

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

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**BARNEY D. BAKER, Appellant**

**and**

**DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC & ATMOSPHERIC  
ADMINISTRATION, NATIONAL MARINE  
FISHERIES SERVICE, Seattle, WA, Employer**

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**Docket No. 04-1466  
Issued: October 7, 2004**

*Appearances:*  
*Barney D. Baker, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On May 12, 2004 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated April 22, 2004 and December 8, 2003 finding that he had not established a recurrence of disability due to his April 17, 2002 work-related injury. 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 sustained a recurrence of disability due to a medical condition causally related to his April 17, 2002 employment injury.

**FACTUAL HISTORY**

On April 30, 2002 appellant, then a 49-year-old fishnet minder, filed a traumatic injury claim alleging that on April 17, 2002 he sustained an injury to his left shoulder while lifting fish

and baskets of fish while in the performance of duty. Appellant did not stop work. The Office accepted the claim for left shoulder tendinitis.<sup>1</sup>

Appellant submitted an April 23, 2003 report from Dr. Fernando Vega, his treating physician and a Board-certified family practitioner, who referred him to physical therapy for chronic left shoulder tendinitis. He also submitted physical therapist reports from April 7, 9, 14 and 16, 2003 for treatment of biceps tendinitis with a date of onset approximately one year earlier.

On June 6, 2003 the Office advised appellant that he may have sustained a recurrence due to his April 17, 2002 work-related injury and advised him to submit a Form CA-2a, notice of recurrence, and additional information to support his claim.

On July 5, 2003 appellant requested authorization to change his doctor to Dr. Janet Christiansen, a Board-certified family practitioner. He indicated that he had not recovered from the April 17, 2002 work-related injury. On August 26, 2003 appellant submitted a CA-2a Form, indicating that he had not recovered from his April 17, 2002 injury and that it had been further aggravated by his work-related activities. Appellant indicated that he had not stopped work and that he only sought medical treatment. The employing establishment indicated that no changes had been made to appellant's regular duties.

On October 10, 2003 the Office advised appellant that the evidence submitted was insufficient to support his claim and requested that he submit a report from his doctor explaining with medical rationale whether his current condition is related to his April 17, 2002 injury. Appellant then submitted treatment notes from Dr. Vega dated October 9 and December 20, 2002 and March 13, 2003 indicating that appellant had left shoulder pain and tendinitis.

By decision dated December 8, 2003, the Office denied appellant's claim on the grounds that the evidence submitted failed to establish that he sustained a recurrence due to his April 17, 2002 injury.

On March 18, 2004 appellant requested reconsideration of the December 8, 2003 decision and submitted treatment notes dated June 27 and August 28, 2002 and physical therapy reports dated April 7, 9 and 16, 2003 and August 8 and 12, 2002.

By decision dated April 22, 2004, the Office denied modification of appellant's request for reconsideration on the grounds that he failed to establish by medical evidence that he sustained the recurrence of disability based on his April 17, 2002 work-related injury.

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<sup>1</sup> This Office, initially, administratively accepted the claim as it was "a simple, uncontroverted case which resulted in minimal or no time lost from work." Formal adjudication of the claim did not occur until appellant filed his recurrence claim.

## LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>3</sup> In this case, appellant has the burden of establishing that he sustained a recurrence of a medical condition causally related to his April 17, 2002 employment injury.<sup>4</sup> Recurrence of a medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is it an examination without treatment.<sup>5</sup>

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.<sup>6</sup>

## ANALYSIS

The Office accepted that appellant sustained left shoulder tendinitis on April 17, 2002. Appellant did not stop work as a result of his injury. The medical evidence submitted in support of his recurrence claim consists of treatment notes from Dr. Vega dated June 27, August 28 and December 20, 2002 and March 13, 2003 indicating that appellant had left shoulder pain and tendinitis. These reports are insufficient because they did not provide a rationalized medical opinion supporting a causal relationship between appellant's left shoulder condition and his April 17, 2002 original injury. For example, Dr. Vega did not note a history of the accepted injury, indicate whether appellant had been released from treatment, or explain why the need for continuing treatment would be attributable to the April 17, 2002 injury. Further, appellant's physical therapy reports dated April 7, 9 and 16, 2003 and August 8 and 15, 2002 have no probative value as a physical therapist is not a physician for the purposes of the Act; therefore, the physical therapy notes do not constitute medical evidence and thus appellant is unable to satisfy his burden of proof on causation through the submission of these physical therapy reports.<sup>7</sup> It is appellant's burden of proof to submit the necessary medical evidence to establish a

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>4</sup> *Joan R. Donovan*, 54 ECAB \_\_\_\_ (Docket No. 03-297, issued June 13, 2003).

<sup>5</sup> 20 C.F.R. § 10.5(y). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (March 2002) (addresses the evidence needed to adjudicate claims for recurrent medical care).

<sup>6</sup> *Joan R. Donovan*, *supra* note 4; *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>7</sup> See *Jennifer L. Sharp*, 48 ECAB 209 (1996).

claim for a recurrence. The record does not contain a medical report providing a reasoned medical opinion that appellant sustained a recurrence causally related to the April 17, 2002 employment injury. The Board accordingly finds that appellant did not meet his burden of proof and the Office properly denied the claim.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a recurrence of disability due to his accepted April 17, 2002 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 22, 2004 and December 8, 2003 are affirmed.

Issued: October 7, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member