

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GREGORY W. HEATH and U.S. POSTAL SERVICE,
POST OFFICE, Peoria, IL

*Docket No. 02-884; Submitted on the Record;
Issued October 17, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability causally related to his work injury of January 4, 1999.

On January 21, 1999 appellant, then a 54-year-old mail carrier, filed a traumatic injury claim alleging that on January 4, 1999 he sustained an injury to his right arm as a result of shoveling his LLV out of the snow. The Office of Workers' Compensation Programs accepted the claim for right shoulder subacromial bursitis. On January 29, 1999 the employing establishment offered appellant light duty. The record reflects that appellant requested leave without pay in lieu of limited duty. Appellant returned to regular duty work on or about February 3, 1999.

On October 18, 2001 appellant filed a notice of recurrence of disability advising the date of the recurrence to be July 31, 2001. He advised he stopped work on August 1, 2001 and used his sick leave on and off since that date. Appellant related that his pain had been off and on in the injured area since he returned to work. He stated that it hurts when opening and closing heavy metal door in LLV; there is pain when lifting heavy weight; he now uses plastic trays instead of heavy trays; he does not carry a mailbag; and he had cut his relays in half when the mail is heavy. Appellant further stated that he injured the same area and two other tendons on July 31, 2001 when he was off the clock and fell off a boat trailer. He indicated that surgery was needed in order to return to work.

In an October 30, 2001 letter, the employing establishment controverted the recurrence claim. They contended that appellant's current condition was a new injury which he suffered away from work when he fell from a boat trailer.

By letter dated November 13, 2001, the Office advised appellant of the type of evidence needed to substantiate a claim for a recurrence of disability.

In a statement dated November 23, 2001, appellant provided a description regarding how he modified his full-time duties and started to overcompensate by using his left shoulder. He related that he started developing problems with his left arm and lower back. Appellant also indicated that he had taken a fall on black ice last winter and had landed directly on his right shoulder. He indicated that he never reported the incident, but advised his right arm got worse with time. An attached witness statement indicated that the date of the fall to be December 2000.¹ Appellant further stated that he underwent surgery on his right shoulder. Medical evidence was also received, which indicated degenerative changes occurring in appellant's right shoulder eventually followed by an October 25, 2001 arthroscopy of the right shoulder with an open rotator cuff repair. Medical evidence prior to the claimed recurrence of July 31, 2001 noted that appellant's complaints of left leg paresthesias was probable left-sided sciatica. The evidence was devoid of any discussion regarding causal relationship to appellant's work duties.

In an August 1, 2001 report, Dr. Thomas J. Halloran, a Board-certified internist, advised that appellant has a history of bilateral rotator cuff tears and has been in therapy for quite sometime. Dr. Halloran stated that appellant was working on his boat yesterday when he lost his balance and fell into the water. Appellant advised that he heard a snap and pop in the right shoulder and, since that time, has been unable to raise the arm past shoulder level. Right shoulder discomfort was accessed, possibly secondary to rotator cuff tear.

In an October 17, 2001 report, Dr. Paul F. Plattner, a Board-certified orthopedic surgeon, advised that appellant continued to have problems with his right shoulder and had incidental complaints concerning his back, left shoulder and in the sciatic nerve down the left lower extremity. Appellant related some of those complaints as being work related as he has to pull a heavy Jeep door and because of his right shoulder problem, he is having to reach over and use the left shoulder. He further stated that he has to compensate the way he walks and works, holding the mail in his left arm. Based on appellant's examination, past history and diagnostic examination, Dr. Plattner stated that appellant has an element of some acromioclavicular (AC) joint arthritis that causes pain; impingement of the rotator cuff with subacromial bursitis and magnetic resonance imaging (MRI) scan evidence of a partial rotator cuff tear; and chronic long-standing bilateral long head of the biceps tendon rupture. He opined that he did not think this was related to the long head of the biceps tendon rupture, but more of the impingement and rotator cuff pathology. Dr. Plattner further opined that, although appellant's primary care physician had taken appellant off work, he felt that appellant could continue to work so long as he did not have to do a lot of heavy use of the right upper extremity.

