

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL D. SHIPLEY and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 01-2118; Submitted on the Record;
Issued June 10, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on July 21, 2000 causally related to his December 10, 1998 employment injury.

On December 10, 1998 appellant, then a 43-year-old mailhandler, sustained an employment-related left wrist sprain while lifting a sack of mail. He did not stop work at that time. The accepted condition was later expanded to include ulnar abutment syndrome and triangular fibrocartilage tear of the left wrist for which he underwent surgical repair on June 16, 1999. He returned to limited duty on August 2, 1999 and underwent a second surgical procedure on February 21, 2000. This consisted of a left ulnar shortening osteotomy with fixation of a surgical plate. Appellant returned to limited duty on April 18, 2000.

On July 31, 2000 appellant filed a recurrence claim, stating that his left wrist and arm were getting worse. He had stopped work on July 21, 2000. In an attached statement, appellant stated that he was limited to using his right hand only at work and that he could not wear a prescribed brace on his left arm because the pressure caused pain. He continued:

“I did try working with one hand only but at the end of the day my right wrist was starting to hurt. At this time all I have is my right arm and hand. I cannot afford to lose it too.”

By letter dated August 22, 2000, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support his recurrence claim, which was to include a rationalized medical report from his treating physician, Dr. L.J. Schwendeman, a Board-certified orthopedic surgeon, explaining why appellant was disabled from performing his right hand only limited duty as a result of the December 10, 1998 employment injury. In response, appellant submitted reports from Dr. Schwendeman dated August 25 and September 14, 2000.

In a decision dated September 25 and finalized September 26, 2000, the Office denied that appellant sustained a recurrence of disability on July 21, 2000 on the grounds that Dr. Schwendeman advised that he was capable of performing right-handed duty. On October 20, 2000 appellant, through counsel, requested a hearing. He resigned from the employing establishment on December 15, 2000. At the hearing held on April 17, 2001, which appellant did not attend, his attorney contended that, after appellant returned to work in April 2000, he was required to use both arms. In a sworn affidavit dated April 24, 2001, appellant attested that his supervisor instructed him to perform duties that required the use of both arms, specifically to push carts, unload trucks and bring mail in. He further attested that Dr. Schwendeman advised that he should not work “as a result of this violation” of his restrictions. By decision dated July 10, 2001, an Office hearing representative affirmed its prior decision. The instant appeal follows.

The Board finds that appellant has not established that he sustained a recurrence of disability on July 21, 2000 causally related to the December 10, 1998 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹

Causal relationship is a medical issue² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

In the instant case, appellant is contending that he sustained a recurrence of disability because his injury-related condition changed and because there was a change in the nature and extent of the light-duty requirements in that he was forced to work outside his restrictions.

The relevant medical evidence includes a number of reports from Dr. Schwendeman, a Board-certified orthopedic surgeon, who began treating appellant in January 1999. Regarding appellant’s return to work in April 2000, in a work capacity evaluation dated April 4, 2000, Dr. Schwendeman provided restrictions to appellant’s physical activity, advising that he could

¹ *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

not lift/carry or push/pull with his left upper extremity, but could perform fine manipulation and pinching/simple grasping with the left upper extremity and could case mail. He estimated that appellant could return to regular duty on June 1, 2000. In an April 25, 2000 treatment note, Dr. Schwendeman noted that appellant was doing no work with his left upper extremity. On May 19, 2000 he advised that appellant could not lift greater than five pounds or perform heavy work with his left upper extremity. In a work capacity evaluation dated June 6, 2000, Dr. Schwendeman provided check marks indicating that appellant could perform fine manipulation and pinching/simple grasping with his left hand. He also advised that appellant could work with his right hand only and provided lifting restrictions of 20 pounds. In a treatment note dated June 16, 2000, Dr. Schwendeman noted appellant's continued discomfort. A tomogram performed on June 27, 2000 demonstrated a healed/healing fracture of the distal ulna with a metallic plate intact. In a treatment note dated July 14, 2000, Dr. Schwendeman stated that he was unsure of the etiology of appellant's continued discomfort and would place him on right-handed work only. In a form report also dated July 14, 2000, he indicated that appellant could perform right-handed work only and could not use his left arm.

