

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA F. PARKER and DEPARTMENT OF AGRICULTURE,
PLACERVILLE RANGER DISTRICT, Camino, CA

*Docket No. 98-481; Submitted on the Record;
Issued November 8, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish a recurrence of disability causally related to either her September 12, 1994 or June 26, 1995 employment injury.

On September 12, 1994 appellant, then a 35-year-old temporary forestry technician, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she strained her right shoulder while she was marking trees on a steep and slippery ground and slipped.¹ The Office of Workers' Compensation Programs accepted the claim for a right shoulder sprain, right rotator cuff tear and right shoulder impingement. Appellant returned to work on May 22, 1995.

On October 5, 1995 appellant filed a claim alleging that she pinched a nerve in her neck on the right side on June 27, 1995 when she slipped and fell on a steep slope and fell on her right shoulder.² The Office accepted the claim for cervical strain and a right shoulder contusion.³ Appellant relocated from Placerville, California to Deadwood, Oregon. The employing establishment terminated appellant's employment effective March 1, 1997. She returned to nonfederal employment in February 1997.⁴

In a June 30, 1997 treatment note, it was noted that appellant's right shoulder pain has worsened. Appellant indicated that she had been doing well until about two weeks earlier when

¹ This was assigned claim number A13-1059013.

² This was assigned claim number A14-309062.

³ On September 19, 1996 the Office issued a decision terminating appellant's wage-loss compensation as the medical evidence established that appellant was no longer disabled from her date-of-injury job.

⁴ Appellant was employed by Commercial Drapery and Blinds to make drapes.

her pain got worse which she thinks may be due to moving some heavy drapes and hanging them up.

On September 2, 1997 appellant filed a claim for a recurrence of disability beginning July 22, 1997 causally related to her September 12, 1994 work injury. Appellant indicated that she worked 40 hours per week for a private employer.

On an employee absentee form dated July 21, 1997, appellant indicated that on July 18, 1997 she felt her right shoulder pop with pain running down her shoulder as she was taking heavy drapes out of the washer to hang them up to dry when she felt pain run down her arm.

On July 21, 1997 Dr. Richard L. Mentzer, an attending physician, released appellant to return to work on July 22, 1997.

In a report of a conversation with Dr. Mentzer, appellant's employer noted that Dr. Mentzer said he would release appellant to work.

In treatment notes dated July 18, 1997, it was indicated that appellant's right shoulder pain "got a lot worse today when she was lifting some heavy wet drapes." Appellant was diagnosed as having chronic right shoulder pain secondary to an old employment-related straining injury.

In treatment notes from Peace Harbor Hospital dated August 5, 1997, it was noted that appellant stretched "the arm while she was hanging some heavy curtains several days ago and has had excruciating pains including in the shoulder and in through the trapezius muscle."

In treatment notes dated August 11, 1997, it is noted that appellant has "persistent right shoulder pain" and that her shoulder had been getting worse for the past 1 to 1½ months. Appellant was diagnosed with chronic right shoulder pain secondary to employment-related straining.

In a report dated August 13, 1997, Dr. Thomas K. Wuest, a Board-certified orthopedic surgeon, noted that appellant had been referred due to her persistent right shoulder pain. He noted appellant's employment injury history and that appellant indicated that she had not worked in some time. Dr. Wuest noted that appellant stated that her pain started approximately four weeks ago when she felt a popping sensation in her shoulder.

In a decision dated October 2, 1997, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the claimed recurrence was causally related to the accepted employment injury. The Office found that appellant sustained a new injury when she felt shoulder pain while lifting heavy drapes and thus, the injury was not related to her federal employment.

The Board finds that appellant has failed to meet her burden of proof to establish that he sustained a recurrence of disability commencing July 22, 1997 causally related to either her September 12, 1994 or June 26, 1995 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable and probative evidence that the recurrence of the disabling condition for which she seeks compensation was causally related to the accepted employment injury.⁵ As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related injury.⁶

In the instant case, the Office accepted appellant's claim for right shoulder sprain, a right rotator cuff tear and right shoulder impingement due to her September 12, 1994 injury and cervical strain and a right shoulder contusion due to her June 27, 1995 injury. Appellant was terminated from her federal employment effective March 1997. She started working for Commercial Drapery and Blinds in February 1997. In a statement dated July 21, 1997, appellant noted that she felt her right shoulder pop and pain raced down her arm and across her shoulder blade when she took heavy drapes out of the washer and put them into dry hung. In a report dated August 13, 1997, from Dr. Wuest noted that appellant stated that she had "not worked in some time" and that she had "felt a popping sensation in the shoulder about four weeks ago." Appellant indicated in a report to her employer that she felt her shoulder pop while lifting heavy wet drapes out of the washer. This is supported by treatment notes and Dr. Wuest's report that appellant felt her shoulder pop. On September 2, 1997 appellant filed a notice alleging a recurrence of disability beginning on July 22, 1997 attributable to her September 12, 1994 accepted employment injury.

The Board notes that it is an accepted principle of worker's 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 conduct.⁷ In discussing how far the range of compensable injuries is carried, once the primary injury is causally connected with the employment, Professor Larson notes:

"When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural causes' and of [the] claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable injury."⁸

⁵ *Jessie Johnson, Jr.*, 39 ECAB 945 (1988).

⁶ *Id.*

⁷ Larson, *The Law of Workers' Compensation* § 13.00; see *John R. Knox*, 42 ECAB 193 (1990).

⁸ Larson, *The Law of Workers' Compensation* § 13.11.

Thus, it is accepted that once the work-connected character of any condition is 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.” (Emphasis added.)

The evidence contained in the record fails to show that appellant sustained a recurrence of disability on or after July 22, 1997 which was the direct and natural result of the September 12, 1994 or May, 1995 employment injury. The evidence of record, which includes appellant’s employee absentee form and treatment notes dated June 30, July 18 and August 11, 1997, indicates that appellant’s injury of July 22, 1997 is an independent nonfederal event. Dr. Wuest, on August 13, 1997 noted that appellant’s pain started when she felt her shoulder pop, but he was unaware of appellant’s nonfederal employment duties as he indicated she had not worked in some time. Dr. Wuest did not have an accurate employment history at the time of his report as he was unaware of appellant’s nonfederal employment or the duties involved. Furthermore, Dr. Wuest did not attribute appellant’s injury to her accepted employment injury and thus, appellant had failed to submit any evidence supportive of a causal relationship to her accepted employment injury or showing that the injury was not produced by an independent cause. Appellant injured her shoulder when she was lifting heavy drapes to hang them up. Accordingly, appellant has not met her burden of proof to establish that her recurrence of disability was due to her accepted employment injuries.

The decision of the Office of Workers’ Compensation Programs dated October 2, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 8, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member