

employing establishment advised the Office that her employment was terminated on May 24, 1997 as part of a reduction-in-force.

In a letter dated May 27, 2002, appellant, through her attorney, inquired about the status of a schedule award. In letters dated August 26, 2002, the Office advised her that she should file a claim for a schedule award if she sustained impairment and reached maximum medical improvement. It requested that appellant submit, a medical report from her attending physician that provided an estimate of any permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). The Office informed her that her claim was closed effective January 9, 1998 and that it had not received any medical reports or bills from a physician showing ongoing medical treatment or residuals of the May 5, 1997 employment injury. It requested that appellant submit all medical records for consideration.

The Office received medical reports dated October 10 to December 14, 2002 from Dr. Bruce E. Carlton, a Board-certified internist, who stated that appellant sustained a right rotator cuff tear as demonstrated by an April 26, 2001 magnetic resonance imaging (MRI) scan. Dr. Carlton estimated that she had a 43 percent impairment of the right arm which was the equivalent of a 26 percent impairment of the whole person.

On February 6, 2003 appellant filed a claim for a schedule award. In an April 22, 2003 letter, the Office advised her that it had not accepted that she sustained a right rotator cuff tear causally related to the May 5, 1997 employment injury. The Office defined a recurrence of disability as set forth by the provisions of the Federal Employees' Compensation Act. It addressed the factual and medical evidence that appellant needed to submit to establish entitlement to a schedule award or other compensation benefits.

In a July 8, 2003 letter, appellant, through her attorney, stated that she had not worked since May 24, 1997 and that she had not sustained any new injuries to the right shoulder. She indicated that a report from her doctor was forthcoming.

By decision dated December 1, 2003, the Office found that appellant did not sustain a recurrence of disability causally related to the May 5, 1997 employment injury. It noted that the requested medical evidence had not been received. The Office also denied appellant's entitlement to a schedule award on the basis that her current shoulder condition was not causally related to the employment-related right rotator cuff tendinitis.

In a December 12, 2003 letter, appellant, through her attorney, requested an oral hearing before an Office hearing representative. She contended that Dr. Carlton had provided a medical opinion establishing that she had continuing employment-related residuals.

At a June 21, 2004 hearing, appellant requested that her case be reopened for medical benefits and a schedule award. She did not seek compensation for total disability. Following the hearing, appellant submitted the August 11 and 16, 2004 reports of Dr. James M.T. Garrity, Board-certified in occupational medicine, who provided a history that she was treated for aggravation of the right shoulder after washing an automobile in March 2001. Dr. Garrity

opined that she sustained a rotator cuff tear and strain and that her recurrent symptomatology was “more likely than not” related to the May 5, 1997 employment injury.

On September 17, 2004 an Office hearing representative affirmed the denial of appellant’s claim for a recurrence of disability causally related to the May 5, 1997 employment injury. He found that appellant failed to submit rationalized medical evidence to establish her claim. The medical evidence did not establish a causal relationship between the right rotator cuff tear and the accepted right rotator cuff tendinitis.

Appellant requested reconsideration on October 1, 2004. She submitted an unsigned report dated July 26, 2004 from Dr. Gregory P. Duff, a Board-certified orthopedic surgeon, who diagnosed a chronic right rotator cuff tear/supraspinatus tear based on a history of the May 5, 1997 employment injury and his findings on physical and x-ray examination.

In a December 15, 2004 decision, the Office denied modification of the September 17, 2004 decision. It found that the evidence submitted by appellant was not well rationalized and insufficient to establish a causal relationship between the claimed right rotator cuff tear and the May 5, 1997 employment injury.

The Office received Dr. Garrity’s October 6, 2005 progress note which provided a history of the May 5, 1997 employment injury. He indicated that, at that time, appellant was diagnosed as having tendinitis and impingement syndrome. Dr. Garrity reiterated his prior opinion that appellant sustained a right rotator cuff tear that was “more likely than not” related to the May 5, 1997 employment injury. He stated that tendinitis and impingement were often all part of the continuum involved with injuries to the shoulder.

On November 14, 2005 appellant, through her attorney, requested reconsideration of the Office’s December 15, 2004 decision.

By letter dated November 30, 2005, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Stanley A. Kopp, a Board-certified orthopedic surgeon, for a second opinion medical examination.

The Office received Dr. Garrity’s December 9, 2005 x-ray report which found that appellant sustained a right shoulder sprain with resultant rotator cuff tendinitis. Dr. Garrity expressed concern about early rotator cuff arthropathy.

In a December 14, 2005 report, Dr. Kopp provided a history of the May 5, 1997 employment injury and appellant’s medical, family and social background. He reviewed her medical records including an April 26, 2001 MRI scan which he believed was an inadequate study due to severe motion artifact. Dr. Kopp stated that it was not clear how the radiologist read the MRI scan because the motion artifact was pretty severe which made it of poor quality. On physical examination, he reported limited range of motion to appellant’s shoulders. On sensory examination, Dr. Kopp reported a little bit sharper sensation on the forearm. Appellant had positive Neer’s and Hawkins’ signs, painful cross-body adduction, a negative load, shift, lift-off and belly press and O’Brien signs. Her vascular examination was normal. Dr. Kopp provided the measurements of appellant’s right and left arms and forearms. He reported no atrophy or

scapular winging at the supraspinatus fossa. Dr. Kopp stated that appellant experienced some pain with abduction and external rotation but, otherwise, her strength was good and her motor function was excellent. He agreed with the MRI scan diagnosis of a rotator cuff tear and stated that he would have repaired the 1997 rotator cuff tear at that time. Dr. Kopp recommended that an adequate MRI scan be taken before determining whether surgery was appropriate. He opined that appellant aggravated the May 1997 employment injury while washing a car in March 2001 and that this aggravation was related to the May 1997 employment injury. Dr. Kopp further opined that the 1997 mechanism “could have” torn her rotator cuff. He stated that the mechanism was consistent and that appellant had signs of impingement and/or a rotator cuff tear. Dr. Kopp further stated that, based on her age group, she “probably” had a rotator cuff tear. He opined that appellant sustained a recurrence of disability when she aggravated the accepted employment injury while washing a car in March 2001.

