

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDDIE MONTGOMERY and DEPARTMENT OF THE ARMY,
FORT McCLELLAN, AL

*Docket No. 02-2137; Submitted on the Record;
Issued February 4, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability in October 1999 causally related to his October 19, 1982 or April 19, 1983 employment injuries.

On November 16, 1982 appellant, then a 29-year-old meat cutter, filed a claim for an injury occurring on October 19, 1982 when a pork bone punctured his hand. Appellant stopped work on October 26, 1982 and returned to work on December 14, 1982. The Office of Workers' Compensation Programs accepted appellant's claim for a puncture wound of the left hand. The Office further accepted that on April 19, 1983 appellant sustained a strain of the left arm and tendinitis when he caught a 65-pound pan filled with hamburger trimmings. Appellant stopped work on April 21, 1983 and returned to work on June 1, 1983.

By decision dated October 22, 1984, the Office denied appellant's claim for compensation after August 29, 1983 on the grounds that he had not established that he was disabled due to his November 16, 1982 or April 19, 1983 employment injuries. By decision dated December 19, 1985, a hearing representative set aside the Office's October 22, 1984 decision and remanded the case for further development of the medical evidence. In a report dated March 26, 1986, Dr. Herndon Murray, a Board-certified orthopedic surgeon and Office referral physician, diagnosed a resolved soft tissue abscess of the left hand and opined that appellant had no residual medical condition or disability. The Office accepted appellant's claim for a recurrence of disability through March 26, 1986, the date of Dr. Murray's report.

In a report of telephone call dated June 4, 1986, an official with the employing establishment informed the Office that appellant had been separated from employment "for other than work[-]related conditions."¹

On October 17, 1999 appellant filed a claim for a "constant" recurrence of disability due to his October 19, 1982 employment injury. He related that he had "permanent nerve damage in

¹ By decision dated April 17, 1987, the Office denied appellant's claim for a schedule award on the grounds that the evidence did not show that he had a permanent impairment of the left upper extremity.

my left hand from gangrene. I also have numbness in my fingertips, poor circulation and constant pain.” Appellant included a list detailing his employment history from December 23, 1986 to October 1999.

By decision dated February 7, 2000, the Office denied appellant’s claim on the grounds that the evidence did not establish that he sustained a recurrence of disability causally related to his October 19, 1982 employment injury.

Appellant submitted chart notes from Dr. Vishuala L. Chindalore, a rheumatologist and his attending physician. In a note dated September 17, 1999, Dr. Chindalore treated appellant for left knee pain and diagnosed diffuse arthralgias and left knee arthritis. On October 15, 1999 she indicated that appellant stated that his joint pain had improved and diagnosed arthralgias and osteoarthritis. In a chart note dated January 18, 2000, Dr. Chindalore described appellant’s complaints of numbness in the upper and lower left extremity. She diagnosed diffuse arthralgias, osteoarthritis and paresthesias.

In a letter dated February 11, 2000, appellant requested a hearing. At the hearing, he submitted a report dated November 1, 2000 from Dr. Chindalore, who described appellant’s complaints of pain in his left upper extremity and stated:

“Since the pain did not get better with any of the conservative measures, I did a triple phase bone scan and it did reveal reflex sympathetic dystrophy. On further questioning, he tells me he had trauma at his job several years ago and since then he has been hurting in his left upper extremity. I think [the] clinical picture is consistent with reflex sympathetic dystrophy.”

Dr. Chindalore concluded:

“Reflex sympathetic dystrophy is known to occur after some type of trauma. Since there is a temporal relation to the trauma he describes, it is possible the puncture wound he received might have precipitated this event. He has had problems with this condition since 1982.”

By decision dated February 12, 2001, the hearing representative set aside the Office’s February 7, 2000 decision. The hearing representative found that the November 1, 2000 report from Dr. Chindalore was sufficient to require further development of the medical evidence. The hearing representative further noted that appellant had been diagnosed with reflex sympathetic dystrophy in 1985.

By letter dated March 13, 2001, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Jeffrey C. Davis, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated March 28, 2001, Dr. Davis discussed the history of appellant’s work injuries.² On physical examination, he found that appellant had full range of motion of the left upper extremity with no atrophy or loss of sensation. Dr. Davis noted that appellant’s grip

² The report by Dr. Davis is not signed.

strength was “much less on the left than the right.” He diagnosed nonspecific pain in the left upper extremity. Dr. Davis stated:

“[Appellant] has a pain syndrome of undetermined etiology. I have a hard time finding a relationship between his present complaints and his initial injury. I certainly have a hard time understanding the amount of impairment that he is claiming based on the physical findings. I am not able to explain the present pain complaints. I am not in a position to say that [appellant] does not have the pain; I am just not able to explain the source of the pain. Again I have a hard time relating the present problems to the injury as reported with regards to the penetrating injury and the subsequent infection. I have no other explanation for the symptoms that [appellant] is having other than the two work injuries as mentioned. However, again I have a very difficult time seeing that these events would lead to the amount of impairment that [appellant] is claiming at this time. Because of the length of time this process has been going on, I would be very dubious as to any intervention causing improvement in his symptoms. I see no reason, from a structural standpoint, that [appellant] cannot at least on a limited basis perform the duties of a butcher, although [his] perceived grip weakness might cause some problems.”

