U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY T. HAMER and DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

Docket No. 96-957; Submitted on the Record;
Issued May 7,1998

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of disability on June 3, 1995, causally related to his March 28, 1983 employment injury.

On March 28, 1983 appellant, then a 35-year-old painter, sustained an employment-related sprain of the left shoulder and arm. He stopped work on April 6, 1983 and did not return. In January 1985 he began employment in private industry as a painter. After further development, on December 8, 1988 the Office of Workers' Compensation Programs determined that appellant's wages in his private industry position fairly and reasonably represented his wage-earning capacity and he began receiving partial disability compensation based on his loss of wage-earning capacity. On June 30, 1995 appellant filed a recurrence claim, alleging that he reinjured his left upper extremity on June 3, 1995, while reaching to get a chair in his shed at home. By decision dated January 18, 1996, the Office denied the recurrence claim on the grounds that the medical evidence of record established that appellant's condition and work restrictions had not changed since the loss of wage-earning capacity determination.

In the present case, in support of his recurrence claim, appellant submitted a July 10, 1995 report, from his treating Board-certified orthopedic surgeon, Dr. E. Michael Okin, who advised that appellant had only worked two years out of the last nine due to pain and discomfort in the left shoulder and advised that he could "not function with the shoulder the way it is." Dr. Okin noted findings on examination and injected the shoulder. He advised that appellant was disabled from any type of gainful employment and recommended complete disability retirement.

By letter dated August 16, 1995, the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record to Dr. Noubar Didizian, a Board-certified orthopedic surgeon, for a second-opinion evaluation. In a September 7, 1995 report,

Dr. Didizian noted that appellant is left hand dominant, the history of injury and that appellant had tried some odd jobs since that time. He noted findings of examination and stated:

> "Based on examination today, it is my medical opinion that the diagnosis at this point is status post mumford procedure of the left shoulder and my examination today showed that the clavicle is unstable and dorsally displaced indicating injury to the trapezoid and conoid. [Appellant] is limited in his activity involving the left shoulder. It is not unusual to find instability of the clavicle after mumford procedures and pending another significant, the history of the injury and causation goes back to March 28, 1993. I am aware that on June 30, 1995 he filed a claim for recurrence of total disability and indicated that he was reaching up to untie a beach chair in his shed when he felt something pull in his left shoulder. I do not think this is a new injury."

In an attached work capacity evaluation, Dr. Didizian advised that appellant should limit reaching and lifting. Following an Office request, Dr. Didizian submitted a supplementary report dated November 14, 1995, in which he advised that appellant was capable of performing a position of painter consisting of trimwork, touch-up and staining.

In a December 7, 1995 report, Dr. Okin noted findings on examination and advised that this prevented him from doing any type of overhead work or lifting or physical activity with the left upper extremity, except for handling light objects of perhaps one pound, concluding that appellant was disabled from working as a painter.

In a December 21, 1995 report, Dr. Didizian advised that he had not released appellant to full duty as a painter, recognizing that he had limitations "which should be respected."

The Board finds that this case is not in posture for opinion due to a conflict in the medical opinion evidence.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[1]

Causal relationship is a medical issue,[2] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and

[1] *Gus N. Rodes*, 46 ECAB 518 (1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] *Mary J. Briggs*, 37 ECAB 578 (1986).

medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[3] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[4]

Section 8123 of the Federal Employees' Compensation Act provides that if there is disagreement between the physician, making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.[5]

In the present case, appellant's treating physician, Dr. Okin repeatedly opined that appellant was disabled from any type of gainful employment due to his shoulder condition. However, the Office referral physician, Dr. Didizian, offered a second opinion that appellant could work as a painter with restrictions. The Board finds that the reports of Drs. Okin and Didizian are of approximately equal value and are in conflict on the issue of whether appellant had a recurrence of total disability due to his employment injury. Upon remand, therefore, the case shall be referred to an appropriate Board-certified specialist, accompanied by a statement of accepted facts and the complete case record, for a rationalized medical opinion addressing this issue. After such further development deemed necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated January 18, 1996 is hereby set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
May 7,1998

Michael J. Walsh
Chairman

George E. Rivers
Member

[3] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[5] 5 U.S.C. § 8123; *see Shirley L. Steib*, 46 ECAB 309 (1994).

Michael E. Groom
Alternate Member