

**United States Department of Labor
Employees' Compensation Appeals Board**

WELLINGTON S. YEE, Appellant)	
)	
and)	Docket No. 02-1900
)	Issued: February 5, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Cincinnati, OH, Employer)	
)	

Appearances: Oral Argument January 7, 2004
Wellington S. Yee, pro se
Thomas G. Giblin, Esq., for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 9, 2002 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 7, 2002 which found that appellant failed to establish that he sustained recurrences of disability. Appellant also appealed a September 6, 2001 decision in which an Office hearing representative affirmed the prior decision and denied appellant's request for subpoenas. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained recurrences of disability on May 9 and September 5, 2000 and April 17, 2001; and (2) whether the Office abused its discretion in denying appellant's request for subpoenas.

FACTUAL HISTORY

On March 22, 1999 appellant, then a 60-year-old clerk-messenger, sustained an employment-related right shoulder tendinitis. He came under the care of Dr. Thomas

Lindenfeld, a Board-certified orthopedic surgeon, began working limited duty and underwent physical therapy. He was released to full duty on July 21, 1999 by Dr. J. Smith, an employing establishment physician.¹ Appellant returned to his regular employment. On May 11, 2000 he accepted a limited-duty job offer. On April 29, 2001 he filed a Form CA-2a, claiming that he sustained recurrences of disability on May 9 and September 5, 2000 and April 17, 2001.

By letter dated July 30, 2001, the Office informed appellant of the evidence required to establish his claim. In response, appellant submitted reports from Dr. Lindenfeld, consisting of a disability slip dated July 6, 2001, requests for a magnetic resonance imaging (MRI) scan and an unsigned treatment note dated July 18, 2001.

By decision dated September 6, 2001, the Office denied the claim, finding that the medical evidence of record failed to establish that appellant sustained the claimed recurrences of disability causally related to the March 22, 1999 employment injury.

On October 2, 2001 appellant requested a hearing and submitted limited-duty restriction forms dated May 9 and September 5, 2000 and April 17, 2001 from Dr. Ernest Wilson, who practices occupational medicine. Appellant subsequently requested that his medical records and notes held by the employing establishment, as well as the records of Drs. Smith and Wilson, be subpoenaed. At the hearing, held on February 12, 2002, appellant testified that he did not miss work due to the claimed recurrences, and indicated that he was actually requesting authorization for shoulder surgery that had been recommended by Dr. Lindenfeld. In a decision dated May 7, 2002, an Office hearing representative affirmed the September 6, 2001 decision.

LEGAL PRECEDENT -- ISSUE 1

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he 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. This burden includes the necessity of furnishing evidence 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. Moreover, sound medical reasoning must support the physician's conclusion.²

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.³ 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

¹ The credentials of Dr. Smith could not be ascertained.

² *Ricky S. Storms*, 52 ECAB 349 (2001).

³ See *Michael E. Smith*, 50 ECAB 313 (1999).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

Under the Federal Employees' Compensation Act,⁵ the term "disability" means incapacity, because of the employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury, but who nonetheless has the capacity to earn wages she was receiving at the time of injury, has no disability as that term is used in the Act.⁶

ANALYSIS -- ISSUE 1

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is generally rationalized medical evidence.⁷ An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his or her claimed condition and employment.⁸ In the instant case, none of the medical reports provide a rationalized medical opinion that the cause of appellant's condition or disability on May 9 or September 5, 2000 or April 17, 2001 was due to the March 22, 1999 employment injury.

The relevant medical evidence includes limited-duty certificates from Dr. Wilson who provided restrictions to appellant's physical activity due to his right shoulder injury. In a report dated July 18, 2001, Dr. Lindenfeld stated that appellant was seen for a "frozen shoulder." He noted that an MRI scan showed bursal inflammation and opined that appellant needed a bursectomy and possibly a minor subacromial decompression procedure. Dr. Lindenfeld further noted appellant's concerns regarding surgery and recommended that he be evaluated by a cardiologist. In none of these reports did the physician explain why he believed appellant's present right shoulder condition was due to the March 22, 1999 employment injury or found disability for work for the periods denied. It is noted that appellant testified that he did not stop work at the time of the claimed recurrences. The Board therefore finds that the medical reports of record are insufficient to establish that appellant sustained recurrences of disability, as alleged. The reports of the physicians do not contain sufficient medical reasoning explaining how and why appellant's current shoulder condition is due to the employment injury. Appellant, therefore, did not meet his burden of proof to establish that he sustained recurrences of disability on May 9 and September 5, 2000 and April 17, 2001.

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁷ *Michael E. Smith*, *supra* note 3.

⁸ *Calvin E. King*, 51 ECAB 394 (2000).

LEGAL PRECEDENT -- ISSUE 2

Section 8126 of the Act states: “The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles.” This section of the Act gives the Office discretion to grant or reject requests for subpoenas.⁹ In requesting a subpoena, a claimant must explain why the testimony is relevant to the issues in the case and why a subpoena is the best method or opportunity to obtain such evidence because there is no other means by which the testimony could be obtained. The Office hearing representative retains discretion regarding whether to issue a subpoena.¹⁰ The function of the Board on appeal is to determine whether there has been an abuse of discretion. A general contention that the evidence obtained through subpoenas would establish his claim is not sufficient to require that subpoenas should be issued.¹¹

ANALYSIS -- ISSUE 2

The Board finds that the Office hearing representative properly exercised his discretion in denying appellant’s subpoena requests. The hearing representative noted the requirements under 20 C.F.R. § 10.619(a)(2) and found that appellant failed to demonstrate why the evidence was relevant to the issue at hand and why it would be the best means of obtaining the requested evidence. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts and similar criteria. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.¹² The Board finds that the Office hearing representative did not abuse his discretion in finding that the documents sought were not necessary for a full presentation of appellant’s case.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained recurrences of disability on May 9 or September 5, 2000 or April 17, 2001 causally related to his March 22, 1999 employment injury. The Board further finds that the Office did not abuse its discretion in denying appellant’s subpoena requests.

⁹ 5 U.S.C. § 8126.

¹⁰ See 20 C.F.R. § 10.619; *Janet L. Terry*, 53 ECAB ____ (Docket No. 00-1673, issued June 5, 2002).

¹¹ *Gregorio E. Conde*, 52 ECAB 410 (2001).

¹² *Claudio Vazquez*, 52 ECAB 496 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 7, 2002 and September 6, 2001 be affirmed.

Issued: February 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member