

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROY G.M. ROBINS, SR. and DEPARTMENT OF THE NAVY,  
BARBERS POINT NAVAL AIR STATION, Ewa, HI

*Docket No. 99-604; Submitted on the Record;  
Issued December 6, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on October 8, 1996 causally related to his June 20, 1996 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on October 8, 1996 causally related to his June 20, 1996 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>1</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

The Board has held that when there is no direct relationship between an employment-related injury and a subsequent nonemployment injury, the second injury is an independent, intervening incident and is not compensable. On the other hand, where the second injury is a consequence of an impairment residual of the employment injury, the second injury is deemed,

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<sup>1</sup> *Charles H. Tomaszewski*, 39 ECAB 461 (1988); *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>2</sup> *Mary S. Brock*, 40 ECAB 461 (1989); *Nicolea Bruso*, 33 ECAB 1138 (1982).

<sup>3</sup> *Michael Stockert*, 39 ECAB 1186 (1988).

because of the chain of causation, to arise out of and to be in the course of employment and is compensable.<sup>4</sup>

On June 20, 1996 appellant, then a 44-year-old crane operator, sustained a thoracic strain in the performance of duty.<sup>5</sup> He returned to work on June 21, 1996 but was off work from June 27 to 30, 1996. He was released to return to full duty on July 1, 1996 by Dr. Chuen Lau, a Board-certified family practitioner and physiatrist.

On May 28, 1997 appellant filed a claim for a recurrence of disability on October 8, 1996, which he attributed to his June 20, 1996 employment injury. In a statement dated July 28, 1997, appellant indicated that during the months of August and September 1996 he was having frequent pain due to his June 20, 1996 employment injury but did not seek medical treatment until October 8, 1996.

By decision dated October 6, 1997, the Office of Workers' Compensation Programs denied appellant's claim for recurrence of disability on October 8, 1996. By decisions dated November 17, 1997 and February 24, March 30 and October 28, 1998, the Office denied modification of its October 6, 1997 decision.<sup>6</sup>

In notes dated October 8, 1996, Dr. Glenda Malana, an internist, related that appellant had experienced pain in his right shoulder and arm for one month after lifting a vehicle transmission. There is no reference by Dr. Malana to any relationship between the transmission incident and the June 20, 1996 employment injury. Telephone records from appellant's treating facility dated October 4 and 7, 1996 provide a history of right shoulder pain "ever since I was removing the transmission from my car."<sup>7</sup> These notes indicate that appellant's shoulder condition was causally related to the transmission incident in September 1996; therefore, they do not establish that he sustained a recurrence of disability on October 8, 1996, as alleged. Furthermore, the medical evidence of record lacks any explanation of why appellant did not seek medical attention

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<sup>4</sup> See *Robert W. Meeson*, 44 ECAB 834 (1993) (finding that the claimant's reinjury of his back in a nonwork-related automobile accident constituted an independent intervening nonindustrial cause of his claimed disability); see *John R. Knox*, 42 ECAB 193 (1990) (finding that the claimant's reinjury of his left knee in a nonwork-related basketball game constituted an independent intervening cause attributable to his own intentional conduct).

<sup>5</sup> In an emergency room report dated June 20, 1996, Dr. Douglas Davenport provided a diagnosis of right thoracic strain. In a report dated June 27, 1996, Dr. Chuen Lau diagnosed a cervical strain and mid back strain.

<sup>6</sup> The Board notes that the case record contains new evidence submitted subsequent to the issuance of the Office's October 28, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

<sup>7</sup> In a letter dated September 3, 1997 appellant stated that his neighbor was working on the transmission of appellant's truck as a favor to him and had the transmission supported by a floor jack when appellant grasped the light tail end of the transmission and helped to set it in place. He estimated that he exerted only 5 to 10 pounds of weight and pressure in installing the transmission.

for his condition between his June 27, 1996 visit to Dr. Lau, when he was released to full duty and his October 8, 1996 visit to Dr. Malana.<sup>8</sup>

In notes dated April 15, 1997, Dr. Karen B. White, a Board-certified internist, related appellant's complaint of right shoulder pain after "lifting under truck." There is no reference to the June 20, 1996 employment injury. Therefore, these notes are not sufficient to meet appellant's burden of proof.

In a report dated May 27, 1997, Dr. Robert A. Gomez, appellant's attending orthopedic surgeon, provided a history of appellant's condition and related that appellant had experienced persistent pain in his right shoulder since his June 20, 1996 employment injury. He provided findings on examination and his impression of a right shoulder impingement syndrome. In a form report dated June 26, 1997, Dr. Gomez indicated that appellant could perform limited duty commencing May 27, 1997. In notes dated July 11, 1997, he related that appellant continued to have pain from a chronic impingement syndrome secondary to his June 1996 lifting accident. In a report dated July 29, 1997, Dr. Gomez related that appellant underwent right shoulder surgery on July 21, 1997. He opined that appellant's symptoms were causally related to the June 20, 1996 employment injury.

Dr. Gomez provided insufficient medical rationale explaining how appellant's impingement syndrome was causally related to the June 20, 1996 employment-related thoracic strain. Additionally, he made no reference to the incident in September 1996 when appellant assisted in lifting a motor vehicle transmission. Therefore, his opinion as to causal relationship is not based on a complete and accurate factual background. Due to these deficiencies, his reports are not sufficient to establish that appellant sustained a recurrence of disability on October 8, 1996 causally related to his June 20, 1996 employment injury.