In a report dated May 25, 2000, the rehabilitation nurse assigned to appellant reported that after his return to work on April 18, 2000, he spent the majority of work day pitching rejected letters. On July 21, 2000 the employing establishment informed the Office that following appellant's return to work in April 2000, he had been working a limited-duty assignment with minimal use of his left arm. The employing establishment further stated that appellant claimed he could not "even use his right arm to answer the [tele]phone at work."

In a form report dated July 21, 2000, Dr. Schwendeman checked a box indicating that appellant could not work until a follow-up appointment on August 25, 2000. In an attending physician's report dated August 14, 2000, he advised that appellant was partially disabled from April 18, 2000 to the present. Dr. Schwendeman opined that appellant could resume regular work on October 1, 2000. By report dated August 25, 2000, which contained a stamped signature, Dr. Schwendeman again provided a checkmark indicating that appellant could not work until a follow-up appointment on November 24, 2000. In a treatment note also dated August 25, 2000, he stated that appellant continued to complain of pain, particularly over the plate. Dr. Schwendeman noted that appellant had not been working, noting that he had been placed on right-handed work only "with his last visit" but in the interim was "taken back off again." He noted findings of pain with palpation over the plate and minimal swelling in that area and concluded that appellant should be referred for a functional capacity evaluation and vocational rehabilitation. By letter dated September 14, 2000, Dr. Schwendeman advised that appellant "certain[ly] could be considered for duties that are right-handed only, as indicated by my July 14, 2000 disability slip." He indicated that appellant had reached maximum medical improvement. Regarding appellant's work status, Dr. Schwendeman concluded:

"I do feel that in my heart if there is no evidence of major pathology in his right upper extremity that *he is available for right upper extremity work only.*"

On September 28, 2000 appellant underwent a functional capacity evaluation which demonstrated a mildly decreased left wrist range of motion and strength and tenderness at the later aspect of the ulna. It was the conclusion of the examiner that appellant could work in light

duty full time.⁴ In a treatment note dated December 7, 2000, Dr. Schwendeman advised that appellant could return to work with the restrictions provided on the functional capacity evaluation.

Regarding appellant's contention that he was required to perform work duties outside his work restrictions, in the statement he provided at the time he submitted his recurrence claim in July 2000, he indicated that his left arm continued to be painful. He also stated that, because he was working with his right upper extremity only, it began to hurt and he was stopping work because he could not "afford to lose it too." The rehabilitation nurse indicated that appellant was pitching rejected letters and the employing establishment indicated that his limited-duty assignment required minimal use of the left arm. Dr. Schwendeman did not unequivocally state that he was to use his right arm only until July 14, 2000, a short time before appellant stopped work. The Board, therefore, finds that appellant failed to substantiate a change in the nature of his limited-duty position.

The Board also finds that the medical evidence fails to establish that appellant's employment-related condition worsened to the degree that he could not perform his limited-duty assignment. While Dr. Schwendeman provided somewhat contradictory reports, in his report dated September 14, 2000, he stated that appellant could work using his right upper extremity. As appellant failed to submit rationalized medical evidence that demonstrated that he could not perform his light-duty position, he failed to discharge his burden of proof and the Board finds that he failed to establish a recurrence of disability.

⁴ The report stated that appellant was presently lifting in the light category Office work as demonstrated by an occasional floor to knuckle lift of 20 pounds, knuckle to shoulder lift of 20 pounds, shoulder to overhead lift of 20 pounds and carry of 24 pounds 100 feet with pivoting.

The decision of the Office of Workers' Compensation Programs dated July 10, 2001 is hereby affirmed.

Dated, Washington, DC
June 10, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member