

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNESTO R. BORJA and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Brooklyn, NY

*Docket No. 02-1412; Submitted on the Record;
Issued December 13, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden to establish that he sustained a recurrence of disability on or around November 16, 2001, causally related to his November 3, 2000 employment injury.

On November 8, 2000 appellant, then a 55-year-old postal clerk, filed a claim for employment-related right shoulder and arm pain he developed on November 3, 2000 while in the performance of duty. Appellant stopped work on November 6, 2000 and returned to full-time light-duty work on March 6, 2001. The Office of Workers' Compensation Programs accepted appellant's claim on June 4, 2001 for right shoulder tendinitis.

On June 15, 2001 appellant stopped work and on June 26, 2001 he filed a claim for a recurrence of disability, Form CA-2a. On October 22, 2001 appellant returned to light-duty work, four hours a day. On December 1, 2001 the Office accepted appellant's claim for a June 15, 2001 recurrence of disability.

On November 16, 2001 appellant again stopped work and on December 4, 2001 he filed a claim for a recurrence of disability Form CA-2a. Appellant returned to full-time light-duty work on March 18, 2002.

In support of his claim for a November 16, 2001 recurrence of disability, appellant submitted medical form reports, CA-17 and CA-20 forms, from Dr. Monica Mehta, his treating Board-certified physiatrist. In Dr. Mehta's reports dated November 26, December 3, 18 and 21, 2001 and January 29 and 31, February 18 and March 18, 2002, she noted appellant's history of having been "hurt on the job" and diagnosed cervical radiculopathy and right shoulder tendinitis. Dr. Mehta indicated by a check mark that appellant had no history of concurrent or preexisting injury or disease and further indicated by check mark, without any additional explanation, that the diagnosed conditions were causally related to his employment. Dr. Mehta stated that she prescribed pain management medication and noted that appellant required additional diagnostic

testing. Collectively, Dr. Mehta's reports indicated that appellant was totally disabled for the period November 16, 2001 to March 18, 2002.

By letter dated March 8, 2002, the Office requested that appellant provide additional factual and medical information, including a statement explaining the circumstances of the alleged recurrence and a rationalized narrative medical report from his attending physician describing the objective findings which convinced her that appellant's condition had worsened to the point where he could no longer perform his light-duty job.

In response to the Office's request for additional information, by letter dated March 25, 2002 and received by the Office on April 8, 2002, appellant stated that he had enclosed the December 11, 2001 narrative report of Dr. Mehta. Appellant also explained the circumstances of his recurrence, stating that on November 15, 2001 he felt some discomfort in his right shoulder, possibly from his sleeping position the night before. While at work, for nearly the entire day, he used his left hand to box mail and used his right hand only to hold the mail to be boxed. Near the end of his shift, his left hand got so tired that he switched to boxing mail with his right hand, but after only a few minutes of boxing mail with his right hand, he felt a pain in his right shoulder, which caused him to drop some mail to the floor. He went to a previously scheduled physician's appointment on November 16, 2001 at which time his physician took him off work.

In the enclosed December 11, 2001 narrative report, also received by the Office on April 8, 2002, Dr. Mehta noted that she was treating appellant for an employment-related right rotator cuff condition sustained on November 3, 2000. She noted that appellant had returned to light duty but was using his left hand most of the time. On November 16, 2001 when he tried to move his right shoulder after holding the mail for a long time, he started to have severe pain in the right shoulder, radiating to the cervical spine, which caused him to stop work. Upon examination, appellant was found to have pain in the right shoulder radiating upward to the cervical spine. Right shoulder range of motion was limited in horizontal abduction from 0 to 30 degrees, internal rotation from 0 to 10 degrees and external rotation from 0 to 20 degrees. Sensations to touch as well as to pinprick were found to be diminished in the C5-6 dermatome. Cervical flexion was limited from 0 to 20 degrees and lateral flexion was limited from 0 to 10 degrees bilaterally. Muscle strength could not be deciphered adequately because of pain, but appellant's grasp was in the plus fair range in the right hand. Dr. Mehta noted that an additional diagnosis was made of cervical radiculopathy in addition to the right shoulder rotator cuff tendinitis. Dr. Mehta stated that she prescribed medication and advised appellant to refrain from work until he had reached maximum medical benefit from the physical medicine treatment program, at least until December 31, 2001. Dr. Mehta stated that she believed appellant required magnetic resonance imaging (MRI) of the right shoulder and cervical spine and would probably require electromyographic studies to evaluate the presence of brachial plexus neuritis and cervical radiculopathy.¹ In conclusion, Dr. Mehta stated: "It is my opinion that the above complaints are aggravated due to the injury sustained on November 16, 2001."

¹ The record contains the results of an MRI scan of the right shoulder performed on March 20, 2002 which revealed: "Moderate degree of impingement, secondary to hypertrophic changes at the AC joint and a small spur at the tip of the acromion process. Tendinitis and at least a partial thickness tear involves the supraspinatus tendon. The study is somewhat limited due to excessive patient motion."

In addition to Dr. Mehta's report, appellant submitted a March 26, 2002 statement from a coworker, who stated that, although he could not recall the exact date, he did remember an occasion when appellant dropped a lot of mail on the floor, appeared to be in pain and, when asked, stated that he had hurt his right shoulder.

In a decision dated April 10, 2002, the Office denied appellant's claim for a recurrence of disability beginning November 16, 2001. The Office found that the evidence received, CA-17 and CA-20 forms and an MRI scan report, did not provide substantial and probative evidence to establish the claimed November 16, 2001 recurrence was causally related to the November 3, 2000 work injury and there were no narrative reports in the record.

The Board finds that this case is not in posture for a determination of whether appellant sustained a recurrence of disability on November 16, 2001 causally related to his November 3, 2000 employment injury.

In *William A. Couch*,² the Board remanded the case because the Office, in issuing a decision dated July 17, 1989, failed to consider new evidence it received on July 13, 1989. The Board stated:

"The Federal Employees' Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office."

With respect to the Office's April 10, 2002 decision, the Board notes that, as in *Couch*, the Office received additional evidence, specifically a narrative medical report from Dr. Mehta, on April 8, 2002 two days before it issued its April 10, 2002 decision rejecting appellant's claim, but did not review this evidence when rejecting appellant's claim. Because Dr. Mehta's December 11, 2001 narrative report was received but not reviewed by the Office in rejecting appellant's claim, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's entitlement to compensation.

² *William A. Couch*, 41 ECAB 548 (1990).

The April 10, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
December 13, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member