

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL C. WALKER and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 01-224; Submitted on the Record;
Issued October 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability causally related to his work injury of January 5, 1984.

On January 5, 1984 appellant, then a 30-year-old letter carrier, filed a claim for neck and shoulder strains sustained by carrying a heavy volume of mail on his shoulder. Appellant stopped work the same day. The Office of Workers' Compensation Programs accepted the claim for a neck strain and later modified the claim to include a right shoulder myositis. Appropriate compensation was paid and appellant returned to light-duty work February 21, 1984 and eventually resumed full-duty work.

On September 22, 1998 appellant filed a recurrence of disability from September 19, 1998 for pain in his back, shoulder, neck, arm and cervical spine. He stated that he received an injury on the left side of his neck and back, which caused the right side to act up again.

By letter dated November 4, 1998, the Office advised appellant of the type of evidence needed to substantiate a claim for a recurrence of disability.

In statements received by the Office December 4, 1998, appellant stated that he was not on light duty at the time of the recurrence and provided the sequence of events concerning his assignments and medical condition. Medical evidence was also received, some which revealed new injuries.

By letter dated January 29, 1999, the Office advised appellant that the factual and medical evidence did not support a recurrence of the prior condition. The Office noted that the original claim of injury involved the right upper extremity and appellant's current problems involve the left upper extremity. The Office noted that the evidence of record also showed that appellant's left upper extremity symptoms were further exacerbated by work activities on August 30, 1998. Appellant was advised to file a new claim of injury. The Office further noted

that appellant sustained a new injury of April 20, 1998, where a thoracic strain was diagnosed and an injury of May 6, 1998, where a cervical radiculopathy was diagnosed and advised appellant that a new claim could be filed for those conditions.¹

By letter dated June 28, 1999, the Office advised appellant to submit a detailed medical report from a physician with medical rationale explaining the causal relationship between the current condition and the original injury of January 5, 1984. It further noted that the medical evidence indicates that appellant sustained new injuries on or about May 6, 1998 after lifting a heavy bale of mail June 1, 1998²; and August 30, 1998 when throwing some mail and inquired as to whether appellant's present disability was a result of those injuries.

In Forms CA-20a and CA-20 dated August 20, 1999, Dr. Brian C. James, a physician specializing in anesthesia and pain medicine, diagnosed a cervical radiculopathy with disc bulges at C3-4; C4-5; C5-6 as a result of carrying mail in 1984. No discussion was provided regarding the causal relationship between appellant's current condition and the original injury of January 5, 1984.

By decision dated August 31, 1999, the Office denied appellant's claimed recurrence of disability as the medical evidence was insufficient to establish the relationship between his present condition and the January 5, 1984 employment injury.

Appellant requested a hearing, which was held before an Office hearing representative on February 29, 2000.

In an undated letter from Dr. James, which the Office received February 14, 2000, Dr. James related that appellant first presented on March 26, 1999. He noted that appellant injured his right shoulder in 1984 from carrying heavy bags of mail weighing approximately 50 to 60 pounds and that his condition got progressively worse. Appellant continued to work and since 1993 began to have left upper extremity pain as well as cervical pain. Appellant suffered another injury at work in 1998. A cervical magnetic resonance imaging (MRI) dated June 24, 1998 indicated disc bulges at C3-4, C4-5 and C5-6. Dr. James stated that he diagnosed appellant with cervical radiculopathy on March 26, 1999. He stated that appellant has not responded to epidural steroid injections. Dr. James opined that given the history of the accident and the fact that he has no history of any intervening accidents, along with appellant's evaluation and objective medical findings, appellant suffered an initial injury in 1984 with an exacerbation in 1998. He further opined that appellant's current diagnosis was causally related to these two workplace injuries.

¹ The record reflects that appellant filed a claim for a new injury of April 20, 1998. The case was assigned claim number 060705056 and was accepted for the condition of acute thoracic strain. In a letter dated April 8, 1999, appellant's counsel was advised that the Office would not consolidate the current claim (file number 100336090) with appellant's April 20, 1998 claim (file number 060705056).

² The Office indicated that appellant's injury of June 1, 1998 was denied on August 27, 1998.

By decision dated May 17, 2000 and finalized May 22, 2000, an Office hearing representative affirmed the decision below as appellant failed to establish by the weight of the medical and factual evidence that he sustained a recurrence of disability.

