# United States Department of Labor
# Employees' Compensation Appeals Board

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| **CRAIG S. IRVINE, Appellant** | ) | |
| **and** | ) | **Docket No. 04-2084** |
| | ) | **Issued: April 14, 2005** |
| **U.S. POSTAL SERVICE, BEACHWOOD AUXILLARY GARAGE, Cleveland, OH, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.,* for the appellant
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

### ***JURISDICTION***

On August 23, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated October 15, 2003 and July 23, 2004 which denied his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant established that he sustained a recurrence of disability on or about December 25, 2001 causally related to his accepted work injury of March 30, 1992.

### ***FACTUAL HISTORY***

On April 21, 1992, appellant, then a 35-year-old automobile mechanic, filed a traumatic injury claim alleging that he sustained injuries to his back as a result of a work-related motor vehicle accident on March 30, 1992, assigned No. 9-365589. The Office accepted the claim for thoracic/shoulder strain. Appellant did not lose any time from work due to this injury but was placed on limited duty until June 6, 2002 at which time he returned to full duty. Appellant

sustained an additional injury to his neck on August 8, 1992 when he was attacked by an intruder at his home. After this incident, appellant stopped work and remained off work until February 12, 1993 when he was released to unrestricted duty.

In a report dated November 5, 1993, Dr. Dean Erickson, a treating Board-certified internist, stated that appellant could perform his regular position as a mechanic because he would have "problems with prolonged reaching and above shoulder work." He further concluded:

> "I have felt in the past and continue to feel that the exacerbation he sustained from the nonwork-related personal injury was responsible for his period of total temporary disability from August 1992 through February of 1993 but currently is not responsible for his ongoing activity restrictions. Again, the basis for this is that he was on restrictions and still completing a diagnostic evaluation at the time of his nonoccupational personal injury in August of 1992."

On July 26, 1994 appellant accepted a rehabilitation job offer from the employing establishment as a modified automobile mechanic.

In a medical report dated April 8, 2002, Dr. Erickson stated that appellant had a cervical strain with plexopathy and an active radiculopathy. He noted:

> "[Appellant] is continued on restrictions essentially at a light level. This is outlined in a [CA-7 form] with a 20-pound occasional, 10-pound continuous lifting restriction limited however to 2 hours a day. He also has restrictions on climbing, bending, stooping, twisting, pushing pulling to two hours a day on an intermittent basis and no reaching above the shoulder through June 3, 2002 at which time I will see him in follow-up."

On April 10, 2002 the employing establishment made an offer of limited-duty employment as a modified automobile mechanic. However, appellant declined this offer.

On June 3, 2002 appellant filed a Form CA-2a alleging a recurrence of his March 30, 1992 employment injury commencing before Christmas 2001 and indicated that he stopped work on April 4, 2002. He noted that his condition became progressively worse "in the last two years." Appellant indicated that he tried to see a doctor but did not receive the necessary paperwork for almost two months. He indicated that he experienced chronic pain in his neck and right shoulder that spread to the back, if aggravated. Appellant acknowledged that he sustained a neck muscle sprain in August 1992 after being attacked by an assailant, but noted that he "[r]eturned to baseline condition after a few months." On the same date, appellant filed a claim for compensation for the period April 4 to June 7, 2002.

By decision dated October 15, 2002, the Office denied appellant's claim as it found that he had not established fact of occupational disease purportedly filed on June 3, 2002 and assigned Office File No. 9-2023402.

By letter dated October 23, 2002, appellant requested a hearing and submitted an October 7, 2002 medical report from Dr. Teresa Ruch, a Board-certified neurosurgeon, who noted that appellant had been in an accident on March 30, 1992 and that he indicated that, over

the last several years his pain, loss of feeling and mobility got worse until in December 2001 he could not do his physical activities anymore. She indicated that appellant's diagnostic magnetic resonance imaging scan showed "a syringomyelia of the cervical cord." Dr. Ruch indicated, "This may well be from his original accident and just has come up over the last few years from progressive scar tissue, etc." She recommended further testing and opined that appellant was "never going to be able to work again at any kind of physical job."

In a report dated December 10, 2002, Dr. Erickson reviewed his treatment of appellant and opined that appellant was unable to perform his regular duties as an auto mechanic based on his objective findings including the significant neurologic abnormality in the cervical spine coupled with the objective abnormalities on examination. He indicated that appellant was indefinitely restricted to intermittent 10-pound lifting and carrying up to 1 to 2 hours a day with restrictions on climbing, kneeling, bending, stooping, twisting, pushing, pulling, simple grasping and fine manipulation limited to 1 hour a day. He diagnosed appellant with "cervical strain with plexopathy with C6 radiculopathy as well as an underlying cervical spine syrinx/syringomyelia."