By letter dated January 12, 2006, the Office requested that Dr. Garrity review Dr. Kopp’s December 14, 2005 report and state whether he agreed with his findings. In a January 19, 2006 letter, Dr. Garrity stated that he essentially agreed with Dr. Kopp. He disagreed with Dr. Kopp’s finding that the 1997 mechanism could have torn appellant’s rotator cuff, stating that, otherwise, the 2001 aggravation due to washing a car would not have likely occurred. Dr. Garrity reiterated his opinion that the May 5, 1997 employment injury and its mechanism caused the rotator cuff tear on a “more likely than not” basis. He stated that this condition was work related and that appellant merely sustained a nonwork-related aggravation in 2001 as the rotator cuff had already been torn.

In a January 20, 2006 progress note, Dr. Garrity diagnosed a rotator cuff tear. In clarifying Dr. Kopp’s statement regarding appellant’s tear, Dr. Garrity stated that the original injury was of sufficient force to tear the rotator cuff. Appellant sustained only an aggravation of this condition as a result of the car washing incident.

By decision dated February 3, 2006, the Office denied modification of the December 15, 2004 decision. It found that both Drs. Kopp and Garrity opined that the March 2001 car washing incident aggravated appellant’s May 5, 1997 employment-related injury. The Office, however, found that this incident constituted an intervening cause. Therefore, appellant failed to establish that she sustained a recurrence of disability causally related to the accepted employment injury.

LEGAL PRECEDENT

A “recurrence of disability” means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.¹

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.² Appellant has the burden

¹ 20 C.F.R. § 10.5(x).

² *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.³ 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.⁴ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁵

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁶ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁷ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁸

ANALYSIS

In this case, the Office accepted that appellant sustained right rotator cuff tendinitis on May 5, 1997 as a result of putting a fuel tank into a box. She contends that she sustained a rotator cuff tear of the right shoulder as a result of the May 5, 1997 injury. Appellant submitted evidence establishing a tear of the right rotator cuff. The Office found that the claimed injury was not caused by the accepted employment injury and she did not sustain a recurrence of disability causally related to the May 5, 1997 employment-related injury. The Board finds that this case is not in posture for decision regarding whether appellant's rotator cuff tear of the right shoulder is causally related to the May 5, 1997 employment-related injury.

The Office referred appellant to a second opinion examination by Dr. Kopp. In a December 14, 2005 report, he stated that the April 26, 2001 MRI scan was inadequate and he did not understand how the radiologist could have read the scan due to a severe motion artifact which rendered the scan of poor quality. Yet, Dr. Kopp stated that he agreed with the MRI scan finding that appellant sustained a rotator cuff tear of the right shoulder. Dr. Kopp did not provide a definitive opinion explaining the causal relationship between appellant's rotator cuff tear and the May 5, 1997 employment-related injury. He opined that the accepted employment injury "could have" torn her rotator cuff. In addition, Dr. Kopp stated that he would have repaired the 1997 rotator cuff tear at that time. He also noted that appellant "probably" sustained

³ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁵ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁶ *See Ricky S. Storms*, *supra* note 4; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁷ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

⁸ *See Ricky S. Storms*, *supra* note 4; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

a rotator cuff tear based on her age. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.⁹ While Dr. Garrity agreed with Dr. Kopp that appellant sustained a rotator cuff tear of the right shoulder. However, he attributed the tear to the May 5, 1997 employment injury.

The Board finds that Dr. Kopp's opinion is not well rationalized as the physician did not adequately address the issue of causal relationship. His opinion on causal relation appears internally inconsistent and speculative and he failed to provide sufficient discussion of the history, case record and clinical examination of appellant. As such, the issue of whether appellant's rotator cuff tear of the right shoulder was caused by the May 5, 1997 employment-related injury remains unresolved. As the Office referred appellant to Dr. Kropp, it has the responsibility to resolve the issue in this case.¹⁰ The Office should seek clarification from Dr. Kopp as to whether the May 5, 1997 employment injury involved an undiagnosed rotator cuff tear which was concealed by other symptoms and was not diagnosed until 2001 when it worsened or whether the accepted employment injury weakened the right shoulder which made appellant more susceptible to sustaining a consequential rotator cuff tear which was caused or worsened by the March 2001 car washing incident or whether the rotator tear was due to the physical stress of some activity unrelated to appellant's federal employment. Following this and any other further development as deemed necessary, the Office should issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant sustained a recurrence of disability causally related to her May 5, 1997 employment-related injury.

⁹ *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006); *Cecelia M. Corley*, 56 ECAB ____ (Docket No. 05-324, issued August 16, 2005).

¹⁰ *See Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2006 decision of the Office of Workers' Compensation Programs be vacated and the case remanded to the Office for further proceedings consistent with this decision.

Issued: January 29, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board