

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTOPHER K. HAYES and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS STATION, Goose Creek, SC

*Docket No. 98-803; Submitted on the Record;
Issued August 24, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that his continuing disability is causally related to his accepted October 23, 1992 employment injury.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof to establish that his continuing disability is causally related to his accepted October 23, 1992 employment injury, as alleged.

In the present case, the Office of Workers' Compensation Programs accepted that on October 23, 1992 appellant, then a 25-year-old lineman, sustained a right shoulder strain while pulling guy wires in the performance of duty. On July 8, 1993 appellant was released by his physician to full duty without restrictions. Appellant stopped work again on July 11, 1993, alleging that he had reinjured his right shoulder. Appellant did not return to work, and on October 23, 1993 his temporary appointment expired. After receiving several letters from appellant requesting continuing disability, the Office advised appellant to submit a claim for a recurrence of disability. Appellant filed a claim for recurrence of disability on April 1, 1997, stating that his condition was actually a continuation of his previously accepted shoulder condition, rather than a recurrence. In a decision dated September 10, 1997, the Office denied appellant's claim on the grounds that he had not submitted sufficient factual evidence to establish his right shoulder reinjury was employment related and was not the result of an independent intervening cause.

Regardless of whether appellant's current condition is a new injury or a recurrence or aggravation of a previously accepted condition, appellant still bears the burden of proof to establish that he has a disabling medical condition causally related to his employment, either as a primary injury or as a direct cause thereof. An employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the

claim.¹ In addition, it is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause, which is attributable to the employee's own intentional conduct.²

In the present case, appellant has failed to establish his claim for continuing disability causally related to his accepted employment injury because his accounts of his alleged employment injuries are inconsistent and indicate that appellant's current condition is most likely the result of an independent intervening cause, specifically, that appellant, having been medically released to full duty without restrictions, reinjured his right arm playing softball. The record contains a notation from the employing establishment stating that on July 11, 1993 appellant reinjured his right arm while playing softball and was off work for two weeks. This statement is confirmed by the chart notes from appellant's treating physician, Dr. John M.J. Ernst, a Board-certified orthopedic surgeon. In his chart note dated July 21, 1993, Dr. Ernst stated that appellant "had an episode while he was playing softball as a cutoff man and throwing the ball hard with abduction and external rotation. He experienced acute pain in his shoulder, holding his shoulder internally rotated." Although Dr. Ernst does not mention the date of this reinjury in his July 21, 1993 notes, in a subsequent chart note dated September 2, 1993, the physician indicated that appellant's right shoulder reinjury occurred on July 11, 1993. In a letter to his congressman and in his narrative statements, appellant subsequently denied injuring his right shoulder playing softball, stating that his supervisor told him to report his injury as having occurred while playing softball. This conflicts, however, with the version of events given by appellant to Dr. Howard L. Brilliant, a Board-certified orthopedic surgeon and Office second opinion physician. In his report dated February 15, 1994, Dr. Brilliant noted that, while the record indicated that appellant had reinjured his arm playing softball, appellant had specifically denied this account, stating that "he really did n[o]t hurt his shoulder playing baseball and he just said this because he had missed four days of work because he was moving." In his most recent narrative statement, dated April 7, 1997, appellant offers yet another version of events. Appellant specifically stated that on several occasions following his original October 23, 1992 injury, he had been ordered by his supervisor to work outside his restrictions or risk being terminated. He further explained that on July 25, 1993 he was again working full capacity while he was supposed to be on light duty when he reinjured his right shoulder climbing a pole that was inaccessible by other employees. He stated that his supervisor told him to report that he had injured his arm over the weekend. As noted above, however, appellant's statement that he reinjured his arm on July 25, 1993 conflicts with Dr. Ernst's chart notes which indicate that appellant had reinjured his arm prior to that date and further conflicts with the statement of the employing establishment that appellant had reinjured his right shoulder on July 11, 1993 and had taken two weeks off from work. Finally, appellant's statement that he reported his injury as softball related under orders from his supervisor conflicts with his own statement to Dr. Brilliant that he simply said his injury was softball related because he had missed four days of work while moving.

¹ *Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Carmen Dickerson*, 36 ECAB 409, 415 (1985).

² *Robert W. Meeson*, 44 ECAB 834 (1993).

As the record is fraught with factual inconsistencies regarding the cause of appellant's current right shoulder pain and it appears that his current shoulder condition is the result of an independent intervening cause, the Office properly determined that he did not meet his burden of proof to establish that his continuing disability is causally related to his accepted October 23, 1992 employment injury.

The decision of the Office of Workers' Compensation Programs dated September 10, 1997 is affirmed.

Dated, Washington, D.C.
August 24, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member