

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUE A. LUEDTKE and U.S. POSTAL SERVICE,
POST OFFICE, Hamilton, Ohio

*Docket No. 96-1999; Submitted on the Record;
Issued June 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that her torn right rotator cuff is causally related to her accepted August 18, 1995 employment injury.

In the present case, on August 19, 1995 appellant filed a claim for traumatic injury (Form CA-1) alleging that on August 18, 1995 she was struck on her right shoulder by a falling tree branch during the performance of her duties as a rural mail carrier. Appellant did not stop work but on August 19, 1995 she did seek emergency room treatment from Mercy Hospital, where she was examined and x-rays were taken. Dr. Kenneth Koster, the emergency room physician, noted that the x-rays revealed a normal right shoulder with no evidence of fracture, dislocation or separation and normal periarticular soft tissues. Appellant was released to full duty. The Office of Workers' Compensation Programs accepted appellant's claim under the Office's "quick closure" procedures, which allow for minimal medical payments without identifying a specific condition as due to the injury. On September 12, 1995 appellant filed a notice of recurrence of disability. Appellant stated that subsequent to her return to work, she continued to experience pain in her shoulder and sought treatment from Dr. K. Scott Starks, a Board-certified orthopedic surgeon, who diagnosed a right rotator cuff tear.

In support of her claim for a recurrence appellant submitted a September 6, 1995 treatment note from Dr. Starks, noting the date of injury as August 18, 1995 and containing a diagnosis of right rotator cuff tear. Appellant also submitted a September 13, 1995 narrative medical report from Dr. Starks, in which he stated that appellant had returned to the office on September 6, 1995 for evaluation of her magnetic resonance imaging (MRI) scan of the right shoulder, which had revealed "a complete tear of the rotator cuff with about 2 cm. of retraction." In his narrative report Dr. Starks stated that surgical repair was advised and concluded that he "would agree completely with the patient's opinion that this represents a work related injury."

In a letter dated October 6, 1995, the Office acknowledged the receipt of appellant's September 12, 1995 claim and advised appellant that based on the initial medical reports from

Mercy Hospital emergency room, which contained an accurate history of injury and the initial x-rays, which were interpreted as normal, her claim was being accepted for a contusion of the right shoulder. The Office further informed appellant that the evidence submitted in support of her claim for recurrence was insufficient to establish that her right rotator cuff tear was due to the original accepted injury. The Office acknowledged the receipt of Dr. Starks' September 13, 1995 report, but noted that while Dr. Starks stated that appellant had "returned" to his office on September 6, 1995, the record did not indicate the date appellant first saw Dr. Starks and did not contain a copy of his original report. In addition, the Office noted that on the issue of causal relationship, Dr. Starks simply stated that he agreed with appellant's opinion that her right shoulder condition was related to the initial work injury, but did not give the history of the specific event on August 18, 1995 and did not give his medical basis to explain how the tree limb episode resulted in a rotator cuff tear. The Office requested that appellant submit additional factual and medical evidence and advised her as to the type of information necessary to establish her claim.

In response to the Office's request appellant submitted a narrative statement, in which she further described the accident. She stated that during a driving rain storm, she was reaching into a mailbox from her jeep when a tree limb fell, struck her extended arm and shattered the windshield. Appellant collected herself and attempted to complete her route but later, when she pulled a full tray of mail out of her truck, she felt an awful tearing sound in her right shoulder. Appellant also submitted a September 6, 1995 narrative medical report from Dr. Starks, in which he noted that appellant was first seen in his office on August 28, 1995. The report contained a diagnosis of right rotator cuff strain and noted that an MRI would be performed to rule out a tear. In describing the history of the injury, however, Dr. Starks stated:

"This 59-year-old right-handed female who is employed as a mail carrier was pulling a tray of mail about three weeks ago when she heard a crunch in the shoulder and noted pain on attempts to abduct the joint. She reports occasional flare-ups of discomfort since that time and sustained a direct blow to the right anterior superior shoulder on [August 15, 1995] when a tree limb fell into her jeep."

