 19, 2008, she told him she injured her right shoulder while delivering mail. Appellant was reaching to open a mailbox, the car moved ahead and put strain on her right shoulder and upper back. Dr. Poff initially thought her shoulder pain was due to thoracic myositis or strain. When her pain continued following conservative therapy, he ordered a cervical MRI scan that was inconclusive. Despite conservative therapy, appellant continued to experience burning pain in the right upper thoracic region into her shoulder and arm. On December 16, 2008 she went to see Dr. Allard who felt she had right shoulder impingement syndrome, AC joint arthritis and cervical spine spurs. Dr. Allard recommended conservative therapy and shoulder surgery if the pain persisted. When appellant returned to see Dr. Poff on April 17, 2009, she still complained of right shoulder pain, tenderness and weakness. Dr. Poff did not see her again until April 5, 2010, when she requested that he prepare a report addressing causal relationship. He noted that appellant still had pain, weakness and a burning sensation in the right upper back, shoulder and arm. Appellant also had limited strength of the right shoulder and could not lift above level on the right. Dr. Poff ordered an MRI scan and she continued to work in spite of her right shoulder problems. He also found a March 2, 2009 letter he had written where he stated "the mechanism of the injury she sustained could certainly have caused these symptoms." Dr. Poff commented that appellant had no previous history of injury to this area and he never had a reason to question her integrity. He also noted he had previously stated that he thought the condition was temporary and should resolve with time. Additionally, Dr. Poff noted that surgical decompression of the shoulder might need to be done.

By decision dated July 1, 2010, the Office denied modification of the April 2, 2009 decision.

## ***LEGAL PRECEDENT***

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.[2]

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 is whether the employee actually experienced the employment incident that

[2] 20 C.F.R. § 10.115(e)(f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury.[4]

## ***ANALYSIS***

The Office found that the record established the February 9, 2008 employment incident where appellant reached from her vehicle using her right arm to place mail in a mailbox and immediately felt pain in her shoulder. It also correctly found that appellant had received a diagnosis ostensibly in connection with the February 9, 2008 employment incident. Appellant, however, has failed to establish that her diagnosed right shoulder condition is causally related to the February 9, 2008 employment incident. Dr. Poff, the treating physician, provided several reports explaining the evolution of his various diagnoses regarding appellant's persistent neck, back and right shoulder complaints. He started with a diagnosis of upper thoracic myositis/strain and subsequently he deferred to Dr. Allard's diagnosis of right shoulder impingement and AC joint arthritis. Neither Dr. Poff nor Dr. Allard has provided a well-reasoned opinion on causal relationship.

The history of injury reported in Dr. Allard's December 16, 2008 narrative was that appellant was delivering mail and felt something snap. Dr. Allard incorrectly identified the date of injury as February 21, 2008. He also did not offer an opinion on causal relationship at the time. The January 9, 2009 prescription pad note indicated that Dr. Allard wanted to perform a subacromial decompression for an injury that occurred on February 9, 2008. However, there was no explanation of how the diagnosed conditions were either caused or aggravated by the February 9, 2008 employment incident. Accordingly, Dr. Allard's opinion is insufficient to establish that appellant's right shoulder condition is causally related to the February 9, 2008 employment incident.

Dr. Poff has repeatedly equivocated as to the cause of appellant's condition. His February 11, 2009 report indicated that the mechanism of injury "could" have certainly caused the symptoms appellant experienced. When the Office requested a more definitive statement on causal relationship, Dr. Poff responded with his March 2, 2009 report. In this later report, he noted that reaching backward to open a mailbox "could" certainly have placed strain on appellant's upper right back/shoulder/neck region. Dr. Poff also indicated that he did not know if the February 9, 2008 injury caused the right shoulder impingement, but he believed it "could" have aggravated it. He has not stated that appellant's February 9, 2008 employment incident caused her current condition, but merely that it "could" have. Dr. Poff's latest report dated April 21, 2010 did not provide any greater insight as to the cause of appellant's right shoulder condition. He merely reiterated his previous findings, and commented that appellant had no

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989). 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.*

previous history of injury to the area and he never had a reason to question her integrity. Dr. Poff's several reports do not satisfy appellant's burden of establishing that she sustained a personal injury as a result of the February 9, 2008 employment incident.

The Board also finds that Dr. Fritzhand's April 16, 2010 report was insufficient to establish that appellant's diagnosed right shoulder condition is causally related to the February 9, 2008 employment incident. Dr. Fritzhand essentially attributed appellant's right shoulder condition to employment-related overuse. He noted that "she was required to usually and repetitively stretch her right shoulder and arm on February 9, 2008," which eventually resulted in significant pain and discomfort in a region involving the right shoulder girdle, upper thoracic musculature and neck. Dr. Fritzhand explained that "impingement was common with ... workers who do repetitive activities...." He indicated that appellant used her right upper extremity to case and deliver mail for years, and "the usual stretching during her workday of February 9, 2008 seemed to finally result in shoulder impingement...." The history of injury in the current case is not one of repetitive use or overuse of the right upper extremity. Appellant described a single incident on February 9, 2008 where she reached for a mailbox and immediately felt pain in her shoulder. Accordingly, Dr. Fritzhand's diagnosis of an overuse-type injury is inconsistent with appellant's reported history of injury and the accepted employment incident of February 9, 2008. An opinion on causal relationship should be based on a complete factual and medical background.[5]

The Board finds that appellant failed to establish that her diagnosed right shoulder condition is causally related to the February 9, 2008 employment incident, and thus, has not established fact of injury.

## ***CONCLUSION***

Appellant failed to establish that she sustained an injury in the performance of duty on February 9, 2008.

[5] *Victor J. Woodhams*, *supra* note 4.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the July 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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