By decision dated June 4, 2003, the hearing representative determined that appellant's claim was not in posture for decision. The hearing representative found no evidence that appellant had filed a claim for an occupational disease and that the Office should develop the medical evidence and consider whether he sustained a recurrence of his March 30, 1992 work injury. The case was remanded and the case files combined under No. 9-365589.

By letter dated July 30, 2003, the Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for a second opinion. In a report dated August 25, 2003, Dr. Kaffen diagnosed remote cervical strain, thoracic strain and right shoulder strain which was not currently active or causing objective symptoms. He also noted syringomyelia of the cervical cord which was a preexisting condition and not related to the injury of March 30, 1992. He noted:

> "It is my opinion based on the history and physical examination and review of the medical record, that the preexisting condition of syringomyelia has not been aggravated, accelerated or precipitated by [appellant's] work injury. If a syringomyelia is secondary to trauma, it is due to hemorrhage within the spinal cord, which would have caused [appellant] to seek treatment immediately. In addition, he had a second injury on August 2, 1992 when he was thrown from a porch. It would seem more likely that he would sustain a more severe injury to his neck in the latter accident than the first. His physical findings are due to the natural progression of syringomyelia."

Dr. Kaffen indicated that no further treatment was required for the allowed conditions. He also noted that appellant was unable to return to work as an auto mechanic without restrictions, but was able to return to the limited duty he had been performing prior to April 4, 2002.

By letter dated September 2, 2003, the Office forwarded Dr. Kaffen's report to Dr. Erickson for comments but no response was received.

By decision dated October 15, 2003, the Office denied appellant's claim for recurrence of disability, finding that the weight of the medical evidence rested with the opinion of Dr. Kaffen who opined that appellant required no further treatment for the accepted work-related injury. The Office noted that Dr. Erickson had not responded to the letter requesting his comments.

By letter dated October 31, 2003, appellant requested a hearing. At the hearing held on May 18, 2004 appellant testified that he had not worked since June 2002.

By decision dated July 26, 2004, the hearing representative affirmed the October 15, 2003 decision.

## ***LEGAL PRECEDENT***

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[1]

## ***ANALYSIS***

The Office accepted that as a result of the March 30, 1992 employment-related accident, appellant sustained a thoracic, right shoulder and cervical strain. Appellant was initially placed on limited duty and returned to full duty on July 30, 1992; he lost no time from work at the time of the injury. As a result of a nonwork-related incident on August 2, 1992, where appellant was attacked at his home, he stopped work for several months, and returned to unrestricted duty in February 1993. Appellant claimed a recurrence of disability commencing on or about December 25, 2001.

The medical evidence commencing in late 2001 does not establish a recurrence of appellant's work-related disability. Dr. Ruch indicated that appellant's syringomyelia of the cervical cord "may well be from his original accident...." However, her opinion is speculative; the Board has held that opinions based on an incomplete history or which are speculative or equivocal in character are of diminished probative value.[2] As the Office had not accepted syringomyelia as employment related, appellant had the burden of proof to establish causal relationship.[3] Dr. Erickson did not relate appellant's condition after late 2001, specifically his syringomyelia of the cervical cord, to the accepted 1992 work-related motor vehicle accident. In a report dated December 10, 2002, Dr. Erickson did not relate appellant's medical condition to his accepted work injury. The only physician who had an opinion with regard to the causal

[1] *Ralph C. Spivey*, 53 ECAB 248 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[3] *See Charlene R. Herrera*, 44 ECAB 361 (1993).

relationship of appellant's post 2001 medical condition was Dr. Kaffen, the second opinion physician. Dr. Kaffen stated that appellant had a preexisting condition of syringomyelia which was not aggravated by the accepted work injury. He noted that had the syringomyelia been secondary to trauma, it would have caused appellant to seek treatment immediately. Dr. Kaffen also noted that the April 2, 1992 nonwork-related incident was more likely to have caused such a severe injury. However, he opined that the syringomyelia was caused by natural progression of the condition. He noted that no further treatment was required for appellant's accepted conditions as they were not active and not causing objective symptoms. Dr. Kaffen clearly opined that appellant's current medical condition was not a recurrence of his accepted work injury and supported this conclusion with sufficient medical rationale. The Board finds that this opinion constitutes the weight of the medical evidence. Accordingly, the Office properly denied appellant's claim for a recurrence of his work-related injury.

## ***CONCLUSION***

Appellant had not established that he sustained a recurrence of disability causally related to his accepted work injury of March 30, 1992.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated July 23, 2004 and October 15, 2003 are affirmed.

Issued: April 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member