

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SEAN ALLEN and U.S. POSTAL SERVICE,
ALTOONA POST OFFICE, Altoona, Pa.

*Docket No. 97-2667; Oral Argument Held October 6, 1998;
Issued December 3, 1998*

Appearances: *Sean Allen, pro se; Sheldon G. Turley, Jr., Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHEAL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that his disability after June 12, 1989 is causally related to his December 5, 1988 employment injury.

On December 5, 1988 appellant, then a 35-year-old letter carrier, was collecting mail from a mailbox when the mailbox began to tip over. Appellant started to catch the mailbox and his left hand was caught between the tipping mailbox and the mailbox next to it. He used sick and annual leave intermittently thereafter. The Office of Workers' Compensation Programs accepted appellant's claim for contusion of the left hand and sprain of the left wrist.

On June 12, 1989 appellant filed a claim for recurrence of disability. In an accompanying note, he stated that he was having difficulty with his left arm due to the December 5, 1988 employment injury. In a June 14, 1989 report, Dr. Andrew W. Gurman, a Board-certified orthopedic surgeon, stated that appellant had tenderness in the left shoulder around the left rotator cuff. In a June 17, 1991 decision, the Office denied appellant's claim on the grounds that the claimed recurrence of disability on or after June 12, 1989 was not causally related to the December 5, 1988 employment injury. In a July 7, 1992 decision, an Office hearing representative found that the medical evidence of record did not establish a causal relationship between appellant's shoulder condition and the December 5, 1988 employment injury. He therefore concluded that appellant was not disabled on or after June 12, 1989 as a result of the December 5, 1988 employment injury. In merit decisions dated April 19, 1993, February 3, 1994, March 7, 1995, February 2, 1996 and June 17, 1997, the Office denied appellant's requests for modification of the Office's decision of June 17, 1991.

The Board finds that appellant has not met his burden of proof in establishing that he had a recurrence of disability after June 12, 1989

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.¹

The original reports from appellant's December 5, 1988 employment injury indicated that appellant had a sprain and contusion of the left wrist. There was no mention of appellant's left shoulder complaints by any physician until Dr. Gurman's June 14, 1989 report. Appellant underwent surgery on May 23, 1991 for a subacromial impingement of the left shoulder. In a June 11, 1992 report, Dr. Gurman stated that he treated appellant for an injury to his left arm in December 1988 and instructed that he be placed on light duty. He noted that appellant was not given light duty until one and one half years later. Dr. Gurman stated that in the interim, appellant had gone on to aggravate problems with his left shoulder which ultimately led to surgery. He indicated that the requirements place on appellant's left arm to accommodate heavy loads in an abnormal fashion because of his inability to bear those loads on the wrist and hand could have been avoided by placing him on light duty as originally ordered. Dr. Gurman concluded that the abnormal stresses placed on the shoulder ultimately led to his shoulder problem. His report did not state that appellant's shoulder condition was caused by the traumatic injury of December 5, 1988. Dr. Gurman suggested that the shoulder condition was a consequential, occupational injury of the employment injury, arising from appellant's work after the employment injury because of the stress placed on the shoulder due to the effects of the employment injury on appellant's arm. This report is not sufficiently well rationalized to establish that the left shoulder condition was caused, directly or consequentially, by the employment injury as it did not give a detailed physiological description on how the employment injury would have caused the left shoulder condition. It therefore does not establish that appellant's recurrence of disability was causally related to the December 5, 1988 employment injury.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Michael Saltzburg a Board-certified osteopathic orthopedic surgeon, for an examination and second opinion. He diagnosed a resolved sprain of the left hand and left wrist and a chronic sprain of the left shoulder. Dr. Saltzburg noted that appellant's left hand and left wrist were treated for six months after the employment injury before appellant received any treatment for the left shoulder. He further noted that there were no complaints of pain in the left shoulder during this time. Dr. Saltzburg stated that appellant was not disabled from his work-related injuries of the left hand and left wrist. He indicated that appellant had limitation in full use of the left shoulder but noted that there was no documentation that could causally connect the left shoulder injury to appellant's left hand and left wrist injuries, primarily because there was no mention of pain reported to the treating doctor for a period of six months. Dr. Saltzburg's report further demonstrates that appellant had not submitted any fully rationalized medical evidence to establish a causal relationship between the December 5, 1988 employment injury and his left shoulder condition. Appellant contended that Dr. Saltzburg's report had limited probative value because the doctor stated appellant was on limited duty after the employment injury while appellant asserted had been required to do his regular duties for

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

18 months after the employment injury before he was given limited duty. However, in the context of whether the employment injury of December 5, 1988 caused appellant's left shoulder condition, the issue of appellant's duty status after the traumatic injury is not relevant. The issue of appellant's actual duties after December 5, 1988 would be relevant if appellant was claiming that those duties caused an occupational injury. Appellant has not made such a claim in this case.

The decision of the Office of Workers' Compensation Programs dated June 19, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 3, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member