

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. BARSE and DEPARTMENT OF THE NAVY,
SEA SYSTEMS COMMAND, Keyport, Wash.

*Docket No. 97-900; Submitted on the Record;
Issued January 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained a recurrence of disability based on his April 13, 1992 work-related injury.

On April 15, 1992 appellant, then a 36-year-old production controller, alleged that on April 13, 1992, he injured his left shoulder while in the performance of duty.

In a medical record dated April 13, 1992 and received by the Office of Workers' Compensation Programs on April 17, 1992, Dr. Larry B. Smick, an osteopath, stated that, upon examination, appellant sustained an acute rotator cuff tear on that day.

On June 16, 1992 the Office accepted that appellant sustained a left shoulder strain as a result of a fall on April 13, 1992 under claim number A14-272423.

On November 15, 1995 appellant filed a claim for recurrence of disability based on the April 13, 1992 work-related injury under claim number A14-272423. Appellant stated that his condition was unstable; that medical treatment had been ongoing; and that he had submitted medical documentation to support his claim under a separate claim number, A14-276964, which had been filed for a dislocated right shoulder.

On February 2, 1996 the Office advised appellant that it was his responsibility to submit medical documentation under the claim number of the claim for which he sought compensation. On February 13, 1996 the Office advised him that he needed to submit a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between his April 13, 1992 work-related injury and his present condition.

On February 17, 1996 appellant stated that "the medical records you have in [the] file with A14-276864 indicate that this has been on going since [the] original injury. The left shoulder is unstable, range of motion impaired due to locking in joint and instability." Appellant also stated that he had returned to work after his original injury for "about six to eight weeks

before reinjuring the right shoulder.” He noted that the doctors advised him that because the right shoulder was more urgent, it would be better to wait for it to stabilize before working on the left shoulder. Appellant also stated that he was not claiming a recurrence of disability since the injury was ongoing, but was requesting medical authorization for further medical treatment.

In a February 28, 1996 medical report, Dr. Guy H. Earle, appellant’s treating physician with a specialty in occupational medicine, stated that on April 13, 1992, appellant sustained an acute left shoulder strain as well as a recurrence of a chronic subluxation of the left shoulder glenohumeral joint.

On March 15, 1996 the Office, in a decision, denied appellant’s claim on the grounds that the medical evidence of record failed to support appellant’s claim that his medical condition was causally related to his original work-related injury of April 13, 1992. The Office noted that, although it had reviewed many of the medical records in claim number A14-276964 and reviewed Dr. Earle’s medical report, the medical evidence failed to establish that his current medical condition was causally related to the original left shoulder strain injury. The Office further noted a contradiction between the medical evidence submitted in A14-276964, wherein a medical report noted that appellant’s left shoulder had 100 degrees flexion and abduction on February 28, 1995 and Dr. Earle’s February 1996 medical report in which he noted had no more than a 90 degree flexion or abduction of the left shoulder without producing subluxation of the joint.

On March 18, 1996 appellant requested a review of the written record of the Office’s March 15, 1996 decision denying compensation benefits.

In a decision issued on June 6 and finalized on June 7, 1996, the hearing representative, using claim number A14-476964, affirmed the Office’s March 15, 1996 decision. The hearing representative stated that the medical evidence of record failed to support that appellant was symptomatic with left shoulder strain or residuals of the original injury.¹

The Board finds that appellant failed to establish that he has sustained a recurrence of disability based on his April 13, 1992 work-related injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability and his April 13, 1992 employment injury.² This burden includes that necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

¹ The Board notes that the hearing representative referred to appellant’s claims as having been doubled by the Office and that the Chief, Branch of Hearings and Review, in his cover memorandum, recommended that the claims be made separate as they represented different parts of the body.

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

In this case, appellant's medical evidence consisted of Dr. Earle's February 28, 1996 medical report wherein he stated that appellant had sustained an acute left shoulder strain as well as a recurrence of a chronic subluxation of the glenohumeral joint. He further noted that "[s]ubluxation of the left glenohumeral joint has been episodic over time and symptoms have never fully resolved." The doctor added that the "medical record documents tenderness about the joint, particularly in the posterior left periscapular area and range of motion cannot exceed approximately 90 degrees of flexion or abduction without voluntarily producing palpable subluxation of the joint." Dr. Earle also stated that appellant's right shoulder condition caused him to compensate by overusing his left arm. In response to specific questions raised by the Office, the doctor noted that appellant's condition was an ongoing and permanent disability; that the residuals consist of pain and popping of the left shoulder and posterior left shoulder area with use above 90 degrees flexion and abduction; and that the factor which produced the recurrence of disability was an ongoing instability of the glenohumeral joint due to ligamentous damage. In response to the question as to whether the diagnosis for the recurring condition was the same as the original injury, Dr. Earle stated that the original injury was strain superimposed on chronic subluxation, which, when combined with lack of use of the right shoulder, makes appellant "more prone to strains and the strain becomes 'chronic' due to mechanical abnormalities of the shoulder joint."

However, the doctor did not indicate that appellant's current medical condition was causally related to the original accepted condition of left shoulder strain. Indeed, in response to the question of the causes of appellant's current condition, the doctor failed to attribute appellant's condition to the accepted strain and stated instead that it was caused by an ongoing instability of the glenohumeral joint due to ligamentous damage. Further, the doctor failed to establish that appellant's residuals of pain and popping of the shoulder were attributable to the accepted strain.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, states whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion. Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.⁴

The decisions of the Office of Workers' Compensation Programs dated June 7 and March 15, 1996 are hereby affirmed.⁵

Dated, Washington, D.C.

⁴ *Donald W. Long*, 41 ECAB 142, 146-47 (1989).

⁵ The Board notes that review of evidence on appeal is limited to evidence that was before the Office at the time of its decision. 20 C.F.R. § 501(c). The record contains evidence received after the June 7, 1996 decision which cannot be reviewed on this appeal.

January 19, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member