

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES M. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Portland, ME

*Docket No. 97-2497; 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 has met his burden of proof in establishing that he sustained an employment-related injury to his elbow and shoulder.

On December 12, 1996 appellant, then a 46-year-old letter carrier, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he sustained an employment-related injury to his elbow and shoulder which required surgery on December 30, 1996. Appellant attributes his elbow and shoulder condition to prolonged duties as a letter carrier and repetitive movement while casing mail into 6-inch letter cases and 539 mailboxes. Appellant states that he first realized the disease or illness was caused or aggravated by his federal employment on August 1, 1996, first became aware of the disease or illness and sought medical treatment on November 7, 1996 and first reported his condition to his supervisor on December 17, 1996. Appellant also noted that he has been seeing a physician for treatment since the trouble started, but lost no time from work due to the alleged condition. On the reverse side of this form, the employing establishment controverted appellant's claim alleging:

“Employee called in sick on December 18, 1996. Dr. [James R.]Curtis, [a Board-certified orthopedic surgeon,] states [appellant] can return [to work] on limited duty using only his left arm. I will have [appellant] answer the telephone only until he can perform limited tasks with both arms. Noted for record. I called [appellant] on December 18, 1996 [around] 10:00 [hours] and got an answering machine -- he called in sick that morning.”

Appellant submitted in support of his claim an undated and unsigned duty status report, Form CA-17, noting the date of injury as December 17, 1996 and indicating that the injury to appellant's right shoulder and right elbow hurts from on the job use. This form also indicated that the employing establishment would accommodate any restrictions placed upon appellant in order to keep him working, such as, answering telephone and sitting all day. Appellant also submitted various reports by Dr. Curtis dated October 30 and December 17 and 23, 1996, a

December 30, 1996 operation report, a January 6, 1997 report and February 25, 1997 physical therapy interim/discharge slip and medical report.

In a decision dated March 25, 1997, the Office of Workers' Compensation Programs denied appellant's claim for the reason that the evidence of file failed to demonstrate that appellant's condition was caused by his federal employment. In an accompanying memorandum, the Office noted that Dr. Curtis in an October 30, 1996 report, indicated that appellant's condition was not work related. The Office stated that "claimant noted the onset of right shoulder pain in July after using a spray paint gun and painting his entire house. While the doctor commented in other reports that the claimant felt pain while reaching at work, the doctor failed to render an opinion regarding the cause of the claimant's condition." The Office further noted that appellant was advised of the deficiencies in his claim on January 28, 1997 and afforded an opportunity to provide supportive evidence, however, evidence sufficient enough to establish that appellant's condition was caused by his federal employment has not been received.

By letter dated April 14, 1997, appellant requested reconsideration of the Office's March 25, 1997 decision and submitted additional evidence. This evidence consisted of a February 10, 1997 letter from appellant which responded to the Office's January 28, 1997 informational letter, an April 3, 1997 letter from Dr. Curtis stating that, at the December 30, 1996 surgery, he found that appellant had a chronic tear of the supraspinatus tendon (rotator cuff). He then associated appellant's injury to frequent use of the arm at or above shoulder level. Dr. Curtis stated that the changes found on appellant's pathology report indicated that the process had been ongoing for quite some time and related it to casing mail at appellant's job. Dr. Curtis also stated that "I have no doubt that his injury predated the incident in July 1996. The overuse in July 1996 simply made the discomfort refractory to conservative treatment."

Appellant then submitted a letter dated December 17, 1996 which described in detail his employment duties and advised of his upcoming surgery on December 30, 1996. In an undated letter from Tony Vafiades, a vehicle maintenance coworker, he stated that appellant had complained to him sometime after October 25, 1995 of a tight door rubber causing the door to open very hard and hurt his arm. Mr. Vafiades stated that appellant had complained about the door several more times before he could get it fixed. In addition, appellant submitted previously considered and new medical reports from Dr. Curtis dated intermittently from October 30, 1996 through May 12, 1997.

In a July 8, 1997 merit decision, on reconsideration, the Office denied appellant's application for review on the grounds that the medical evidence submitted on reconsideration was insufficient to warrant modification of the prior decision. The Office particularly stated:

"[T]he claimant has alleged and the Office has accepted that his job involves casing of mail, a repetitive activity. His physician has maintained that the claimant had a long-standing shoulder condition which became symptomatic during the 'overuse' of July 1996. He has stated that the claimant's 'overuse made the discomfort refractory to conservative treatment' *i.e.*, as a result, the claimant required surgical treatment. The fact is, however, that the claimant had no treatment until October 1996, that when he did seek treatment he stated the pain began after 'painting his entire house' (itself certainly a repetitive arm

activity) the previous July, and that the pain increased and was noticeable when he was casing mail at work. Even if one accepts that the claimant may have had a degenerative shoulder condition to which his employment contributed, this condition did have any clinical significance until the day of house painting in July 1996. Based on the evidence submitted, including Dr. Curtis' April 3, 1997 letter, the claimant incurred an injury to his shoulder as a result of an off-duty incident. The treatment he received beginning October 30, 1996 was occasioned by this incident alone."

The Board finds this case not in posture for decision for a determination of whether appellant sustained an elbow and shoulder condition or aggravation in the performance of duty.

In the instant case, the Office found that the claimed events, incidents or exposures occurred at the times, places and in the manner alleged; however, the medical evidence of file failed to establish that the claimed medical condition resulted from the accepted trauma or exposure from appellant's federal employment. The Office further found that the medical evidence of file indicated that appellant's accepted trauma or exposure was the result of an off-duty incident and the treatment appellant received beginning October 30, 1996 was occasioned by this incident alone.