By letter dated August 14, 2000, appellant, through his counsel, requested reconsideration. Medical reports from Dr. Philip S. Rubin, a Board-certified family practitioner, were submitted. In an August 7, 2000 report, Dr. Rubin provided a history of the January 5, 1984 injury. An EMG in February 1984 showed probable right trapezius myofascial pain syndrome. Dr. Rubin stated that although appellant was able to return to work after this injury, he had never fully recovered to the point where he was totally without pain. Dr. Rubin stated that he saw appellant in March 1994 and his injuries at that visit were consistent with exacerbation of the prior injury. He related that despite appellant seeing multiple physicians and trying multiple therapies including physical therapy, steroid injections, medications, as well as restraining from heavy lifting at work, appellant's pain never totally went away. Dr. Rubin stated that it would appear that appellant's current medical condition and disabilities appear to be related to his initial work injury in 1984, with the condition getting worse in 1988. Since appellant's original injury was related to work as a postal worker and his most recent injury was also related to postal work, it seems irrelevant to make a distinction over whether his current condition is related to the original 1984 injury or solely on the basis of his 1998 injury since both occurred during his employment as a postal worker. Dr. Rubin further stated that it seemed plausible that appellant's condition is related to the original injury in 1984. In a progress report of August 24, 2000, Dr. Rubin diagnosed an exacerbation of chronic neck pain as demonstrated by spasms in the right paracervical muscles.

By decision dated September 19, 2000, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

The Board finds that appellant failed to establish a causal relationship between his original injury of January 5, 1984 and his alleged recurrence of disability of September 19, 1998.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.³ Such proof must include 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 An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁵

The medical evidence submitted to support appellant's recurrence claim does not establish a causal relationship between his 1998 alleged recurrence of disability and his

³ *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

⁴ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

⁵ *Id.*

January 5, 1984 accepted employment injury. Review of appellant's medical records from 1984 onwards do not conclude that appellant's current back, shoulder, neck, arm and cervical spine condition are causally related to his original neck strain and right shoulder myositis. Similarly, progress notes from Dr. James diagnosing cervical radiculopathy along with his CA-20 and CA-20a form reports of August 20, 1999 stating that such cervical radiculopathy was the result of carrying mail in 1984 do not contain a rationalized medical opinion relating appellant's condition to his January 5, 1984 medical injury. Although Dr. James, in his undated report which the Office received February 14, 2000, opined that appellant's current condition was causally related to his work injuries of 1984 and 1998, no medical rationale was provided explaining how the two injuries were interrelated and how each injury from the past could cause appellant's current condition. Moreover, the Office has never accepted that appellant sustained a cervical radiculopathy as a result of the work injury of 1984. Additionally, it appears from Dr. James report that he is confused about appellant's medical history. He initially related that appellant had a work injury in 1998. Dr. James later concluded that appellant suffered an exacerbation in 1998 as there is no history of any intervening accidents.

Dr. Rubin's August 7, 2000 report is of diminished probative value as his opinion is ambiguous. Dr. Rubin failed to provide a clear, unequivocal and rationalized explanation in his August 7, 2000 report. Dr. Rubin never explained why appellant's "probable" right trapezius myofascial pain syndrome never resolved to the point that appellant was without pain and how or why the condition became much worse in 1998. Moreover, Dr. Rubin opined that it seemed "plausible" that appellant's condition was related to the original injury in 1984 solely on the basis that appellant's injury was related to postal work and the 1998 injury also occurred during postal work. Although Dr. Rubin stated that it was irrelevant to make a distinction on the basis of whether appellant's current condition was related to either the 1984 or 1998 injury as both occurred during appellant's postal employment, the statement does not address whether a recurrence happened in this case. In view of the equivocal nature of Dr. Rubin's opinion, this evidence is of diminished probative value and, therefore, is insufficient to satisfy appellant's burden of establishing a causal relationship between his claimed recurrence and his original work injury of January 5, 1984.⁶ As the record lacks sufficient probative medical opinion attributing appellant's current condition to his accepted employment injury in 1984, the Office properly denied compensation.

⁶ *Ern Reynolds*, 45 ECAB 690, 696 (1994).

The September 19 and May 22, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 3, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member