By letter dated June 25, 2001, the Office informed appellant that Dr. Davis’ opinion was speculative and that he would be referred for another examination by a rheumatologist. On August 6, 2001 the Office referred appellant to Dr. J. Graham for a second opinion examination.

In a report dated October 12, 2001, Dr. Graham noted appellant’s complaints of pain in his left hand, arms, shoulders, knees, ankles, back and neck. He listed findings on physical examination and diagnosed a history of a puncture wound of the left hand, status post abscess, chronic pain syndrome, osteoarthritis and bursitis/tendinitis of the left shoulder. Dr. Graham noted objective findings of diminished grip strength in appellant’s left hand and “diffuse joint tenderness” which he found was “consistent with [c]hronic pain syndrome and [o]steoarthritis.” He opined that appellant did not have reflex sympathetic dystrophy and stated: “The present information does not support the claimant’s recurrence of symptoms as being causally related to his injuries of October 19, 1982 and April 19, 1983. [Appellant] has just had chronic pain associated with the development of osteoarthritis and bursitis of the left shoulder.” In an accompanying work restriction evaluation, Dr. Graham found that appellant could work for eight hours per day with no limitations.

By decision dated November 9, 2001, the Office denied appellant’s claim for a recurrence of disability. Appellant requested a hearing, which was held on April 30, 2002. In a decision dated July 29, 2002, the hearing representative affirmed the Office’s November 9, 2001 decision.

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to his October 19, 1982 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to

the accepted injury.³ This burden includes the necessity of furnishing evidenced from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

In support of his claim, appellant submitted office visit notes from Dr. Chindalore dated September 17, 1999 through January 18, 2000. In these notes, Dr. Chindalore diagnosed arthralgias and osteoarthritis but did not discuss the cause of the diagnosed conditions and thus her reports are of little probative value.⁵

In a report dated Dr. November 1, 2000, Dr. Chindalore diagnosed reflex sympathetic dystrophy based on a bone scan. She noted appellant's history of an employment injury and stated: "Reflex sympathetic dystrophy is known to occur after some type of trauma. Since there is a temporal relation to the trauma he describes, it is possible the puncture wound he received might have precipitated this event." Dr. Chindalore's opinion that it was "possible" that appellant's employment-related puncture wound caused reflex sympathetic dystrophy is couched in speculative terms and therefore is of little probative value.⁶ Further, the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to establish causal relationship.⁷ Thus, Dr. Chindalore's opinion is insufficient to meet appellant's burden of proof.

Moreover, the record contains evidence that appellant's problems with his left upper extremity are not related to his employment injuries.⁸ In a report dated October 12, 2001, Dr. Graham noted appellant's complaints of pain in his left hand, arms, shoulders, knees, ankles, back and neck. He listed findings on physical examination and diagnosed a history of a puncture wound of the left hand, status post abscess, chronic pain syndrome, osteoarthritis and bursitis/tendinitis of the left shoulder. Dr. Graham opined that appellant did not have reflex sympathetic dystrophy and that he had not experienced a recurrence of disability due to his October 19, 1982 and April 19, 1983 employment injuries. He attributed appellant's chronic

³ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁴ *Id.*

⁵ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁶ *Jennifer L. Sharp*, 48 ECAB 209 (1996) (medical opinions which are speculative or equivocal in character have little probative value).

⁷ *Thomas R. Horsfall*, 48 ECAB 180 (1996).

⁸ In a report dated March 28, 2001, Dr. Davis, a Board-certified orthopedic surgeon and Office referral physician, diagnosed pain of "undetermined etiology." He listed normal findings on physical examination except for decreased grip strength on the left. Dr. Davis concluded that he had "a hard time finding a relationship between [appellant's] present complaints and his initial injury" but had no explanation except for the two work injuries. He concluded that he could not determine the etiology of appellant's complaints of pain. The Office found Dr. Davis' report insufficient to resolve the issue in the present case due to its equivocal nature and properly referred appellant for another evaluation.

pain to osteoarthritis and left shoulder bursitis. In a work restriction evaluation of the same date, Dr. Graham found that appellant could work for eight hours per day with no limitations.

Accordingly, the Board finds that the medical evidence does not establish that appellant sustained a recurrence of disability causally related to his October 19, 1982 or April 19, 1983 employment injuries. It is appellant's burden of proof and the evidence is insufficient to meet his burden in this case.

The decisions of the Office of Workers' Compensation Programs dated July 29, 2002 and November 9, 2001 are affirmed.

Dated, Washington, DC
February 4, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member