Dr. Curtis, a Board-certified orthopedic surgeon, provided two reasons for appellant's right shoulder condition. First, he attributed appellant's right shoulder condition and surgery of December 30, 1996 to appellant's July 6, 1996 incident, in which appellant used repetitive shoulder movements while painting his entire house while not at work. Secondly, he attributed the condition and surgery to appellant's frequent employment-related use of the arm at or above shoulder level. Dr. Curtis in his April 3, 1997 medical report opined:

"I believe that [appellant's] shoulder injury is causally related to his work at the [employing establishment]. At surgery on December 30, 1996, I found that he had a chronic tear of the supraspinatus tendon (rotator cuff). This injury was associated with frequent use of the arm at or above shoulder level. The changes found on his pathology report indicate that the process had been going on for quite some time and it is related to casing mail at his job.

"I have no doubt that his injury predated the incident in July 1996. The overuse in July of 1996 simply made the discomfort refractory to conservation treatment...."

While this report and other medical reports submitted by Dr. Curtis are clearly insufficient to discharge appellant's burden of proof by proving by the weight of the reliable, substantial and probative evidence that appellant's condition was causally related to his employment, they constitute sufficient support of appellant's claim to require further development of the record by the Office. The factors of employment cited by Dr. Curtis are the same which appellant details and are specific enough to provide an adequate background for the support of Dr. Curtis' opinion. Further, it is unclear which of the two factors submitted by Dr. Curtis' opinion was the most significant in producing appellant's diagnosed condition. Whenever a factor of employment aggravates, accelerates, or otherwise combines with a

preexisting, nonoccupational pathology, the claimant is still entitled to compensation. Causal relationship does not denote a single and exclusive causative factor, nor does it preclude aggravation of an underlying condition by employment factors.¹ The fact that nonwork factors may have also contributed to an employee's disability is not sufficient to take the case out of coverage under the Federal Employees' Compensation Act.²

The Office denied appellant's claim because appellant's physician, Dr. Curtis, a Board-certified orthopedic surgeon, noted a "mix" of factors, both work and nonwork, but failed to attribute or apportion the degree of involvement of the accepted employment factors in this mix. It is, however, well established that such an apportionment is inappropriate. In *Arnold Gustafson*,³ the Board held that it is not necessary that a work factor "materially" contribute to a disabling condition for the employee to be entitled to compensation benefits. In *Henry Klaus*,⁴ the Board held: "Where a person has a preexisting condition which is not disabling but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable." The Board held that no attempt should be made to apportion the disability between the preexisting condition and the aggravation of that condition; the employee's disability "is compensable regardless of the precise quantum of such aggravation directly attributable to work."⁵ In the case of *Beth P. Chaput*,⁶ the Board set aside and remanded the case to the Office, stating:

"It is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence revealed that [a work factor] ... contributed in any way to [the employee's] ... condition, such condition would be considered employment related for the purpose of compensation benefits under the Federal Employees' Compensation Act."⁷

The Office may undertake to develop either factual or medical evidence for determination of the claim.⁸ It is, further, well established that proceedings under the Act are not adversarial in nature,⁹ and while the claimant has the burden to establish entitlement to

¹ *John Van Swearinger*, 33 ECAB 55 (1981).

² *Arthur R. Jones*, 16 ECAB 458 (1965).

³ 41 ECAB 131 (1989).

⁴ 9 ECAB 333 (1957)

⁵ *Id.* at 334.

⁶ 37 ECAB 158 (1985).

⁷ *Id.* at 161.

⁸ 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

⁹ *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

compensation, the Office shares the responsibility in the development of the evidence.¹⁰ The Office has the obligation to see that justice is done.¹¹

The Board will, therefore, set aside the Office's July 8 and March 25, 1997 decisions and remand the case for further development of the medical evidence and the appropriate final decision. Dr. Curtis' inability to state that any one particular factor was "the" cause or "specific" cause of appellant's diagnosed condition is not an opinion negating work relationship. Therefore, there was an uncontroverted inference of causal relationship and the Office was obligated to request further information from appellant's treating physician.

On remand, the Office shall further develop the evidence by preparing an accurate statement of accepted facts asking Dr. Curtis to support his opinion with a well-reasoned explanation of how and why the repetitive movement and/or specific employment duties enumerated by appellant, caused, contributed or aggravated any medical condition in appellant's elbow and shoulder, or resulted in the December 30, 1996 surgery. For example, Dr. Curtis should particularly clarify, with a reasonable amount of medical certainty, whether the physical requirements of appellant's employment and the pressures or work load associated therewith, contributed in any way to appellant's diagnosed condition. He shall then clarify whether appellant's December 30, 1996 surgery was a consequence of appellant's work or nonwork factors, or a combination of both.¹² After such further development of the evidence as may be deemed necessary, the Office shall issue an appropriate *de novo* decision addressing, both appellant's employment and nonemployment-related factors.

¹⁰ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹¹ *William J. Cantrell*, 34 ECAB 1233 (1983).

¹² See *Beth P. Chaput*, *supra* note 6, (noting that it is not necessary to prove a significant contribution of employment factors to a condition for the purpose of establishing a causal relationship).

The decisions of the Office of Workers' Compensation Programs dated July 8 and March 25, 1997 are hereby set aside and the case is remanded for further proceedings 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