

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE STRICKLAND and U.S. POSTAL SERVICE,
POST OFFICE, White Plains, NY

*Docket No. 03-364; Submitted on the Record;
Issued April 18, 2003*

DECISION and ORDER

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

The issues are: (1) whether appellant established that she sustained a recurrence of disability on or after May 2, 2000; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On June 11, 1996 appellant, then a 31-year-old clerk, filed a notice of traumatic injury, alleging that she fell off a chair in the performance of duty.¹ Appellant received treatment for a right shoulder strain and rib bruises from Dr. Dhansukh Patel, an internist, who placed her off work. The Office accepted the claim for injury to her right shoulder and chest wall. Appellant received compensation for wage loss from June 11, 1996 until she returned to light duty effective July 15, 1998. She worked 30 days of light duty and then resumed regular duty.

On June 23, 1998 appellant had a computerized tomography (CT) scan of the cervical spine that was described as essentially normal.

In a July 17, 1998 report, Dr. Syeda Tahera, a family practitioner, diagnosed brachial plexis compression and indicated that appellant should not lift over 10 pounds.² Appellant was advised to perform no pushing, pulling, bending or stooping. The physician stated that appellant's right arm movements were limited to 30 percent of normal and recommended physiotherapy.

On July 17, 1998 an employing establishment contract physician agreed that appellant was fit for light-duty work only. His restrictions stated that appellant should perform no lifting

¹ Appellant had a prior work-related back injury on March 25, 1995. In an October 10, 1996 report, Dr. Raymond Koval, a Board-certified orthopedist and Office referral physician, advised that appellant had no objective findings of any disability with respect to her back or the March 25, 1995 work injury. The record indicates that appellant had a nonwork-related motor vehicle accident in November 1996.

² In a July 10, 1998 report, Dr. Tahera had cleared appellant for light-duty work.

over 10 pounds, no pushing or pulling with the right arm, no bending, stooping, overtime or carrying with the right shoulder.

On August 5, 1998 Dr. Tahera saw appellant for a follow up. The physician indicated that appellant should continue to use only her left arm. Dr. Tahera further stated on August 20, 1998 that appellant would have to continue light duty for one more month on account of right shoulder pain.

In a progress note dated April 11, 2000, Dr. Tahera reported that appellant had presented complaining of right shoulder and arm pain, which had begun one week prior to her office visit. The physician opined that appellant had a pinched nerve and recommended that she should stay off work for one week.

In a May 5, 2000 progress note, Dr. Tahera indicated that appellant had returned to work but still complained of right shoulder pain. A magnetic resonance imaging (MRI) scan was recommended to rule out a rotator cuff tear. Physical findings included limited motion of the shoulders.

On May 8, 2000 appellant filed a Form CA-2a, alleging that she sustained a recurrence of disability on June 9, 1998. She stated that her right shoulder and arm continuously goes numb. Appellant stopped work May 2, 2000 and has not returned.

In an attending physician's report, prepared for the State of New York Workers' Compensation Board on May 8, 2000, Dr. Tahera indicated that appellant complained of right shoulder pain on April 4, 2000 possibly due to repetitive motion. It was noted that her original injury occurred on June 11, 1996 when she fell from a chair and suffered a right shoulder strain. Dr. Tahera recommended an MRI scan of the right shoulder.

In a May 15, 2000 statement, appellant related the following: "[I]n June [1998] sorting mail contiguously made right arm and shoulder go numb and dead. Then in April [2000], trying to get something out of my attic started to experience the same numbness. Put on [light] duty at that time but was told to limit use of right arm which was not done due to sorting of mail everyday after [light-]duty status. The continued use of arm has affected the healing of the shoulder and arm since that time there has not been an injury or medical condition which affected same area."³

In a July 5, 2000 letter, the Office advised appellant of the factual and medical evidence required to establish her claim for a recurrence of disability. The Office specifically requested that appellant explain what happened on June 9, 1998.

Appellant submitted a reply letter on June 9, 1998. She stated that the postmaster kicked her out of work because her right shoulder was going dead and numb and she was unable to perform her job duties.

³ Appellant's supervisor informed the Office that appellant had called in sick in April 2000, alleging that she fell at home while getting something out of the attic and reinjured her right shoulder. She was apparently off work for three days.

In a July 18, 2000 report, Dr. Tahera related that appellant was first seen on April 11, 2000 for right shoulder pain that was one week in duration prior to the office visit. The physician stated: "I believe her shoulder pain is an aggravation from her original injur[ies] of [June 11, 1996] and [June 9, 1998]." Dr. Tahera stated that he told appellant to remain home and rest her shoulder, but that she returned to light duty. Appellant was next seen on May 2, 2000 when it was recommended that she obtain an MRI to avoid permanent damage to the shoulder. Dr. Tahera noted that, since appellant had not received authorization from the Office to obtain a right shoulder MRI, he could not in good conscience release her for work.