In a December 21, 2001 report, Dr. Plattner advised that he reviewed appellant's medical record and stated that a May 11, 1999 report from Dr. Benjamin Welch indicated that appellant was first seen on January 29, 1999 and his history of injury and problems with the shoulders were well outlined in that report. At that time, appellant was noted to have bilateral biceps tendon ruptures. He was referred to the Physical Medicine and Rehabilitation Department where Dr. Jain, in a May 14, 1999 report, related that it was felt that appellant had right shoulder subacromial bursitis with deltoid strain, and some complaints consistent with carpal tunnel

¹ The witness statement appears to have been typed by appellant, but was signed by witness Sonia Snapp.

syndrome. Electrodiagnostic studies demonstrated carpal tunnel syndrome but no evidence of radiculopathy. By June 28, 1999, appellant's right shoulder pain was nearly resolved, but he was apparently having more problems with the left shoulder and was felt to have some AC joint arthropathy. On July 12, 1999 the Physical Medicine and Rehabilitation Department felt appellant to have bilateral mild AC joint separation with a right rotator cuff injury and probable synovial cysts about the left AC joint. The physiatrist noted, at that time, that appellant's shoulders were not much better. Appellant was seen on August 1, 2001 by his internist for right shoulder pain. The reason for his presentation on August 1, 2001 was that he had a new injury where he lost his balance and fell, and felt a snap and pop in the right shoulder. Dr. Plattner continued to document appellant's medical condition concerning his shoulders from the surgical intervention on October 25, 2001 and the progress made after surgery. He opined that, in reviewing all of these records, it was apparent that appellant has had chronic bilateral shoulder problems since his original work-related injury in 1999. The last note from the Physical Medicine and Rehabilitation Department on July 12, 1999 indicated that appellant had a right rotator cuff injury, which was later confirmed by MRI scan after appellant began acutely more painful after an intervening fall in August 2001.

By decision dated February 5, 2002, 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 4, 1999 employment injury.

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or about July 31, 2001 causally related to his accepted employment injury of January 4, 1999.

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.² 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.³ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.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 July 31, 2001 alleged recurrence of disability and his January 4, 1999 accepted condition of right shoulder subacromial bursitis. A "recurrence of disability" is defined as "an inability to work after an employee has returned to work, caused by

² *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

³ *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁵ See *Alfredo Rodriguez*, *supra* note 3.

a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁶ In contrast, a “traumatic injury” is defined as “a condition of the body caused by a specific event or incident or a series of events or incidents, within a single workday or shift.” The condition “must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence, and member or function of the body affected.”⁷ Although the record contains evidence that appellant might have had a right rotator cuff injury prior to July 31, 2001, appellant, in both his CA-2a form and in providing medical history to his physicians after July 31, 2001, attributed the increase in his right shoulder pain to a new traumatic injury when he lost his balance and fell off a boat during a nonscheduled workday. Appellant’s description of the events which gave rise to his current disability of his right shoulder and resulted in surgical correction indicates that it was not the result of a “*spontaneous* change in a medical condition ... without an intervening injury.”⁸ (Emphasis added.) As the record fails to clearly establish a causal relationship between appellant’s accepted employment injuries and his claimed recurrence of disability on or about July 31, 2001, the Board finds that appellant has failed to meet his burden of proof.

The Board notes that appellant has alleged that due to his right shoulder condition, he was utilizing his left shoulder to compensate for his right shoulder and has subsequently developed problems with his left arm, lower back and left lower extremity. Appellant specifically advised that he now uses his left shoulder to pull a heavy Jeep door and was now holding the mail in his left arm. The medical evidence of record reflects that appellant has a history of bilateral rotator cuff tears and the record is devoid of any medical information noting whether or not the intervening injury of July 31, 2001 impacted appellant’s left shoulder condition.

⁶ 20 C.F.R. § 10.5(x) (1999).

⁷ 20 C.F.R. § 10.5(ee) (1999).

⁸ 20 C.F.R. § 10.5(x) (1999).

The February 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 17, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member