

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY A. SANTOS and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

*Docket No. 97-2881; Submitted on the Record;
Issued August 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that his left neck and shoulder conditions are causally related to factors of his federal employment.

On March 8, 1996 appellant, then a 42-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he first became aware on December 8, 1995 that his use of crutches, canes and walkers increased pain to his left neck and shoulder. In an attached narrative, appellant alleged that his injury was due to a work-related ruptured disc sustained on January 10, 1995. He also referred to a work-related left shoulder injury sustained on March 9, 1988.¹

In support of his claim, appellant submitted medical reports from Dr. Robert W. Hunt, appellant's treating physician and a specialist in orthopedic medicine.² In a February 23, 1995 medical report, Dr. Hunt related appellant's history of injury which included "an industrial injury" on January 10, 1995 resulting in an injury to his back which has been symptomatic with pain since that date. He also noted that appellant "has continued with occasional periods of left shoulder pain. Cortisone injections were recommended; however, appellant did not want that type of treatment. No case was filed." Dr. Hunt noted that appellant returned to light-duty office work which caused continued pain. Post examination, the doctor determined that appellant sustained lumbosacral strain with secondary radiculopathy to the right lower extremity. Dr. Hunt recommended physical therapy, noted that appellant could continue to work light duty and requested authorization for a magnetic resonance imaging (MRI) scan of the L1 to S1.

¹ The employing establishment stated that appellant was working in a modified sedentary position of four hours a day at the time of filing.

² In addition to Dr. Hunt's reports which addressed a neck and shoulder condition, appellant submitted multiple medical reports from Dr. Hunt and other physicians who addressed a work-related back injury (A13-1069025).

In a November 29, 1995 medical report, Dr. Hunt stated that appellant continued to be temporarily totally disabled and released him to work with restrictions. He noted appellant's subjective complaints of pain in the right groin, testicle and lateral calf, numbness in the right toe and pain in the left shoulder.

In a January 31, 1996 medical report, Dr. Hunt stated that appellant remained symptomatic with pain in the right hips. He also noted appellant's subjective complaints of left shoulder pain, stating that appellant "further states that that in 1988 he injured his left shoulder, but it did not hurt until he started using crutches last year." Dr. Hunt requested authorization to have an MRI of the left shoulder and lumbosacral spine. He noted that x-rays of the left shoulder "revealed spurring from the greater tuberosity and cystic lesions of the greater tuberosity."

In a report dated March 20, 1996, the employing establishment stated that appellant's March 9, 1988 work-related left shoulder strain, A13-0850966, had resolved as of May 4, 1988.

In a medical report dated March 22, 1996, Dr. Hunt stated that he had examined appellant on March 7, 1996, who related neck and left shoulder pain and numbness and tingling in the left hand, aggravated from a 1988 injury when he was walking with crutches due to the right sciatica.

By letter dated April 16, 1996, the Office of Workers' Compensation Programs notified appellant that it had received his claim "for left side of neck and shoulder condition" but that the information thus far submitted was determined to be insufficient to determine appellant's eligibility for compensation benefits for the specified conditions. The Office required appellant to describe the employment-related activities which he believed contributed to his condition, a comprehensive medical report and opinion from his treating physician regarding the cause of appellant's condition and, if appropriate, whether Dr. Hunt believed that appellant's condition was caused by employment factors.

In a decision dated May 24, 1996, the Office denied appellant's claim for benefits on the grounds that the medical evidence of record failed to establish that he had sustained an occupational disease causally related to factors of federal employment.

On June 25, 1997 appellant requested reconsideration. In support of his request, appellant submitted an April 22, 1997 medical report from Dr. Hunt. In that report, Dr. Hunt stated that appellant "wishes to add to the initial history taken on August 13, 1996 of the left shoulder complaints." He then related appellant's interim history, noting his subjective complaints regarding his need to use a left axillary crutch from February to March 1995 at a 45 degree angle due to back pain which then struck the left axillary pushing the shoulder up. Dr. Hunt noted a continuous history of left shoulder pain since March 1995. He then noted appellant's contemporary subjective complaints, noting that appellant felt pain on a continuous basis and in regard to a variety of common gestures such as reaching behind himself, pulling his hand out of his pocket and extending his arm in any direction. Upon neck examination, Dr. Hunt noted forward flexion and extension of 45 degrees, rotation at 60 degrees bilaterally, lateral bending at 45 degrees bilaterally. He noted anterolateral accordion and no palpable muscle spasm. Upon left shoulder examination, Dr. Hunt noted that appellant's left shoulder range of motion findings as follows: abduction at 45 degrees, forward flexion at 45 degrees, rotation at

40 degrees, external rotation at 60 degrees, extension at 30 degrees and abduction at 15 degrees. He also noted appellant's complaints of pain at extremes of flexion and abduction. Left shoulder x-rays revealed spurring of the greater tuberosity and cystic changes in the head of the humerus. Dr. Hunt determined that appellant had left shoulder strain and cervicothoracic strain with secondary radiculopathy. He noted that he had requested authorization for an MRI of the left shoulder and the cervicothoracic spine, a nerve conduction study and an electromyography in order to provide a more comprehensive medical evaluation. Dr. Hunt stated:

"In 1988 [appellant] injured his left shoulder, was treated and recovered. On January 10, 1995 [appellant] suddenly twisted and injured his back. As the pain in the low back increased, [he] resorted to a cane and ultimately to crutches, to relieve the stress on his back. It was after using the crutches for a period of time that [he] noted the onset and continuance of pain in the left shoulder. As the left shoulder pain is the result of the treatment for the low back condition, I believe it is related to the injury of January 10, 1995 and should be treated as such."³

In an August 14, 1997 merit decision, the Office denied appellant's request on the grounds that the evidence of record failed to establish that appellant sustained a work-related condition of left shoulder strain. The Office stated that appellant's treating physician related appellant's condition to the "January 10, 1995 traumatic work incident, rather than any occupational factors of federal employment."

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

The Board has held that a second nonemployment-related injury is compensable if it is the direct and natural result of an earlier injury. That is, if the second injury is sustained as a consequence of a residual resulting from a previous industrial injury, the second injury is deemed to arise out of and in the course of employment because of the chain of causation.⁴

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁵ This is particularly true where, as in this case, appellant's treating physician has provided a comprehensive medical examination establishing that appellant's condition was caused by a traumatic injury, although he failed to establish causation associated with an employment factor.⁶

Although the reports of Dr. Hunt are insufficient to discharge appellant's burden of establishing that his left neck and shoulder conditions were causally related to the January 10,

³ Dr. Hunt, on June 4, 1997, requested authorization for a left shoulder MRI which the Office, on June 18, 1997, rejected.

⁴ *Margaret B. Rogler*, 43 ECAB 1034, 1038 (1992).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ The Board notes that appellant's claim form was for an occupational disease rather than a traumatic injury.

1995 work-related ruptured disc or the March 9, 1988 work-related left shoulder injury, in the absence of medical evidence to the contrary, the reports constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.⁷ For example, in his April 22, 1996 medical report, Dr. Hunt stated that appellant's left shoulder pain was caused by appellant's reliance on a cane and crutches which in turn were used by appellant as a result of a work-related injury.

On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's left neck and shoulder condition to his federal employment.

The August 14, 1997 decision of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
August 25, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ See *Horace Langhorne*, 29 ECAB 821 (1978).