

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OMAR J. SHIPLEY and DEPARTMENT OF DEFENSE,
DEFENSE CONTRACT AUDIT AGENCY, Pascagoula, MS

*Docket No. 01-1972; Submitted on the Record;
Issued May 24, 2002*

DECISION and ORDER

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

The issue is whether appellant had any disability or any additional medical condition causally related to his November 25, 1998 employment injury, a left shoulder sprain with mild adhesive capsulitis and a cervical sprain.

The Board has reviewed the entire case record in this appeal and finds that appellant has failed to establish that he had any disability or any additional medical condition causally related to his November 25, 1998 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.¹ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁵

¹ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

² See *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

³ See *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ See *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *Id.*

On March 31, 1999 appellant, then a 52-year-old auditor, filed a claim for a traumatic injury on November 25, 1998 when he pulled on a stuck drawer and experienced pain across his upper back and shoulder. Appellant stopped work after February 26, 1999 but returned to work for matters such as training through June 8, 1999. He was granted disability retirement by the Office of Personnel Management effective September 24, 1999.

By decision dated June 25, 1999, the Office denied appellant's claim for a work-related injury on November 25, 1998.

On January 26, 2000 appellant filed a claim for lost wages for September 25, 1998 to December 31, 1999.

By decision dated and finalized April 20, 2000, an Office hearing representative remanded the case for further development and instructed the Office to refer appellant to a Board-certified orthopedic surgeon for an opinion on whether he sustained a work-related injury on November 25, 1998.

By decision dated August 31, 2000, the Office accepted that appellant sustained an injury on November 25, 1998 resulting in a left shoulder sprain with mild adhesive capsulitis and a cervical sprain, resolved by December 25, 1998. The Office denied appellant's claim for lost wages finding that the weight of the medical evidence established that appellant had no disability causally related to his November 25, 1998 employment injury. The Office authorized continued medical benefits.

By letter dated October 12, 2000, appellant requested reconsideration.

By decision dated January 19, 2001, the Office denied modification of its August 31, 2000 decision.

By letter dated March 19, 2001, appellant requested reconsideration and stated that he wished to expand his claim to include a partial tear of the left rotator cuff tendon and a frozen shoulder.

By decision dated June 6, 2001, the Office denied modification of its January 19, 2001 decision.

In a report dated July 14, 2000, Dr. Raymond R. Fletcher, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition, a summary of the medical evidence and detailed findings on examination. The Office provided him with a statement of accepted facts. He stated:

"1. [Appellant] sustained an injury to the left shoulder on November 25, 1998. This would have been a shoulder sprain, with subacromial bursitis, relating to preexisting impingement and subsequent adhesive capsulitis. There is a residual of adhesive capsulitis, which is present to this day based on examination. The injury to the cervical spine is expected to have been self-limiting and the vast majority of symptoms of the cervical spine and left cervical radiculitis are due to

preexisting degenerative changes. In this regard there is no residual cervical problem relating to [his] job injury.

“2. The diagnosis for the injury of November 25, 1998 is ... [m]ild residual adhesive capsulitis, left shoulder, originating from a left shoulder sprain and bursitis from preexisting subacromial impingement.

“3. [Appellant] continues with some symptoms relating to the left shoulder adhesive capsulitis.

“4. The injury to the cervical spine, which would have been a cervical sprain resolved within 30 days of the original injury.⁶ The continued cervical and left cervical radiculitis symptoms are relating to preexisting changes. The left shoulder adhesive capsulitis reached maximum medical improvement in March of 1999 (approximately 2 months after initiation of treatment by Dr. Hatzis).

“5. The mild residual adhesive capsulitis of the left shoulder caused no work limitations. In this regard there are no restrictions assigned for this job injury of November 25, 1998. Any limitations would be the result of the normal degenerative process of the cervical spine and left shoulder.”

The Board finds that the Office properly found that the weight of the medical opinion evidence was represented by the thorough evaluation of Dr. Fletcher, a Board-certified orthopedic surgeon, who performed a physical examination of appellant and reviewed the statement of accepted facts and prior medical evidence, including diagnostic tests. Dr. Fletcher based his report on a complete and accurate factual background. He provided medical rationale in support of his opinion that appellant sustained left shoulder and cervical strains on November 25, 1998 which had resolved and did not cause any disability and that his left shoulder strain led to mild adhesive capsulitis which continued but caused no work restrictions. Dr. Fletcher opined that appellant’s continuing cervical symptoms were caused by preexisting degenerative spinal conditions and not the November 25, 1998 employment injury.

