

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN A. MORELLI and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Seattle, Wash.

*Docket No. 96-1026; Submitted on the Record;
Issued October 21, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue are: (1) whether appellant met his burden of proof in establishing that he sustained a recurrence of disability causally related to his June 15, 1992 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

On June 15, 1992 appellant, then a 47-year-old warehouse worker, was unloading a freight truck and pushed a pallet of fire extinguishers when he pulled a muscle in his left shoulder. Appellant's claim was accepted for left shoulder strain. Appellant was released to light duty on June 16, 1992.

On October 1, 1992 Dr. Randall Scott Fowler, a Board-certified family practitioner and appellant's treating physician, released appellant to full duty. Since treating appellant, Dr. Fowler had reviewed the physical requirements of appellant's position and examined appellant every few weeks. At the time of release to full duty, appellant had full range of motion without pain and was performing his full duties.

In a Form CA-16 dated September 7, 1995, Dr. Fowler noted that appellant returned for left shoulder symptoms. He diagnosed a torn rotator cuff, checked "yes" to indicate that appellant's current condition was related to his June 15, 1992 injury, and considered appellant capable of continuing regular work. He referred appellant to Dr. Arnold G. Peterson, a Board-certified orthopedic surgeon.

On September 5, 1995 appellant filed a claim for a recurrence of disability indicating that he had weakness and pain in the left shoulder and that the shoulder never felt right after the 1992 injury.

By letter dated September 18, 1995, the Office acknowledged the recurrence claim and requested further information from appellant.

In a report dated September 20, 1995, Dr. Peterson, a Board-certified orthopedic surgeon, noted that appellant was injured at work three years prior, placed on light duty, and that the shoulder never recovered. He further noted that appellant returned to Dr. Fowler approximately six months prior and began some physical therapy. He also noted that appellant was “on a wave runner, just doing the normal things on a wave runner and did [not] do anything spectacular or take a fall, [and] he just hit a normal wave and felt a sharp pain in his shoulder which continued.” Dr. Peterson related that, as a result of that injury, an arthrogram was obtained which showed a rotator cuff tear. On examination, Dr. Peterson noted that appellant had obvious atrophy of the left shoulder over the right with a much smaller deltoid and supraspinatus. He diagnosed a left rotator cuff tear. Dr. Peterson opined that this condition was definitely related to the 1992 injury and that the recent wave runner incident was really not a factor in his entire clinical course.

In a letter dated September 27, 1995, appellant stated that, after the June 15, 1992 injury, he was released for light duty approximately six weeks later. He stated his work duties were consistent with that of a warehouseman and that his shoulder had been weak since the injury with dull aches and muscle soreness. He stated he went back to his doctor on his own time in December 1994 and tried physical therapy for a few weeks at that time. Appellant further stated that he had to give up or cut back on all outside activities that he was used to such as golfing, fishing, hunting, hiking, boating, swimming and refereeing basketball.

By decision dated October 4, 1995, the Office denied appellant’s claim because the evidence failed to demonstrate a causal relationship between the injury and the claimed condition.

By letter dated October 31, 1995, appellant requested reconsideration. In support of the request for reconsideration, appellant submitted medical evidence. Appellant resubmitted the September 20, 1994 report and treatment notes from Dr. Peterson from August 14, 1990 to September 7, 1995. Appellant also resubmitted the September 20, 1995 report from Dr. Fowler.

Appellant also submitted a copy of the September 11, 1995 x-ray report which diagnosed positive shoulder arthrogram with a rotator cuff tear.

Appellant submitted a physical therapy evaluation report of January 10, 1995. Also submitted was an October 12, 1995 letter from Dr. Fowler in which he stated that he was of the opinion that it was quite possible to have a partial rotator cuff tear, have some painfree intervals, then worsen or complete the tear causing further symptoms.

In a decision dated January 8, 1996, the Office found that the evidence submitted in support of the reconsideration request was not sufficient to require modification as appellant failed to submit new and relevant evidence.