In an August 2, 2000 report, Dr. Eduardo V. Alvarez, a Board-certified orthopedist, examined appellant at the request of the employing establishment. He discussed her history of injury and medical treatment. Dr. Alvarez opined that appellant had a frozen right shoulder and was not capable of using her right arm.

In a work restriction form dated August 2, 2000, Dr. Alvarez stated that appellant could only work four hours a day as a result of her frozen right shoulder.

In an August 11, 2000 report, Dr. Gary McAbee, a Board-certified neurologist, performed a fitness-for-duty examination. He found no neurological basis for appellant's complaints of right shoulder pain and indicated that her problem must be orthopedic in nature.

In a work restriction form completed on August 11, 2000, Dr. McAbee stated that appellant could work eight hours a day with restrictions.

In an attending physician's report dated August 17, 2000, Dr. Tahera diagnosed neuropathy of the right shoulder and advised that appellant was totally disabled for work on May 2, 2000. The date of injury was listed as June 11, 1996. He indicated that appellant had limited range of motion of the right shoulder and complained of pain, numbness and swelling of the right shoulder and arm.

On August 17, 2000 appellant filed a Form CA-7 claim for compensation for wage loss beginning May 19, 2000.

In a facsimile transmission of a "Request of OWCP Claim Status Leave" received by the Office on August 25, 2000, the employing establishment challenged appellant's claim for a recurrence of disability, noting that her supervisor had stated that appellant called in sick during April 2000 due to a fall at home while she had been getting something out of the attic and had reinjured her right shoulder. It was argued that the nonwork accident was an intervening injury that precluded appellant from receiving compensation benefits for a recurrence of disability.

In a decision dated September 6, 2000, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between the June 11, 1996 injury and the claimed recurrence of disability. The Office specifically noted that appellant had presented insufficient medical evidence to support a recurrence of disability as of June 9, 1998.

On September 19, 2000 appellant requested reconsideration. She stated that the Office incorrectly considered her claim for a recurrence of disability on June 9, 1998 when she was seeking compensation beginning May 2, 2000.

In support of her reconsideration request, appellant submitted a June 9, 1998 treatment note from Dr. Tahera. The physician indicated that appellant sustained injuries to her neck and back in a motor vehicle accident in 1996. It was noted that appellant complained that her right arm felt “dead.” Dr. Tahera recommended that she undergo x-rays of the chest and cervical spine.

In a decision dated December 11, 2000, the Office denied modification of its prior decision, finding that the evidence was insufficient to establish a recurrence of disability on or after May 2, 2000.

Appellant submitted another request for reconsideration on July 3, 2000.

On December 28, 2000 appellant filed a second claim for recurrence of disability with the onset date of May 2, 2000.

On March 2, 2001 appellant underwent an MRI of the right shoulder and cervical spine. The report stated that her right shoulder was “unremarkable” but that the cervical spine MRI showed herniated discs at C2-3.

In a March 12, 2001 report addressed to the employing establishment, Dr. Tahera indicated that he was responding to a request for a medical update on appellant. He reported that appellant had last been seen on February 27, 2001. The report stated that “two [previous] disability letters were written by Gail Cornelius on [July 18] and [September 18, 2000] without my knowledge and were inaccurate.” Dr. Tahera advised that appellant had sustained a work injury to the lower back in March 1995, that she was involved in a motor vehicle accident in 1996 and that she fell from a chair and injured her right shoulder in the same year. He stated that, following her work injury, appellant “continued to have problems with the right arm and shoulder and came to my office in March 1998. An MRI was requested on May 2, 2000 and was done on March 2, 2001. The results showed that appellant has two herniated discs.” The physician opined that appellant’s current medical condition would prevent her from returning to work and that she was being referred for physical therapy.

Dr. Tahera also wrote a report for the Office dated March 12, 2001 relating much of the information sent to the employing establishment. Appellant was reported as having fallen from a chair while at work in 1996. Dr. Tahera specifically wrote: “In my medical opinion the accident from June 11, 1996 caused [appellant] to suffer from symptoms she has experienced since the injury occurred.”

In a March 22, 2001 report, a physical therapist noted that appellant received treatment for a diagnosis of cervical radiculopathy and lower back pain.

In a personal statement dated April 9, 2001, appellant requested reconsideration, stating that when she returned to light duty effective July 15, 1998 the employing establishment did not comply with her medical restrictions.

In an August 9, 2001 letter, the Office advised appellant of the factual and medical evidence required to establish her claim for a recurrence of disability.

In a decision dated August 17, 2001, the Office denied modification, finding that the evidence was insufficient to establish that appellant sustained a recurrence of disability on either June 9, 1998 or May 2, 2000 causally related to the work injury of June 11, 1996.

