

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS E. BALLARD and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, EXAMINATION DIVISION, Clayton, Mo.

*Docket No. 97-404; Submitted on the Record;
Issued March 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained consequential injuries to his left elbow and left fifth finger as a result of his accepted left shoulder rotator cuff tear.

The case has been on appeal previously.¹ In a June 25, 1991 decision, the Board found that there was a conflict in the medical evidence on whether appellant had more than a 10 percent permanent impairment of the left arm due to the November 3, 1987 employment injury when appellant slipped at a gasoline station and fell, landing on his left shoulder. The Board also noted that the Office of Workers' Compensation Programs had not addressed appellant's claim for a torn rotator cuff of the right shoulder, a fracture of the left elbow and a fracture of the left fifth finger which he cited as consequential injuries arising from the injury to his left shoulder. Appellant stated that, since his legs had been paralyzed due to polio since he was five years old, he needed crutches to walk which required strength in his shoulders. He contended that the torn rotator cuff in the left shoulder caused subsequent falls which led to fractures of the left elbow and left fifth finger as well as the torn rotator cuff of the right shoulder. The Board remanded the case for resolution of the conflict in the medical evidence on the extent of the permanent impairment to the left arm and for further development for appellant's claims for consequential injuries.

In a June 22, 1992 decision, the Office found that appellant had an additional 33 percent permanent impairment of the left arm for a total 43 percent permanent impairment of the left arm. In a May 13, 1993 decision, the Office denied appellant's claim for consequential injuries to the right shoulder rotator cuff, left elbow and left fifth finger on the grounds that evidence of record failed to demonstrate a causal relationship between the November 3, 1987 employment injury and the other injuries claimed. In an October 16, 1993 letter, appellant submitted additional medical evidence and requested reconsideration of the Office's decisions of June 22,

¹ Docket No. 91-502 (issued June 25, 1991). The history of the case is contained in the prior decision and is incorporated by reference.

1992 and May 13, 1993. In a February 2, 1994 decision, the Office modified its May 13, 1993 decision in part by finding that appellant had met his burden of proof in establishing that the rotator cuff tear of his right shoulder was a consequential injury related to his left shoulder injury. The Office, however, denied appellant's request for modification of its decision pertaining to appellant's left elbow and left fifth finger. Appellant appealed to the Board. In an August 2, 1996 order, the Board found that the case record submitted on appeal was incomplete as it did not contain records pertaining to appellant's left elbow or left fifth finger injuries but only contained appellant's request for reconsideration and the evidence submitted in support of that request. The Board remanded the case for reconstruction of the case record, to be followed by a *de novo* decision.² In an October 7, 1996 merit decision, the Office denied appellant's request for modification of the May 13, 1993 decision.

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

In the case of *John R. Knox*,³ regarding consequential injury, the Board stated:

“It is an accepted principal of workers’ compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee’s own intentional conduct. As is noted by Professor Larson in his treatise: ‘[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant’s knowledge of his condition.’”⁴ (Citations omitted.)

In a February 28, 1989 report, Dr. Joseph M. Sudekum, an orthopedic surgeon, stated that appellant had fallen the week before. In an April 21, 1989 office note, Dr. Sudekum indicated that appellant's left fifth finger was doing well. In an April 26, 1989 form report, he indicated that appellant had a fracture of the left fifth finger as well as torn rotator cuffs of both shoulders. In a February 19, 1990 report, Dr. Martin Wice, an orthopedic surgeon, noted that appellant gave a history of being prone to falls since the November 3, 1987 employment injury. He related that appellant gave a history of falling and fracturing his left fifth finger. He indicated that appellant also reported that in the week prior to Dr. Wice's examination, he had fallen again and fractured his left proximal radius. In a March 7, 1990 letter, appellant indicated that he fell in February

² Docket No. 94-1616 (Order Remanding Case, issued August 2, 1996).

³ 42 ECAB 193 (1990).

⁴ *Id.* at 196.

1989 and fractured his fifth left finger. He noted that he fell in February 1990 and fracture his left elbow. He related both falls and the subsequent injuries to the weakness of both arms caused by the employment injury. In a March 19, 1990 report, Dr. Sudekum stated that appellant fell on February 11, 1990 and fractured the radial head at the left elbow. In a May 24, 1990 report, Dr. Sudekum stated that the injuries of February 1989 and February 1990 with injuries of the finger and elbow respectively were causally related to appellant's primary problem of rotator cuff deficiency in the shoulders which became increasingly symptomatic starting with his fall of November 3, 1987. In a June 15, 1990 letter, appellant stated that he fell on February 11, 1990 because he was unable to lift his body sufficiently high enough to allow his left leg forward over the carpet. He indicated that this inability was the direct result of the weakness of his arms due to the employment injury. In an August 30, 1990 report, Dr. Sudekum stated that, based on appellant's description of the February 11, 1990 fall, he assumed that appellant fell because he was unable to raise his body high above the shoulder to allow the left leg to swing forward. Because of this he fell and fractured the radius at the left elbow. He commented that because of appellant's shoulder disease he was unable to prevent the fall. In a June 226, 1990 report, Dr. William L. Smith, an osteopath, stated that appellant had a loss of motion of 60 degrees in the distal interphalangeal joint of the left little finger due to a permanent flexion contracture. In a September 30, 1992 report, Dr. Allen G. Adams, a Board-certified orthopedic surgeon, noted appellant's history of fractures of the left distal fifth finger and the left elbow as well as the torn rotator cuffs. He concluded that there was no existing objective basis for a causal relationship between the apparent work-related left shoulder rotator cuff tear and the degeneration or tear in the right rotator cuff. In a subsequent November 12, 1992 report, Dr. Adams stated that there was no objective basis in the medical record or his clinical examination that the nondisplaced fracture of the radial head at the left elbow or the injury to the left fifth finger was in any way related to the accepted left rotator cuff tear.

Dr. Sudekum related appellant's fractures of the fifth left finger and the radius at the left elbow to falls that he attributed to weakness in appellant's left shoulders due to his torn rotator cuffs. He therefore has concluded that the fractures were consequential injuries causally related to the torn rotator cuffs that were accepted as causally related to appellant's November 3, 1987 employment injury. Dr. Adams stated that there was no objective basis to relate these fractures to the employment injury. There exists therefore a conflict in the medical evidence between Dr. Sudekum and Dr. Adams. The case must therefore be remanded for referral of appellant to an appropriate impartial medical specialist for examination. The specialist should be requested to give the findings and a diagnosis of appellant's left elbow and left fifth finger. He should then be requested to give his opinion, with a detailed explanation, on whether the fractures of the radius at the left elbow and the left fifth finger were due to falls that were attributable to weakness in his shoulders caused by the November 3, 1987 employment injury or to conditions arising out of that employment injury. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated October 7, 1996, is hereby set aside and the case remanded for further action in accordance with this decision.

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

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member