In a report dated October 17, 1997, Dr. Gomez stated:

"According to [appellant] the injury occurred on June 20, 1996 while lifting a 50-pound outrigger pad. He was seen in the emergency room ... where he was noted to have a right thoracic parascapular injury.... It should be noted at this time that the injury that occurred while lifting a 50-pound outrigger pad is absolutely consistent with that which typically causes impingement syndrome. Part of impingement syndrome includes trapezius spasm, which can be difficult to differentiate between cervical and thoracic as well as parascapular injury.... If [appellant] had truly had an upper back injury it would have been localized to the upper back and not parascapular as described by the treating physicians. According to [appellant] he then subsequently had some baseline discomfort but was able to return to work and continued working. He suffered an exacerbation at home while installing a transmission, however, this is an exacerbation of the injury that occurred on June 20, 1996. [Appellant] continued to try to work in spite of his discomfort, however, the pain continued to worsen....

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<sup>8</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988).

“[Appellant’s] history as well as the chart is consistent with impingement syndrome that began on June 20, 1996, which has persisted, was exacerbated by lifting the transmission and was subsequently treated by arthroscopic subacromial decompression ... on July 21, 1997.”

Dr. Gomez fails to explain how appellant’s condition was caused by his June 20, 1996 employment injury rather than by the incident in September 1996 when he assisted with lifting a transmission. In his reports dated May 27, June 26 and July 29, 1997, Dr. Gomez did not mention the transmission incident. Not until his October 17, 1997 report, which followed the Office’s October 6, 1997 denial of appellant’s recurrence claim, did Dr. Gomez mention the transmission incident. Dr. Gomez was not appellant’s treating physician until seven months after the alleged recurrence of disability and he has not provided sufficient medical rationale explaining how appellant’s impingement syndrome was causally related to the June 20, 1996 employment injury. Therefore, this report is not sufficient to meet appellant’s burden of proof.

In a letter dated April 13, 1998, Dr. Gomez stated:

“I have nothing new to add at this point. [Appellant] ... has been consistent in his statement that the [employment] injury occurred on June 20, 1996 while lifting a 50-pound outrigger pad. He states that lifting the transmission was a mild exacerbation of his underlying discomfort. This is consistent with impingement syndrome. Intraoperative findings of chronic synovitis and bursal scarring are also consistent with his description of events.”

Dr. Gomez based his opinion on causal relationship primarily on the history given to him by appellant. He provided no medical rationale showing causal relationship between the alleged recurrence of disability on October 8, 1996 and the June 20, 1996 employment injury.

In a letter dated May 11, 1998, Dr. Amy Kogut, a Board-certified family practitioner, stated that she had reviewed appellant’s chart and felt that his injury was consistent with impingement syndrome, which likely began on June 20, 1996 and was subsequently treated by surgery in 1997. However, she failed to provide sufficient medical rationale explaining why the condition was causally related to the June 20, 1996 employment injury rather than to the transmission incident. Therefore, her opinion is insufficient to meet appellant’s burden of proof.

In a report dated May 29, 1998, Dr. John Rochat, a Board-certified family practitioner, related that when he first examined appellant,<sup>9</sup> he treated him without a detailed knowledge of his injury history. He stated that appellant later gave him a detailed history in which he stated that his right shoulder pain began on June 20, 1996 after he lifted an outrigger pack weighing more than 50 pounds and that he continued to have pain until a surgical correction by Dr. Gomez on July 21, 1997. Dr. Rochat related appellant’s statement that he initially took 2 to 3 days off from work but was able to continue working until his surgery.

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<sup>9</sup> The record shows that he treated appellant on December 4, 1996.

This report is not based upon a complete and accurate factual history, as it does not reference the transmission incident. Further, Dr. Rochat did not provide a rationalized medical opinion as to how the alleged recurrence of disability of October 8, 1996 was causally related to the June 20, 1996 employment injury. Therefore, this report is not sufficient to establish that appellant sustained a work-related recurrence of disability.

In a report dated June 8, 1998, Dr. White stated that she first saw appellant on April 15, 1997 when he complained of right shoulder pain after lifting while working under a truck. She related appellant's statement that the pain had been present for one year. Dr. White indicated that due to the various etiologies listed in the medical notes and reports it was difficult to determine the cause of appellant's pain. Because Dr. White did not opine that appellant's condition was causally related to his June 20, 1996 employment injury, her report does not establish that appellant sustained a recurrence of disability on October 8, 1996 causally related to his June 20, 1996 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>10</sup>

Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury. Considering all the circumstances of this case including appellant's return to regular duty effective July 1, 1996, his failure to seek medical treatment between June 27 and October 8, 1996, the transmission incident in September 1996 and the lack of sufficient medical rationale explaining causal relationship, the Office properly denied appellant's claim for a recurrence of disability on October 8, 1996.

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<sup>10</sup> See *Walter D. Morehead*, 31 ECAB 188 (1986).

The decisions of the Office of Workers' Compensation Programs dated October 28, March 30 and February 24, 1998 are hereby affirmed.

Dated, Washington, DC  
December 6, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member