

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CALOWAY REEVES, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Columbus, OH

*Docket No. 03-1824; Submitted on the Record;
Issued February 19, 2004*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a work-related disability for the period June 25 to July 29, 2002; and (2) whether appellant has established entitlement to an additional schedule award.

This is the second appeal in this case.¹ On the first appeal, the Board reviewed the Office of Workers' Compensation Programs' April 7, 1994 decision, by which it denied appellant's 1992 occupational disease claim for fibrositis, finding that the medical evidence was insufficient to establish that appellant's employment caused or aggravated his condition. The Board remanded the case finding that, while the medical evidence established that appellant's employment did not cause any of his underlying cervical degenerative disc disease, appellant had submitted uncontroverted medical evidence indicating that his employment had aggravated the preexisting condition in August or September 1993.² The facts and the circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

On February 24, 2000 appellant filed another occupational disease claim alleging that his limited-duty position, which required that he reach above his head to case mail, caused arthritis and right shoulder pain. The Office accepted the claim for an aggravation of the right acromioclavicular joint and later expanded the claim to include a right arthroscopic subacromial decompression/mumford procedure which was performed on August 10, 2000. Appellant was

¹ Docket 94-1806 (issued April 3, 1996).

² On September 24, 1992 appellant, then a 34-year-old distribution clerk and flat sorter, filed an occupational disease claim for fibrositis alleging that he sustained pain from his arms to his neck which he attributed to keying mail on a flat sorter machine. Appellant stated that the condition first became symptomatic around August 1, 1993. Accompanying his claim, appellant submitted evidence from a physician who stated that appellant's fibrositis was not caused by his employment, due to his history of neck injury while playing football in high school and several motor vehicle accidents but that his employment "clearly aggravated this condition based on the history given, *i.e.*, work involved turning head to the left, work aggravated the pain, and no other cause is apparent."

treated for his upper extremity and shoulder condition by Dr. Gerald Rosenberg, a Board-certified orthopedic surgeon. Appellant was offered a rehabilitative sedentary position by the employing establishment, which he accepted on June 15, 2000. On March 30, 2001 the Office issued appellant a schedule award for 14 percent permanent impairment of the right upper extremity.

On December 14, 2001 appellant filed a third occupational disease claim, alleging that the repetitive activities of casing mail in the limited-duty position caused arthritis in his right neck and shoulder pain. The Office accepted the claim for an aggravation of degenerative arthritis in the neck and combined the shoulder and neck claims with the previous 1993 claim. On May 9, 2002 the Office accepted that appellant sustained a recurrence of disability beginning February 20, 2002 when he could not reach above his shoulder at work. The Office paid appellant compensation for a period of disability and he returned to his limited-duty position on April 9, 2002.

On July 1, 2002 appellant filed a CA-7 disability claim related to the February 23, 2000 work injury alleging that he was totally disabled from June 25 to July 22, 2002 due to neck and shoulder pain after casing mail. In support of the claim, he submitted a statement dated July 12, 2002 in which he indicated that he returned to the same job duties as he had prior to his recurrence; however, upon his return, he again experienced right neck pain that radiated to his arm while casing mail. Appellant indicated that following the recurrence he received a new job offer from the employing establishment which did not require him to case mail and that he would return to the new position on July 22, 2002. He also submitted a disability slip and medical note from Dr. Rosenberg dated June 28, 2002, which indicated that appellant was out of work until July 22, 2002 due to his right shoulder condition and that he needed a work release to do a different type of job that would be easier on his shoulders. The disability slip noted restrictions limiting appellant to rewrap duties and prohibiting the casing of mail. The record reflects that appellant accepted the new limited-duty job offer with the employing establishment on July 10, 2002 and was scheduled to return to the new position on July 22, 2002.

