

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN ABOUNADER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Buffalo, NY

*Docket No. 00-804; Submitted on the Record;
Issued May 1, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability causally related to his accepted February 3, 1999 injury.

In this case, the Office of Workers' Compensation Programs accepted that on February 3, 1999 appellant, then a 53-year-old housekeeping aide, sustained a right shoulder sprain in the course of his employment. Appellant stopped work on February 3, 1999 and returned to a light-duty position on July 12, 1999.¹

On April 30, 1999 the Office authorized arthroscopic surgery with possible open repair of the right rotator cuff, acromioplasty and resection of the distal right clavicle.

On June 17, 1999 Dr. Joseph Falcone, an orthopedist and appellant's treating physician, performed the right rotator cuff repair, resection of the distal right clavicle and right shoulder acromioplasty.

In a June 24, 1999 surgical report, Dr. Falcone indicated that appellant's June 17, 1999 surgery was uneventful but that appellant returned on June 23, 1999 with a suspicious drainage from the right shoulder wound. On June 24, 1999 he was examined again and taken to the operating room for further investigation, irrigation, debridement and culturing of the right shoulder wound. Dr. Falcone observed that the right shoulder revealed a hematoma with a slight purulent tinge. He indicated that the hematoma was evacuated and the area debrided of any necrotic tissue.

¹ Appellant's job duties as a modified housekeeping aide consisted of dusting, maintaining the stock room and issuing supplies, inspecting and issuing equipment, providing training, cleaning glass windows, sinks and drinking fountains, restocking the dispensers for paper towels and soap, light vacuuming and mopping and doing sanitation inspections. This job was based on the restrictions of no lifting or using the right arm and a lifting restriction of 0 to 10 pounds with no fine manipulation.

In a July 7, 1999 report, Dr. Falcone indicated that appellant could return to work on July 12, 1999, "light duty" only. He added that appellant "may participate in light duty only. No use of right arm at present."

Appellant was offered a light-duty position, starting on July 12, 1999, which he accepted.

On August 9, 1999 appellant filed a notice of recurrence of disability alleging that his condition had caused blood clots in his right arm, which had traveled throughout his body. He stopped work on July 24, 1999.

In an August 13, 1999 report, Dr. John J. McMahon, a Board-certified family practitioner, reported the history of the June 17, 1999 surgery, its subsequent infection and the incision and drainage on June 23, 1999 to correct the infection. He indicated that appellant was inactive for several days recuperating, developed dyspnea and chest pain and was sent for diagnostic testing, revealed a deep vein thrombosis of the right arm. Appellant was hospitalized on July 27, 1999 for treatment of the new condition. Dr. McMahon opined that the deep vein thrombosis and embolism were a "direct result of his shoulder surgery performed in June," and that appellant remained disabled.

In a September 13, 1999 report, Dr. Falcone stated that appellant was discharged from the hospital for a blood clot in his right leg and his right lung. He noted that appellant's shoulder had a significantly diminished range of motion and that appellant had not started physical therapy yet. Dr. Falcone added that "there was some misunderstanding at work as far as what his work duty status was and ... he was not to return to work until I gave the O.K." Dr. Falcone stated that appellant was advised not to return to work until his shoulder was significantly improved and he had recovered from the blood clots in his leg and right lung.

In an October 1, 1999 report, Dr. McMahon noted that appellant was admitted to the hospital for "possible recurrent pulmonary embolism," but was discharged with findings negative for pulmonary thromboembolus.²

In a letter dated October 5, 1999, the Office advised appellant of the additional factual and medical information needed to establish his claim.

In an October 15, 1999 report, Dr. Falcone indicated that he had examined appellant on September 27, 1999 and that his wound on the right shoulder was nicely healed, but he had significant restriction of motion. Additionally, Dr. Falcone noted diminished grip strength in the right hand and motion of the fingers, with limited abduction. Appellant remained totally disabled and would continue with physical therapy.

In a November 19, 1999 decision, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that he sustained a recurrence of disability beginning on July 24, 1999 causally related to the February 3, 1999 accepted employment injury.

² This report was left out of the record; however, it was stamped as received by the Office on October 15, 1999. The Office decision was November 19, 1999.

The Board finds that this case is not in posture for decision.

While appellant had the burden to establish entitlement to compensation, the Office shares the responsibility in the development of evidence.³ When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.⁴ Additionally, the Board has held that surgery, which is performed as a result of an employment injury and which causes further impairments, constitutes a consequential injury and any resulting disability may be compensable.⁵

In this case, the Office accepted that appellant had a right shoulder sprain and authorized arthroscopic surgery. Appellant subsequently developed a suspicious drainage from the shoulder surgery and on June 24, 1999 a hematoma was removed.

On August 13, 1999 Dr. McMahon opined that appellant's deep vein thrombosis and embolism were a "direct result of his shoulder surgery performed in June," and that appellant remained disabled. On September 13, 1999 Dr. Falcone opined that appellant was discharged from the hospital after treatment of blood clots in his right leg and lung. Dr. McMahon, in an October 1, 1999 report, indicated that appellant was again admitted to the hospital for "possible recurrent pulmonary embolism," but was discharged with negative findings. In an October 15, 1999 report, Dr. Falcone indicated that appellant's right shoulder had healed but he remained totally disabled and would continue with therapy.

While the reports of Drs. Falcone and McMahon are not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that the blood clots were causally related to his accepted February 3, 1999 employment injury, they constitute sufficient evidence in support of appellant's claim to require further development of the record by the Office.⁶ The Board further notes there is no medical evidence refuting a causal relationship between appellant's right shoulder surgery and the blood clots.

On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated November 19, 1999 is hereby set aside and the case remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
May 1, 2001

³ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Florence L. Krause*, 33 ECAB 613 (1982).

⁶ *See Horace Langhorne*, 29 ECAB 820 (1978).

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member