In a June 1, 2002 decision, the Office denied appellant's claim for a recurrence of disability beginning May 2, 2000.

On August 29, 2002 appellant requested an oral hearing.

In an October 24, 2002 decision, the Office denied appellant's hearing request as untimely filed. The Office exercised its discretion in considering appellant's hearing request and noted that the matter could be equally well addressed through the reconsideration process.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on or after May 2, 2000 causally related to her accepted work injury of June 11, 1996.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial reliable and probative evidence that the disability for which he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 the employment injury and supports that conclusion with sound medical reasoning.⁴

In support of her claim for a recurrence of disability, appellant relies on the report of Dr. Tahera dated July 18, 2000. The Board initially finds that, since Dr. Tahera has denied knowledge of the preparation of the July 18, 2000 report, it is of no probative value in evaluating appellant's claim for compensation. Nonetheless, he did state in his March 12, 2001 report, that appellant was seen on April 11, 2000 complaining of increased right shoulder pain. Dr. Tahera stated that appellant was taken off work on May 2, 2000. The physician indicated that appellant's right shoulder pain was an aggravation of her work injury on June 11, 1996.

The Board finds several deficiencies with respect to Dr. Tahera's opinion. First, his April 11, 2000 treatment note implies that appellant may have sustained an intervening nonwork-related accident, which may have caused her claimed disability.⁵ The physician specifically notes on April 11, 2000 that appellant complained of right shoulder pain from a pinched nerve she received as a result of lifting items from her attic. If appellant hurt her shoulder at home then her claimed recurrence of disability would be the result of an intervening event and not the

⁴ *Dennis J. Lasanen*, 43 ECAB 549 (1992); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. See generally *Larson, The Law of Workmen's Compensation* § 10.02.

natural progression of her accepted work injury. If the worsening of appellant's shoulder condition was produced by a cause other than her employment, then she is not entitled to compensation based on a recurrence of disability. Without a proper discussion of how appellant's right shoulder condition was affected by a nonwork lifting incident, Dr. Tahera's opinion cannot be deemed well reasoned.⁶

Secondly, Dr. Tahera specifically acknowledged in his March 12, 2001 report that appellant's MRI scan of the right shoulder was unremarkable. Insofar as he has offered no objective evidence to explain appellant's continuing complaints of right shoulder pain, the Board does not consider the physician's findings to be based on anything but appellant's subjective complaints. Dr. Tahera has offered no credible reason why appellant was disabled from work on or after May 2, 2000 due to the accepted work injury of June 11, 1996.

Finally, Dr. Tahera suggested that appellant's right shoulder pain could be attributable to repetitive lifting at work in the performance of her light-duty job. Accepting this as true, then appellant would not be entitled to compensation based on a recurrence of disability due to the June 11, 1996 work injury. Instead she would have to file a new claim for an occupational injury.

Appellant has the burden of establishing that she sustained a recurrence of disability by presenting rationalized medical opinion evidence that discuss the nature of his disability and its relation to the accepted work injury. Because Dr. Tahera has not provided a reasoned opinion supported by adequate rationale that appellant sustained a recurrence of disability due to her accepted work injury on or after May 2, 2000, the Board concludes that his opinion is insufficient to carry appellant's burden of proof.

The Board also finds that the Office properly denied appellant's request for hearing.

Section 8124(b) of the Employees' Compensation Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.⁷ As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.⁸

Because appellant's hearing request was filed on August 29, 2002 more than 30 days after the Office's June 1, 2002 decision, the Office correctly found that appellant was not entitled

⁶ Dr. Tahera likewise did not discuss how appellant's automobile accident, which appears to have caused her to sustain two herniated discs at the cervical level, may have aggravated appellant's right shoulder condition. *See Robert W. Meeson*, 44 ECAB 834 (1993) (the Board held that a nonwork-related automobile constituted an intervening injury and that claimant's alleged recurrence of disability was not the result of a natural progression of the accepted work injury).

⁷ *See* 5 U.S.C. § 8124(b).

⁸ *See* 20 C.F.R. § 10.616(a) (1999); *Charles J. Prudencio*, 41 ECAB 499, 501 (1990).

to a hearing as a matter of right.⁹ The Office nevertheless considered appellant's request for a hearing and properly determined that the issue of the case could be equally well resolved through a request for reconsideration. Accordingly, the Board finds that the Office did not abuse its discretion in its denial of appellant's request for a hearing.

The decisions of the Office of Workers' Compensation Programs dated October 24 and June 1, 2002 are hereby affirmed.

Dated, Washington, DC
April 18, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ The date of the hearing request is determined by the postmark of the request. 20 C.F.R. §10.616(a) (1999); *see also Gus N. Rodes*, 43 ECAB 268 (1991).