The Board finds that appellant failed to sustain his burden of proof in establishing that he sustained a recurrence of disability causally related to his June 15, 1992 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability and his accepted

employment condition.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual history, concludes that the condition is causally related to the accepted employment injury and supports that conclusion with sound medical reasoning.² The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.³ Neither the fact that the condition became apparent during a period of employment nor the claimant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁴

In this case, the record shows that appellant sustained a left shoulder strain on June 15, 1992. He was released to light duty on June 16, 1992 and returned to full duty on October 1, 1992. There is no evidence that any medical treatment was provided to appellant after he was released to full duty until September 14, 1995, when he returned to Dr. Fowler. Although Dr. Fowler stated that appellant returned for left shoulder symptoms and diagnosed a torn rotator cuff, he provided no rationale as to why he felt the current symptoms were related to the June 15, 1992 injury, for which he released appellant to full duty, other than to check "yes" to a box indicating that appellant's condition was due to his history of injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵ Moreover, Dr. Fowler did not discuss any intervening medical care or nonwork-related activities in which appellant participated. Therefore, Dr. Fowler's September 7, 1995 report is not sufficient to meet appellant's burden of proof.

Although in his report of September 20, 1995, Dr. Peterson opined that the current need for rotator cuff repair was related to the 1992 work injury, Dr. Peterson's report is of insufficient probative value to establish causality. As his evaluation is more than three years after the original shoulder strain, Dr. Peterson had no actual knowledge of appellant's condition prior to his examination. The record reveals that when Dr. Fowler released appellant to full duty on October 1, 1992, appellant had full range of motion and no symptoms. Although Dr. Peterson mentioned a recurrence of pain when appellant was on a wave runner, he did not discuss any other nonwork-related activities in which appellant had participated in the last three years. Since there are historical indications of other factors which might have aggravated appellant's condition, Dr. Peterson's opinion is of insufficient probative value to establish causality because of the incorrect medical history upon which it was based.⁶

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

² *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁴ *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192, 193 (1952).

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁶ *Id.*

Thus, as appellant has failed to provide any rationalized medical evidence establishing that he sustained a recurrence of disability causally related to his June 15, 1992 employment injury, he has failed to discharge his burden of proof.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for a review of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁷ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.⁸

In this case, the only new evidence submitted was a physical therapy evaluation report dated January 10, 1995 and an October 12, 1995 medical report from Dr. Fowler. The physical therapy evaluation report is not sufficient to establish appellant's claim as neither an exercise physiologist nor a physical therapist is a physician⁹ for the purposes of the Federal Employees' Compensation Act and cannot supply the medical opinion evidence necessary to establish appellant's claim.¹⁰ Although Dr. Fowler stated that it was possible appellant had a partial rotator cuff tear and then worsened or completed the tear causing further symptoms, he provided no explanation on the causal relationship between appellant's original work injury and how appellant could have worsened or completed the tear due to factors of his employment.¹¹ Thus, Dr. Fowler's October 12, 1995 report is cumulative evidence. As the other evidence submitted repeats or duplicates evidence already in the case record, it has no evidentiary value and does not constitute a basis for reopening a case.¹²

Inasmuch as appellant failed to submit any new and relevant medical evidence or advance substantive legal contentions in support of his request for reconsideration, appellant's reconsideration request is insufficient to require the Office to reopen the claim for further consideration of the merits. Moreover, appellant was previously advised of what was needed to require the Office to reopen his case in the list of appeal rights which were enclosed with the Office's decision of October 4, 1995.

⁷ 20 C.F.R. § 10.138(b)(1).

⁸ 20 C.F.R. § 10.138(b)(2); *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

⁹ 5 U.S.C. § 8101(2).

¹⁰ *Arnold A. Alley*, 44 ECAB 912 (1993).

¹¹ *Lucrecia M. Nielson*, *supra* note 5.

¹² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, *supra* note 4 at 1093-94.

The decisions of the Office of Workers' Compensation Programs dated January 8, 1996 and October 4, 1995 are hereby affirmed.

Dated, Washington, D.C.
October 21, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member