The reports of appellant’s treating physicians are not sufficient to overcome the weight of Dr. Fletcher’s report.

In a report dated January 4, 1999, Dr. Nick Hatzis, appellant’s attending orthopedist, stated that appellant had been experiencing pain in the left shoulder for the past three or four months and had also hurt his back and shoulder 35 years previously when he fell down some concrete steps. He provided findings on examination and diagnosed left shoulder pain with possible cuff tendinitis. In a report dated February 1, 1999, Dr. Hatzis diagnosed continued left shoulder pain with a possible cuff tear. In a report dated February 15, 1999, Dr. Hatzis diagnosed referred left shoulder pain from C5-6 degenerative disc disease. In a report dated March 15, 1999, Dr. Hatzis diagnosed improving adhesive capsulitis of the left shoulder and

⁶ The record shows that appellant was off work on certain dates between November 25 and December 25, 1998. However, he did not consult a physician until January 4, 1999. Therefore, there is no medical evidence establishing that appellant was disabled between November 25 and December 25, 1998 due to his employment injury.

C5-6 disc disease. Dr. Hatzis was the first physician to treat appellant for the November 25, 1998 employment injury but there is no indication that appellant mentioned the November 25, 1998 incident to him during these four visits in early 1999. Furthermore, Dr. Hatzis reported that appellant had experienced pain in his shoulder for the past three or four months which would be September or October 1998, prior to the November 25, 1998 employment incident. Additionally, he did not indicate any periods of disability resulting from the accepted condition of adhesive capsulitis. Therefore, these reports do not establish that appellant was disabled due to his November 25, 1998 employment injury. There is also insufficient medical rationale to establish that the conditions of a cuff tear or cuff tendinitis or degenerative disc disease are causally related to the November 25, 1998 employment injury.

In a report dated February 7, 2000, Dr. Hatzis stated that he first saw appellant on January 4, 1999 and his initial injury “was apparently on November 25, 1998 when he was pulling on a stuck file cabinet drawer which began his onset of shoulder pain. This was documented in a work restriction form that he brought to me back in June of 1999.” Dr. Hatzis stated:

“I believe [appellant] has a diagnosis of adhesive capsulitis of that left shoulder. I believe it is secondary to the trauma he sustained while opening a stuck file cabinet drawer on the 25 of November 1998. He has been treated appropriately with therapy, stretching exercises, and pain medicines. Adhesive capsulitis is usually self limited and improves on its own. It may be seen after trauma. It may also be seen without trauma. However, since he was asymptomatic before this injury and he began to have shoulder pain and stiffness afterwards, it is my opinion that this injury was the cause of his shoulder pain and adhesive capsulitis.”

However, Dr. Hatzis did not indicate any periods of disability due to appellant’s accepted condition of adhesive capsulitis. Therefore, this report does not discharge appellant’s burden of proof.

In a report dated July 2, 1999, Dr. Terry C. Smith, a neurosurgeon, stated that appellant gave a history of falling down some concrete steps in 1964 while serving in the military with loss of consciousness and subsequent shoulder pain which gradually resolved. Appellant told him that a 1997 magnetic resonance imaging (MRI) scan showed degenerative disc disease. Dr. Smith related that in November 1998 appellant was trying to open a stuck drawer and developed pain in his upper back and chest area, which had continued to the present. He provided findings on examination and indicated that he had reviewed an MRI of the cervical spine, which showed some degenerative disc disease but no nerve root compression “and certainly nothing on the MRI to explain the complaints and examination that he has. The symptoms seem out of [pro]portion to the actual positive findings.” Dr. Smith recommended an EMG (electromyogram) and NCV (nerve conduction velocity) study of the arm and an MRI of the thoracic spine. In a report dated August 3, 1999, Dr. Smith provided findings on examination and stated that the EMG and NCV tests were consistent with C6-7 radiculopathy and an MRI revealed left foraminal stenosis at C4-5, C5-6, and C6-7. He stated that the November 1998 employment injury most likely exacerbated his preexisting condition. However, Dr. Smith did not provide sufficient medical rationale explaining how the November 25, 1998 employment

injury exacerbated appellant's degenerative disc disease and his left arm problems and he did not indicate any periods of disability. Therefore, this report is not sufficient to establish that appellant had any additional medical condition or disability causally related to his November 25, 1998 employment injury.

