

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

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<b>CHRISTOPHER W. MILLER, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 05-847</b>
	)	<b>Issued: July 22, 2005</b>
	)	
<b>U.S. POSTAL SERVICE, FORT POINT STATION, PARCEL POST DELIVERY UNIT, Boston, MA, Employer</b>	)	
	)	
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*Appearances:*  
*Christopher W. Miller, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

*Before:*  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 28, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated January 5, 2005, denying his claim for a recurrence of disability from November 6 to 16, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability from November 6 to 16, 2003 causally related to his accepted left rotator cuff tendinitis sustained on or before April 5, 2000. On appeal, appellant asserted that, in its January 5, 2005 decision, the Office confused evidence in his case with another employee's claim for a May 24, 2004 hand laceration.

**FACTUAL HISTORY**

The Office accepted that, on or before April 5, 2000, appellant, then a 53-year-old assignment clerk and carrier expeditor, sustained left rotator cuff tendinitis due to lifting, pulling

and pushing heavy parcels while in the performance of duty. He did not stop work at the time of the claim.

In a May 2, 2000 narrative report, Dr. Jeffrey L. Zilberfarb, an attending Board-certified orthopedic surgeon of professorial rank, noted a history of appellant flexing and extending his left shoulder with a 50-pound load, causing sharp pain in the posterior shoulder at the glenohumeral joint. On examination Dr. Zilberfarb was able to reproduce appellant's pain symptoms and found positive apprehension, sulcus and impingement signs at the left shoulder. Dr. Zilberfarb diagnosed left shoulder instability with rotator cuff tendinitis. He administered a subacromial corticosteroid injection and prescribed physical therapy.<sup>1</sup> In an accompanying form report, Dr. Zilberfarb released appellant to work with lifting limited to 10 pounds and no overhead work.

On November 17, 2003 appellant filed a notice of recurrence of disability commencing November 6, 2003, at which time he was on full duty. He was off work from November 7 to 16, 2003. Appellant asserted that the "overextension of lifting and moving heavy equipment exacerbated the physical condition." He noted that he sought treatment on November 10, 2003 from Dr. David August, an attending Board-certified orthopedic surgeon.

The record contains medical evidence pertaining to a Christopher W. Miller, born in August 1968. A May 24, 2004 emergency room discharge instruction sheet from St. Joseph's Mercy Health Center mentions a "cut hand" requiring sutures. A June 3, 2004 follow-up note indicates that sutures were removed from the patient's left hand that day. These forms were received by the Office on or before September 27, 2004.

In a November 18, 2004 letter, the Office advised appellant of the type of additional evidence needed to establish his claim. The Office noted that appellant had not submitted any medical evidence regarding the accepted condition dated between August 20, 2000 and 2004 and that updates were needed to bridge this gap. The Office instructed appellant to submit a detailed narrative report from his attending physician explaining how and why current clinical findings were related to the accepted left shoulder condition and would cause the claimed period of disability. The Office emphasized that appellant's "physician's opinion [was] crucial to the claim." Appellant was afforded 30 days in which to submit such evidence. The record indicates that appellant did not submit any additional evidence.

By decision dated January 5, 2005, the Office denied appellant's claim for a recurrence of disability on the grounds that he submitted insufficient medical evidence to establish the claimed period of disability. The Office found that the May 24 and June 3, 2004 reports regarding the left hand laceration were the only medical evidence received following appellant's November 17, 2003 claim for recurrence of disability.<sup>2</sup>

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<sup>1</sup> Appellant submitted physical therapy notes dated from May 15 to August 2, 2000.

<sup>2</sup> Appellant submitted new evidence accompanying his request for appeal. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Such evidence may be submitted to the Office pursuant to a request for reconsideration.

## LEGAL PRECEDENT

The Office's implementing regulations define a recurrence of disability as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."<sup>3</sup> When an appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. This burden includes the necessity of furnishing evidence from a qualified physician, who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician's conclusion.<sup>4</sup> An award of compensation may not be based on surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.<sup>5</sup>

## ANALYSIS

The Office accepted that appellant sustained left shoulder rotator cuff tendinitis in the performance of duty due to heavy lifting on or before April 5, 2000. Following this injury, he resumed full duty with physical limitations and no lost time from work. On November 17, 2003 he filed a claim for recurrence of disability from November 6 to 16, 2003.

In a November 18, 2004 letter, the Office advised appellant of the need to submit a detailed narrative report from his attending physician supporting a causal relationship between the accepted left shoulder condition and the claimed period of disability. However, appellant did not submit such evidence. There is no medical evidence of record addressing the claimed period of recurrence of disability. Although appellant mentioned in his November 17, 2003 claim form that he sought treatment on November 10, 2003 from a Dr. August, he did not submit any documentation from this visit.

As appellant did not submit medical evidence supporting the claimed causal relationship between a period of disability for work from November 6 to 16, 2003 and the accepted left rotator cuff tendinitis, he has failed to meet his burden of proof.<sup>6</sup>

On appeal, appellant contended that the Office's January 5, 2005 decision was in error as it was predicated on evidence that pertained to another claimant with a name similar to his. The Board finds that the May 24 and June 3, 2004 documents regarding a left hand laceration do not pertain to appellant, as the patient described was born in August 1968 and appellant was born in January 1947. However, under the circumstances of this case, the Office's discussion of these

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<sup>3</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Philip L. Barnes*, 55 ECAB \_\_\_\_ (Docket No, 02-1441, issued March 31, 2004).

<sup>4</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>5</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>6</sup> *Ricky S. Storms*, *supra* note 4.

documents is harmless error that does not affect the conclusion that appellant failed to submit medical evidence in support of the claimed recurrence of disability.

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof as he did not submit medical evidence establishing that he sustained a recurrence of disability from November 6 to 16, 2003 causally related to his accepted left shoulder tendinitis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 5, 2005 is affirmed.

Issued: July 22, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board