

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KING E. CHAPPELLE and DEPARTMENT OF VETERANS AFFAIRS,
COLUMBIA VETERANS ADMINISTRATION HOSPITAL, Columbia, SC

*Docket No. 98-218; Submitted on the Record;
Issued September 2, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on December 1, 1993 causally related to his November 9, 1986 employment injury.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on December 1, 1993 causally related to his November 9, 1986 employment injury.

This case has previously been before the Board on two occasions. In a decision dated December 24, 1990,¹ the Board found that appellant had not established that he was disabled due to his accepted conditions of strain, right shoulder, rotator cuff tear, right shoulder and resultant surgery on or after November 30, 1987. On October 31, 1991² the Board determined that appellant had no more than 15 percent permanent impairment of his right upper extremity due to his accepted employment injuries. The facts and circumstances of the case as set out in the Board's prior decisions are adopted herein by reference.

Following the Board's December 31, 1991 decision, appellant filed a claim for recurrence of disability alleging that on December 1, 1993 he sustained a recurrence of disability causally related to his accepted employment injury. The Office of Workers' Compensation Programs requested further information from appellant by letter dated March 3, 1997. Appellant did not respond and by decision dated July 14, 1997, the Office reviewed the medical evidence initially submitted in support of appellant's claim and concluded that he had failed to meet his burden of proof in establishing a recurrence of disability.

¹ Docket No. 90-1699.

² Docket No. 91-1019.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing December 1, 1993 and his November 9, 1986 employment injury.³ This burden includes the 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.⁴

In support of his claim for recurrence, appellant submitted a December 3, 1993 note diagnosing a small spur at the bicipital groove.⁵ On December 9, 1993 a physician diagnosed adhesive capsulitis of the right shoulder and noted right rotator cuff tear surgery in 1990. A note dated September 19, 1994 listed appellant's complaints of pain and giving away of the right shoulder. The physician reported appellant's history of rotator cuff injury in 1988 and indicated that appellant had problems since then. He found a well-healed shoulder incision, limited motion in the right shoulder and weakness in the right shoulder but no neurological defect. In a report dated September 22, 1994, a physician noted degenerative changes at the acrominal joint, as well as irregularity of the posteriolateral humeral head which may represent postoperative changes due to the prior rotator cuff repair. An x-ray report dated December 5, 1996 noted degenerative changes in both shoulders and stated that appellant may have some post-traumatic deformity involving the right shoulder. In a note dated December 5, 1996, a physician noted appellant's prior shoulder injury and surgery and recommended treatment of both shoulders. These reports are not sufficient to meet appellant's burden of proof as there is no clear opinion on the causal relationship between appellant's current condition and his accepted employment injury and as these reports did not address appellant's disability for work due to the diagnosed conditions.

Appellant also submitted a note dated January 27, 1994 from a physician's assistant. A physician is as defined by the Federal Employees' Compensation Act does not include physician's assistants.⁶ As a physician's assistant is not a physician for the purposes of the Act, this note does not constitute medical evidence and is not sufficient to establish appellant's claim.⁷

As appellant has not submitted the necessary rationalized medical opinion evidence establishing a causal relationship between his current disability and his accepted employment injury, he has failed to meet his burden of proof and the Office properly denied his claim.

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁴ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁵ The signatures of the various physicians who completed appellant's medical records are illegible.

⁶ 5 U.S.C. § 8101(2).

⁷ *John D. Williams*, 37 ECAB 238 (1985).

The decision of the Office of Workers' Compensation Programs dated July 14, 1997 is hereby affirmed.

Dated, Washington, D.C.
September 2, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member