Appellant submitted a September 15, 1999 response by Dr. Henry H. Stonnington to medical questions posed by appellant in a typed document. However, there is no indication that Dr. Stonnington actually examined him and, therefore, this evidence is of limited probative value and is not sufficient to discharge appellant's burden of proof.

In a report dated June 11, 2000, Dr. John J. McCloskey, a neurosurgeon, stated that, since his November 25, 1998 employment injury, appellant had experienced neck and left shoulder pain. He diagnosed cervical disc disease with nerve root compression at C5-6 and stated that appellant's current neck and left arm pain represented a permanent aggravation of preexisting asymptomatic degenerative disc disease in his neck. Dr. McCloskey stated that appellant was permanently restricted from heavy, strenuous or overhead work. However, there is no indication that he actually examined appellant and he provided insufficient medical rationale explaining how his degenerative disc disease was aggravated by the November 25, 1998 employment injury. Therefore, his report is of limited probative value and is not sufficient to discharge appellant's burden of proof.

A functional capacity evaluation dated January 10, 2001, indicated that appellant had limited left shoulder range of motion and strength.⁷ However, this evaluation does not address the issue of disability or additional medical conditions causally related to the November 25, 1998 employment injury and is of limited probative value in this regard.

In a report dated March 9, 2001, Dr. Victor T. Bazzone provided a history of appellant's condition and findings on examination. He incorrectly noted that appellant's employment injury was on October 25, 1998. Dr. Bazzone diagnosed impingement syndrome of the left acromioclavicular joint with a partial rotator cuff tear, cervical spondylosis without radiculopathy, and a probable bilateral compression of the ulnar nerve at the elbow with sensory changes. He stated:

“[Appellant's] problem is not in his neck. However, it is resulting from a torn rotator cuff which I feel is a direct result of his accident dated October 25, 1998. [Appellant] had absolutely no symptomatology whatsoever in his neck and shoulder prior to that time, but since then has been afflicted by this continuous, severe, incapacitating pain, as well as decreased range of motion in the left shoulder. The MRI scan of the shoulder performed on September 10, 1999 is very clear in its findings. I am of the opinion that he needs an orthopedic

⁷ On appeal appellant requested a schedule award for permanent impairment of the left shoulder based on this functional capacity evaluation. However, the Office has not issued a final decision regarding a claim for a schedule award. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c); 501.3(d)(2). Therefore, the issue of a schedule award is not within the Board's jurisdiction on appeal.

evaluation.... I am firmly [convinced] that [appellant] will need a repair of his left rotator cuff.

“In summary it is my opinion that [appellant] suffered a left rotator cuff as a result of the accident at his place of employment on October 25, 1998. The chronicity of his symptoms and the severity of his symptoms indicate to me he will need a surgical procedure.”

However, Dr. Bazzone’s report is not based upon a complete and accurate factual background as he gave an incorrect date for the employment injury. Furthermore, he indicated that appellant had no neck or shoulder pain prior to the 1998 employment injury. However, in a report dated April 14, 1999, Dr. R. Eugene Bass indicated that appellant had a long history of neck pain with cervical disc disease at C5-6. Also, as noted above, in a report dated January 4, 1999, Dr. Hatzis indicated that appellant had been experiencing left shoulder pain prior to the November 25, 1998 employment injury. Due to these deficiencies, Dr. Bazzone’s report is not sufficient to establish that appellant sustained any disability or additional medical condition causally related to his November 25, 1998 employment injury.

Appellant has expressed his disagreement with some of the medical evidence of record. However, lay persons are not competent to render a medical opinion.⁸ Therefore, his opinions regarding the medical evidence are of no probative value and are insufficient to discharge his burden of proof.

The decisions of the Office of Workers’ Compensation Programs dated June 6 and January 19, 2001 and August 31, 2000 are affirmed.

Dated, Washington, DC
May 24, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *James A. Long*, 40 ECAB 538, 541-42 (1989).