

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SALVATORE BUONO and U.S. POSTAL SERVICE,  
POST OFFICE, Providence, RI

*Docket No. 97-1310; Submitted on the Record;  
Issued July 23, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability, due to his January 31, 1986 employment injury, commencing in 1988.

The Office of Workers' Compensation Programs accepted appellant's claim for cervical radiculitis at C5-C6 and C6-C7, chronic impingement syndrome of the left shoulder and left carpal tunnel syndrome with release. This case is on appeal for the second time. In *Salvatore Buono*, Docket No. 90-1337, issued September 28, 1990 (unpublished), the Board remanded the case for further evaluation on the evidence as to whether appellant's January 31, 1986 employment injury was in fact work related. Appellant also sustained work-related injuries in 1977 and 1985. The Office subsequently accepted appellant's claim for the 1986 employment injury. On January 11, 1994 the Office awarded appellant a schedule award for a 17 percent permanent loss of use of his left upper extremity for the period from March 22, 1989 through March 28, 1990. On January 30, 1996 the Office awarded appellant a schedule award for a one percent additional permanent loss of use of the left arm from November 1 to 22, 1990.

On May 17, 1995 appellant filed a claim for a recurrence of disability, Form CA-2a, alleging that since he retired in 1988 he has been unable to work at all, was losing his "left side everyday" and was in "constant pain." Appellant stated that his original injury at work occurred in 1977 and he reinjured himself at work in 1985 and 1986. He stated that after his retirement he worked 20 hours a week or less for Mag Jewelry as a driver which involved driving a small jeep and picking up deliveries. Appellant stated that he would only handle small merchandise due to the fact that he could only do light-duty work. He stated that he was laid off in November 1994. By letter dated November 14, 1995, the Office informed appellant that additional evidence was needed to establish his claim including a narrative medical report from his treating physician explaining the causal relationship between his current disability and his original work injury. Appellant did not submit any evidence.

By decision dated January 19, 1996, the Office denied the claim, stating that the evidence of record failed to establish a causal relationship between the injury and the claimed condition.

By letter dated February 7, 1996, appellant requested an oral argument before an Office hearing representative which was held on September 17, 1996. Appellant also submitted a medical report from his treating physician, Ronald C. Hillegass, a Board-certified orthopedic surgeon, dated October 31, 1996. In his October 31, 1996 report, Dr. Hillegass considered that appellant was in a motor vehicle accident on July 16, 1991 and injured himself at work on September 10, 1985. He noted that appellant underwent release of the carpal tunnel and continued to have difficulty with his left hand as well as persistent pain in his neck. Dr. Hillegass stated that appellant developed some arthritic changes at the carpometacarpal joint of his thumb, and returned to work although he had persistent pain in his neck and left shoulder. He also stated that he treated appellant on November 28, 1990 for his neck and shoulder problem and treated him again on November 28, 1995 for complaints of pain in his neck, left shoulder, left wrist and hand. Dr. Hillegass stated that previous x-rays of the cervical spine revealed changes in the disc level at C6-C7 as well as at C5-C6 and C2-C3, x-rays of the left shoulder revealed calcification in the area of the partial acromionectomy and the rotator cuff and x-rays of the hand revealed arthritis involving the joints of the hand. He concluded that appellant's pain in his neck and left shoulder was related to the September 10, 1985 employment injury. Dr. Hillegass also noted that he did not see appellant from October 3, 1986 until March 22, 1989, although appellant was treated by Rhode Island Group Health Insurance during this time period. He stated that appellant told him that he had persistent pain in his neck and left shoulder since October 31, 1996 and had not worked since 1988. Dr. Hillegass concluded that appellant's "injuries most likely" precluded him from working during that period of time although, as noted, [he] did not see him frequently after 1989."

At the hearing, appellant's attorney stated that appellant had been disabled since 1988 when he retired from the employing establishment due to his inability to work on the job as a result of his work-related injuries. Appellant testified that he stopped working on February 24, 1988 because he "could not take the pain in [his] arm anymore." He stated he was unable to lift or move "anything." Appellant testified that, after his January 1986 employment injury, he was out of work for "some time" and when he returned to work, he returned to very light duty. Appellant stated that he was unable to move the hampers, push heavy dollies or lift objects which he was able to do prior to his injury. Appellant testified that he had pain in his shoulder most of the day, that his left arm felt numb and he tended to drop objects such as car keys. Appellant stated that, when he returned to work after the January 31, 1986 employment injury, his boss made him lift a very heavy object which aggravated his shoulder. He stated that he thought his boss picked on him because he could not do the work anymore. Appellant stated that he "loved" to work but he could not do it. Appellant's attorney stated that appellant waited until 1995 to file a claim for a recurrence of disability because appellant had thought the schedule award would continue for a long time but when it ended, he sought additional benefits.

By decision dated December 7, 1996, the Office hearing representative affirmed the Office's January 19, 1996 decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability, due to the January 31, 1986 employment injury, beginning in February 1988.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment 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 employment factors and supports that conclusion with sound medical reasoning.<sup>2</sup> An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.<sup>3</sup>

In the present case, the only medical evidence appellant submitted to support his claim for a recurrence of disability is Dr. Hillegass' October 31, 1996 report. In his report, Dr. Hillegass considered part of appellant's history of injury and reviewed x-ray results showing calcification in the area of the partial acromionectomy and the rotator cuff, arthritis in the joints of his hand and changes in the disc level at C2-C3, C5-C6 and C6-C7. He stated that the pain in appellant's neck and left shoulder were related to the September 10, 1985 employment injury. He also stated that appellant's injuries "most likely" precluded him from working from 1988.

Dr. Hillegass' opinion is insufficiently rationalized to establish that appellant's recurrence of disability is causally related to the January 31, 1986 employment injury or appellant's other employment injuries. The Board has held that a medical opinion which is equivocal or speculative is of diminished probative value.<sup>4</sup> Dr. Hillegass opined that appellant's pain in his neck and left shoulder were related to the September 10, 1985 employment injury but his statement that appellant's injuries "most likely" precluded him from working since 1988 is speculative. His opinion, therefore, fails to establish the requisite causal connection to establish appellant's claim for a recurrence of disability. The Office advised appellant of the medical evidence necessary to establish his claim and appellant failed to respond.

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>2</sup> *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>3</sup> *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>4</sup> *Alberta S. Williamson*, 47 ECAB 569, 573-74 (1996); *William S. Wright*, 45 ECAB 498, 504 (1994).

The decision of the Office of Workers' Compensation Programs dated December 7, 1996 is hereby affirmed.

Dated, Washington, D.C.  
July 23, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member