

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE N. WIGFALL, JR. and DEPARTMENT OF THE NAVY,
MARINE CORPS BASE, Camp Lejeune, NC

*Docket No. 00-1467; Submitted on the Record;
Issued April 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of total disability beginning June 8, 1998.

On November 1, 1989 appellant, then a 44-year-old maintenance mechanic helper, filed a claim for an injury to his right shoulder sustained on October 25, 1989 while unloading sheet rock from a dump truck.

The Office of Workers' Compensation Programs accepted that appellant sustained a right trapezius strain and right rotator cuff tendinitis and also authorized three surgeries on appellant's right shoulder and arm: an acromioplasty on July 23, 1990, a release of the de Quervains tunnel of the right wrist on December 2, 1991 and an excision of the distal end of the right clavicle, excision of the subacromial bursa and partial excision of the acromion on March 28, 1994.

By decision dated December 20, 1993, the Office found that appellant's wage-earning capacity was represented by the position of parts salesman. The Office paid appellant partial disability effective December 12, 1993 based on this wage-earning capacity. By decision dated March 10, 1995, the Office refused to review its decision on appellant's loss of wage-earning capacity.

On April 29, 1997 the Office issued appellant a schedule award for an additional 16 percent permanent loss of use of the right arm.¹ When payment of this schedule award ended on July 5, 1997 the Office resumed payment of compensation for loss of wage-earning capacity. By decision dated July 23, 1998, the Office found that appellant's May 7, 1998 request for reconsideration of its April 29, 1997 schedule award was not timely filed and did not demonstrate clear evidence of error.

¹ Appellant had previously received a schedule award of 6 and 10 percent for loss of use of his right upper extremity in 1991 and 1993.

On June 8, 1998 appellant filed a claim for a recurrence of disability. He indicated the date of the recurrence was “continuous” and that the date he stopped working after the recurrence was “not working.” By letter dated September 9, 1998, the Office advised appellant of the evidence needed to establish his claim for a recurrence of disability.

By decision dated November 4, 1998, the Office found that appellant had not established that he sustained a recurrence of disability on or after June 8, 1998. Appellant appealed to the Board, which remanded the case to the Office for reconstruction and proper assemblage of the case record and to protect appellant’s appeal rights, for issuance of an appropriate decision.² On March 3, 2000 the Office reissued its November 4, 1998 decision.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.³ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

The Board finds that appellant has not established that he sustained a recurrence of disability beginning June 8, 1998.

Appellant submitted several medical reports from his attending physician, Dr. Ralph J. DiFiore, a Board-certified orthopedic surgeon, who stated in an October 20, 1998 report that appellant’s present problems were not “a recurrence of a condition but an actual continuation of the initial condition” since appellant had never been free of symptoms since his initial injury. In a report dated March 10, 1998, Dr. DiFiore stated: “Because of his employment of his right shoulder, in combination with his age, educational level and former work experience, he is unable to obtain gainful employment at this time.”

Although Dr. DiFiore opined that appellant was not able to work due to his age, lack of experience and education, this opinion lacks probative value because it addresses the suitability of the position based on nonmedical factors and the doctor does not have any expertise to consider these factors.⁵ None of Dr. DiFiore’s reports address the relevant issue of whether appellant’s current shoulder condition was causally related to the accepted work injury. Appellant has not established that, as of June 8, 1998, he was unable to perform the duties of a parts salesman, the position on which the Office based its determination of his wage-earning capacity and, thus, appellant has not established that he sustained a recurrence of total disability.

² Docket No. 98-1855 (issued January 6, 2000).

³ *John E. Blount*, 30 ECAB 1374 (1974).

⁴ *Frances B. Evans*, 32 ECAB 60 (1980).

⁵ *Steve Costello*, 37 ECAB 251 (1985).

The March 3, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 10, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member