In a decision dated December 26, 1995, the Office denied appellant's claim for recurrence on the grounds that the evidence of record failed to demonstrate a causal relationship between the August 18, 1995 employment injury and the subsequently diagnosed rotator cuff tear and associated surgery.

Following the Office's decision, appellant submitted additional medical evidence from Dr. Starks, a Form CA-20, as well as a second claim for recurrence of disability. Upon receipt of this new evidence the Office explained to appellant in a letter dated February 2, 1996, the deficiencies in the medical evidence and advised appellant, on three separate occasions, to pursue one of her avenues of appeal if she wished further review of her claim.

In response to the Office's explanation of the deficiencies in the medical evidence, appellant submitted a May 17, 1996 medical report from Dr. Starks together with a narrative statement, in which she stated that she hoped the Office could "look over" her case.

In a letter dated June 14, 1996, the Office again advised appellant that no action would be taken on her claim unless she requested a specific right of appeal.

By letter postmarked June 10, 1996 and received by the Office on June 14, 1996, appellant requested a review of the written record. In a second letter dated postmarked June 10, 1996 and received by the Board on June 13, 1996, appellant filed an appeal with the Board.

In a decision dated July 18, 1996, the Office denied appellant's request for a review of the written record as untimely. The Office further informed appellant that it had determined that the issue in her claim could be equally well resolved by submitting new evidence on reconsideration.

The Board finds that appellant has not established that her torn right rotator cuff is causally related to her August 18, 1995 employment injury.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.¹ As part of this burden of proof, appellant must submit rationalized medical opinion evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.² The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.³ Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁴

In the present case, appellant has not submitted rationalized medical opinion evidence based on a complete and accurate history to support a finding that her torn right rotator cuff is causally related to her employment injury of August 18, 1995. In his report dated September 6, 1995, Dr. Starks related the history of appellant's injury as having occurred when she lifted a tray of mail around August 7, 1995, approximately three weeks prior to her initial treatment visit on August 28, 1995. He then stated that on August 18, 1995, appellant sustained a direct blow to her right shoulder when the tree limb struck her. This history of injury does not comport with the history of injury provided by appellant, who stated that both shoulder injuries, first the tree limb contusion and then the ripping sound when lifting the tray of mail, occurred on the same day. In addition, Dr. Starks does not provide, either in his September 6 or September 13, 1995 reports, his reasoned medical explanation as to how the tree branch incident, the mail tray incident, or both, caused the right shoulder tear and the consequent need for surgical intervention. As Dr. Starks' reports are both based on an inaccurate factual history and do not

¹ *Margaret A. Donnelly*, 15 ECAB 40 (1963).

² *Edgar L. Colley*, 34 ECAB 1691 (1983); *Daniel R. Hickman*, 34 ECAB 1220 (1983).

³ *Juanita Rogers*, 34 ECAB 544 (1983).

⁴ *Bruce E. Martin*, 35 ECAB 1090 (1984); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

contain the requisite rationalized opinion as to causal relationship between the accepted August 18, 1995 shoulder contusion and the subsequently diagnosed rotator cuff tear, they are insufficient to establish appellant's burden of proof.⁵

The decision of the Office of Workers' Compensation Programs dated December 26, 1995 is hereby affirmed. The decision of the Office dated July 18, 1996 is set aside as null and void.⁶

Dated, Washington, D.C.
June 23, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁵ *Edgar L. Colley; Daniel R. Hickman, supra* note 2.

⁶ The Board and the Office may not simultaneously have jurisdiction over the same case. Because the Office must review its decision in order to exercise its discretion on whether to grant an untimely request for a review of the written record, the Office may not issue a decision granting or denying a request for a review of the written record regarding the same issue on appeal before the Board; *see Arlonia B. Taylor*, 44 ECAB 591 (1993). The Office, therefore, did not have the authority to issue its July 18, 1996 decision, as the case was at that time before the Board on an appeal of the same decision from which the review of the written record was requested.