

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH R. WICK and U.S. POSTAL SERVICE,
POST OFFICE, Norman, OK

*Docket No. 97-1404; Submitted on the Record;
Issued July 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained a recurrence of disability causally related to his August 23, 1988 or February 19, 1993 employment injuries.

On August 23, 1988 appellant, then a 31-year-old letter carrier, sustained a left shoulder muscle strain in the performance of duty.¹

On February 26, 1993 appellant filed a claim alleging that he sustained an injury to both shoulders and his upper back on February 19, 1993 which he attributed to carrying heavy mail.

In a report dated April 1, 1993, Dr. Stewart C. Smith, a Board-certified neurosurgeon, provided a history of appellant's condition and noted that appellant had experienced continued problems with neck stiffness since his 1988 employment injury and that in February 1993 he began to have difficulty with stiffness in the neck. He stated that appellant had experienced pain for at least five years but the pain became more significant in February 1993.

By decision dated April 27, 1993, the Office denied appellant's claim for an injury sustained on February 19, 1993.

Appellant subsequently filed a request for a review of the written record.

In an undated letter received by the Office on July 16, 1993, appellant stated his belief that his 1993 condition was related to his August 23, 1988 employment injury.

¹ The Board notes that the medical evidence of record shows that the injury in 1988 was to appellant's left shoulder. However, the Office erroneously indicated in some of its documents that the injury was to the right shoulder.

In notes dated July 19, 1993, Dr. Smith diagnosed a degenerative disc at C5-6 and a herniated disc at C6-7 and recommended surgery. In notes dated August 18, 1993, he indicated that appellant underwent surgery on July 23, 1993 for a cervical discectomy fusion.

By decision dated January 25, 1994, the Office hearing representative vacated the Office's April 27, 1993 decision and remanded the case for further development. He also directed the Office to consolidate the case files for appellant's 1988 employment injury and the 1993 claim.

In a report dated March 29, 1994, Dr. Robert M. Simpson, a Board-certified orthopedic surgeon, provided a history of appellant's condition and treatment and findings on examination, including the results of x-rays. He stated his opinion that appellant's disc herniation and shoulder condition were directly related to his job duties of carrying a mailbag and casing mail and also to his 1988 employment injury.

By decision dated April 14, 1994, the Office accepted that appellant sustained a cervical strain, myofascial syndrome, trapezial muscle spasm and strain, and a herniated disc at C5-6 and C6-7 in the performance of duty on February 19, 1993. The Office noted that appellant had returned to work with no restrictions effective September 15, 1993.

On July 12, 1996 appellant filed a notice of disability and claim for compensation benefits alleging that he was experiencing continuous pain in his neck which he attributed to his August 23, 1988 employment injury.

In a report dated May 20, 1996, Dr. D. Brent Tipton, a Board-certified physiatrist, provided a history of appellant's condition and related that during the past two years appellant's pain had increased and he now complained of constant neck pain and occasional tingling into his arm and a burning sensation in his shoulder. He provided findings on examination and diagnosed status post C5-6 and C6-7 cervical discectomy and fusion on July 23, 1993. He indicated that appellant was able to work with restrictions.

By decision dated September 12, 1996, the Office denied appellant's claim stating that the evidence of record failed to demonstrate "that the claimed recurrence of disability on or after February 19, 1993 [was] causally related" to the February 19, 1993 employment injury.² There was no discussion of the medical evidence of record in this decision.

The Board finds that this case is not in posture for a decision.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.³ This burden includes the necessity of furnishing medical evidence from a

² The Board notes that subsequent to the issuance of the Office's September 12, 1996 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; see 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

In this case, the record shows that appellant sustained employment injuries to his back and shoulders in 1988 and 1993 and filed a claim alleging continued problems which he attributed to his employment injuries. As noted above, the record shows that the Office initially denied appellant's claim for the 1993 injury but accepted the claim upon remand of the case by an Office hearing representative in a January 25, 1994 decision. In his decision, the hearing representative directed that the case files for the 1988 employment injury and the 1993 claim be consolidated.

In its September 12, 1996 decision, the Office stated that the evidence of record failed to demonstrate "that the claimed recurrence of disability on or after February 19, 1993 [was] causally related" to the February 19, 1993 employment injury. However, the Office did not address the issue as to whether the medical evidence of record established that appellant's claimed conditions were caused or aggravated by the accepted 1988 employment injury. As this issue was not addressed by the Office in its September 12, 1996 decision, this case will be remanded to the Office for further development, as deemed necessary, to be followed by a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated September 12, 1996 is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
July 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

⁴ *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).