

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN E. JAMES and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS HOSPITAL, Ann Arbor, Mich.

*Docket No. 96-1124; Submitted on the Record;  
Issued February 5, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the appellant sustained a recurrence of disability beginning October 3, 1995 causally related to his accepted June 20, 1989 employment injury.

On June 20, 1989 appellant, a 36-year-old nursing assistant, fell to the ground during a company picnic, injuring his left wrist and left elbow. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on the date of injury, which the Office of Workers' Compensation Programs accepted for left proximal radial head fracture, left wrist ulnar neuropathy, left wrist tendon tear and left elbow ulnar neuropathy.<sup>1</sup> Appellant returned to work on light duty on June 27, 1989 and he subsequently was off work for intermittent periods.

Appellant was released to return to light duty by his treating physician, Dr. Mark R. Wilson, a Board-certified orthopedic surgeon, on January 27, 1992, with restrictions on forceful pushing, pulling or gripping with his left arm, in addition to heavy lifting.

On October 16, 1994 appellant returned to work at the employing establishment in a limited-duty position as a timekeeper for four hours per day, a job which was found suitable for him by a vocational rehabilitation counselor and approved by Dr. Wilson.

On November 2, 1995 appellant filed a CA-2 claim for recurrence of disability, alleging that on October 3, 1995 he experienced an exacerbation of pain in his left arm and shoulder, which he indicated was causally related to his June 20, 1989 employment injury. Appellant stopped work on October 3, 1995.

Appellant subsequently submitted a Form CA-20 dated from Dr. J. Richard Goulet, a Board-certified family practitioner, who diagnosed osteophyte formation, calcific rotator cuff tendinitis, and "frozen" shoulder and checked a box indicating that he believed this condition was caused or aggravated by employment factors.

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<sup>1</sup> On April 20, 1993 the Office awarded appellant a schedule award for a 15 percent impairment of his left arm.

Appellant also submitted a Form CA-20 from Dr. Wilson, his treating physician, on which he stated that appellant had positive calcification and tendinitis in the rotator cuff of his left shoulder. Dr. Wilson also checked a box indicating that he believed this condition was caused or aggravated by employment factors.

By letter dated November 29, 1995, the Office requested that appellant submit additional information in support of his claim.

Appellant submitted office notes dated October 3, 1995 from Dr. Wilson, plus a Form CA-20 dated November 27, 1995 and medical reports dated November 27 and December 21, 1995 from Dr. Luke Kim, Board-certified in physical medicine and rehabilitation. In his October 3, 1995 report, Dr. Wilson stated that appellant had been having worsening pain, particularly in the left outer aspect of the shoulder. Dr. Wilson advised that appellant had not sustained a specific injury; he indicated that appellant's left arm in the elbow area continued to give him radiating pain, but that the shoulder area "seemed to be new." Dr. Wilson noted that x-rays had been taken of the left elbow, which showed the elbow to have reconstituted a medial epicondyle and small osteophyte. He did not believe that there was any specific change in regard to the elbow joint, but that x-rays of the left shoulder demonstrated calcium deposits in the rotator cuff tendon region.

In his Form CA-20 of November 27, 1995, Dr. Kim diagnosed an impingement of appellant's left shoulder with myofascitis. Dr. Kim checked a box indicating that he believed this condition was caused or aggravated by employment factors and also indicated that cumulative trauma to appellant's left side caused him pain.

In the November 27, 1995 report, Dr. Kim noted his findings on examination and stated that appellant had been having difficulty with his left upper extremity, shoulder and neck area since 1993. He noted appellant's history of surgeries involving his left wrist and left ulnar nerve, which improved his conditions to a certain extent, but stated that whenever he increased his activities, he experienced significant pain. Dr. Kim also stated that appellant did not have any one injury to report and his condition was due to cumulative trauma.

In a follow-up report dated December 21, 1995, Dr. Kim stated that appellant had undergone physical therapy since his previous visit but continued to complain of significant burning radiating down the left upper extremity. Dr. Kim advised that appellant's range of motion of the cervical spine was similar to that noted in his previous visit and that neurological examination of both upper extremities showed some give-away weakness due to pain.

By letter dated January 17, 1996, the Office informed Dr. Kim that it required additional information regarding appellant's claim and asked whether he believed appellant's current left shoulder symptoms were causally related to his June 20, 1989 employment accident.

In response to the Office's letter, Dr. Kim stated in a report dated January 25, 1996, that he did not have a history of appellant sustaining injury to his left shoulder, although he noted that appellant had injured his left elbow during the June 20, 1989 employment incident and subsequently underwent a series of surgical procedures regarding his elbow and wrist. Dr. Kim opined that appellant's current work duties as a timekeeper had contributed to his left shoulder pain because he had a problem with his elbow and wrist and was using the larger shoulder girdle

muscles to compensate for the distal limitations and problems. Dr. Kim indicated that a keyboard armrest and a lumbar support was sufficient for him to be able to perform his part-time job of timekeeper if his work station was ergonomically arranged.

By decision dated February 9, 1996, the Office denied appellant's claim for a recurrence of disability. The Office found that appellant failed to submit sufficient medical evidence to establish that the claimed recurrence of disability was caused or aggravated by the June 20, 1989 employment injury.

The Board finds that appellant has not sustained a recurrence of disability as of October 3, 1995 causally related to the June 20, 1989 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>2</sup>

In the instant case, the record does not contain any medical opinion showing a change in the nature and extent of appellant's injury-related condition. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of October 3, 1995 to his June 20, 1989 employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

The only medical evidence which appellant submitted were Form CA-20's and medical reports from Drs. Wilson, Kim and Goulet, which described appellant's complaints of shoulder pain and generally indicated that these complaints were caused or aggravated by his June 20, 1989 employment injury, but did not include a rationalized, probative medical opinion sufficiently explaining the medical process through which his current shoulder condition was caused or aggravated by the accepted June 20, 1989 employment injury.<sup>3</sup> In fact, Drs. Wilson and Kim specifically stated that appellant's current condition had not been caused by any specific injury. Drs. Wilson and Kim both indicated that appellant had recently begun experiencing left shoulder pain at work and had developed calcium deposits and tendinitis in the rotator cuff of his left shoulder, which Dr. Kim believed was the result of cumulative trauma at work. Neither of these physicians, however, submitted a probative medical explanation of how appellant's disability as of October 3, 1995 was caused or contributed to by his accepted 1989 employment injury. The form reports from Drs. Wilson, Kim and Goulet that support causal relationship with a checkmark are insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation.<sup>4</sup>

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<sup>2</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>4</sup> *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

In addition, the Board finds that the evidence fails to establish that there was a change in the nature and extent of appellant's limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty, part-time job as a timekeeper. Accordingly, as appellant has not submitted any factual or medical evidence supporting his claim that he was totally disabled from performing his light-duty assignment as of October 3, 1995 as a result of his employment, appellant failed to meet his burden of proof.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

As there is no medical evidence addressing and explaining why the claimed condition and disability as of October 3, 1995 was caused or aggravated by his June 20, 1989 employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

The February 9, 1996 decision of the Office of Workers' Compensation Programs is, therefore, affirmed.

Dated, Washington, D.C.  
February 5, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member