

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE M. PILLING and U.S. POSTAL SERVICE,
POST OFFICE, Westville, NJ

*Docket No. 02-60; Submitted on the Record;
Issued April 24, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on January 4, 2000 or a torn rotator cuff of the left shoulder causally related to his December 14, 1999 employment injury.

The Office of Workers' Compensation Programs accepted that appellant's December 14, 1999 employment injury, sustained when he slipped and fell on his right hip, resulted in a sprain of the left shoulder,¹ a sprain of the pelvis, a contusion of the back and a lumbar spine sprain. Appellant returned to work on December 28, 1999.

Appellant stopped work from January 4 to 11, 2000. On January 9, 2000 he filed a claim for a recurrence of disability due to his December 14, 1999 employment injury. On his claim form appellant stated that he believed he returned to his full workload too soon and that he had an acute worsening of his low back injury.

By decision dated May 6, 2000, the Office found that the evidence failed to demonstrate that the claimed recurrence of disability was causally related to appellant's December 14, 1999 employment injury and that an injury at home on January 3, 2000 was considered the cause of his disability beginning January 4, 2000.

Appellant requested a hearing, which was held on November 8, 2000. By decision dated February 7, 2001, an Office hearing representative found that the evidence failed to establish that appellant's disability beginning January 4, 2000 was causally related to his December 14, 1999 employment injury and that appellant had not established that his torn rotator cuff of the left shoulder was causally related to the December 14, 1999 employment injury.

¹ The Office initially accepted a right shoulder sprain, but a February 20, 2001 medical report and appellant's testimony at a November 8, 2000 hearing indicated that appellant's left shoulder, not his right, was injured on December 14, 1999.

By letter dated March 26, 2001, appellant requested reconsideration and submitted additional medical evidence.

By decision dated June 22, 2001, the Office found that the additional medical evidence was based on an incomplete history and was insufficient to warrant modification of its prior decisions.

The Board finds that appellant has not established that he sustained a recurrence of disability beginning January 4, 2000 causally related to his December 14, 1999 employment injury.

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.² 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.³

Despite appellant's testimony at a November 8, 2000 hearing that he complained mainly of his shoulder on his January 4, 2000 visit to his attending physician, Dr. Don Weems, Jr., the only reports of January 4, 2000 medical attention are from an associate of Dr. Weems, Dr. Michael C. Lafon, who indicated that appellant was seen for "acute worsening of low back injury" without new trauma. Dr. Lafon indicated that appellant should be excused from work from January 4 to 11, 2000, and stated, "This is a worsening of the December 14, 1999 injury." There are no other medical reports that address appellant's disability from January 4 to 11, 2000.

These reports are not sufficient to meet appellant's burden of proof. They do not contain any findings on examination supporting total disability or indicating a worsening of appellant's back condition, nor do they contain rationale explaining why the doctor believed appellant's worsened back condition on January 4, 2000 was causally related to his December 14, 1999 employment injury.⁴ Moreover, these reports do not show that Dr. Lafon was aware that on January 3, 2000, appellant called the employing establishment and reported that he hurt his hip working in his attic over the weekend. Notes made on January 3, 2000 by appellant's supervisor and by the officer in charge at the employing establishment, both of whom spoke to appellant that morning, indicate that appellant reported a reinjury in his attic. These statements, being more contemporaneous with the telephone conversations in question, are entitled to more credibility than the later, self-serving statements by appellant that he did not tell anyone at the employing establishment that he injured himself in his attic.⁵

² *John E. Blount*, 30 ECAB 1374 (1979).

³ *Frances B. Evans*, 32 ECAB 60 (1980).

⁴ Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

⁵ *See Claudia J. Thibault*, 40 ECAB 836 (1989).

The Board finds that appellant has not established that his torn rotator cuff of the left shoulder is causally related to his December 14, 1999 employment injury.

Findings of a February 18, 2000 magnetic resonance imaging (MRI) scan of appellant's left shoulder were consistent with a partially torn rotator cuff. No physician, however, has directly attributed this condition to appellant's December 14, 1999 employment injury. In a report dated March 23, 2000, Dr. Gregory Maslow noted that, because of appellant's continuing discomfort of his left shoulder since the December 14, 1999 injury, an MRI was done that showed a torn rotator cuff. Dr. Maslow recommended a physiotherapy program "since the injury is three months old." This report is not sufficient to meet appellant's burden of proof, as it does not specifically state that appellant's torn rotator cuff is causally related to his December 14, 1999 injury, or explain why the doctor believes there is such a relationship. In addition, Dr. Maslow's report contains an inaccurate history that appellant "had not had prior cuff or shoulder problems." Appellant testified at a November 8, 2000 hearing that he had been treated for bursitis of the left shoulder prior to his December 14, 1999 employment injury. As the other medical reports diagnosing a rotator cuff tear do not address the etiology of this condition, appellant has not met his burden of establishing that this condition was causally related to his employment injury.

The June 22 and February 7, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
April 24, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member