On July 21, 2002 appellant filed another CA-7 claim for disability from July 23 to 29, 2002 related to the accepted injury. He submitted a narrative and attending physician's report from Dr. Robert Cromwell, a Board-certified orthopedic surgeon, both dated July 23, 2003. In the attending physician's report, Dr. Cromwell noted that he first treated appellant on May 28, 2002 and that appellant was totally disabled from September 17, 2001 to the present as a result of his upper extremity pain. In the narrative report, Dr. Cromwell stated that he was given appellant's paperwork and asked to make a causal association between the accepted work conditions and appellant's ongoing ability to work. He stated that, based on appellant's description, his inability to work probably did relate to degenerative changes in the neck. Dr. Cromwell concluded that he could not make a causal association regarding the condition because he did not have any documentation of the nature of the injury. He indicated that appellant could return to work on July 29, 2002 following physical therapy or any time prior.

By decision dated August 20, 2002, the Office denied appellant's claims on the grounds that he failed to submit sufficient medical evidence to support employment-related disability from June 25 to July 29, 2002.

In a letter dated August 23, 2002, appellant requested an oral hearing. Appellant subsequently requested a review of the written record on October 31, 2002 and submitted additional evidence to support his claim. In a medical note dated September 5, 2002, Dr. Cromwell opined that appellant was unable to work from June 25 through July 29, 2002 due to neck, shoulder and arm pain which he stated was caused by a work-related injury. Dr. Cromwell stated that, although there was no single specific traumatic event, the pain was likely related to exertion which appellant described as one hour of shoulder level repetitive casing of letters. Dr. Cromwell noted: “[t]hat event was apparently in July 2001.” Appellant submitted another report dated September 12, 2002 in which Dr. Cromwell stated that appellant continued to have activity-related neck pain exacerbations with occasional right arm pain due to repetitive work activities, including the rewrapping of damaged mail. He further stated: “It has really been a subjective level of pain limitation that has caused appellant’s necessity for remaining off work for various intervals of time. This has raised some confusion and the apparent discrepancy of when he was or was not able to return to work ... he does have significant activity limitations and difficulty continuing with efforts at work.”

On November 20, 2002 appellant filed a CA-7 claim for an additional schedule award related to the February 23, 2000 injury. By decision dated January 14, 2003, the Office denied appellant’s claim. The Office found that appellant had previously received a schedule award for 14 percent loss to the right upper extremity and that the current impairment ratings were the same as the prior assessments. Thus, there was no medical evidence establishing additional impairment.

In a letter dated January 21, 2003, appellant disagreed with the schedule award determination and expanded his October 31, 2002 request for review of the written record, contending that he also had an accepted neck condition which should be considered for a schedule award.

By decision dated May 2, 2003, an Office hearing representative affirmed the August 20, 2002 Office decision, finding that appellant was not entitled to disability for the period June 25 to July 29, 2002.

The Board finds that appellant has not met his burden of proof to establish that he sustained a work-related disability for the period June 25 to July 29, 2002.

In this case, the Office accepted that appellant sustained an employment-related right shoulder condition at the right acromioclavicular joint on February 23, 2000 for which he underwent arthroscopic subacromial decompression surgery. He had various periods of disability, but returned to limited-duty work on April 9, 2002. Appellant stopped work on June 25, 2002 and claimed compensation for total disability for the periods June 25 to July 22, 2002 and July 23 to July 29, 2002 due to the February 23, 2000 employment injury. Appellant has the burden of proof to establish total disability for the claimed period by the submission of probative medical evidence.³ To establish disability, appellant must submit evidence from a qualified physician who on the basis of a complete and accurate factual and medical history,

³ *Charles E. Robinson*, 47 ECAB 536 (1996); *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

concluded that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁴

Dr. Rosenberg, in a disability slip dated June 28, 2002, indicated that appellant was out of work until July 22, 2002 due to his right shoulder condition and noted that appellant needed a work release to do a different type of job that would be easier on his shoulders. This report is insufficient as it does not provide a rationalized medical opinion to explain how appellant's disability for the claimed period related to the accepted condition. The reports of record from Dr. Cromwell lack probative value as they demonstrate that the physician did not have accurate description of the accepted injuries or a familiarity with the employment factors appellant alleged aggravated his accepted condition. He noted in an attending physician's report that he first treated appellant on May 28, 2002; however, he backdated appellant's disability from September 17, 2001 to the present as a result of reported upper extremity pain. Dr. Cromwell stated that he was given appellant's paperwork and asked to make a causal association between the accepted work conditions and his ongoing ability to work. He concluded that he could not make a causal association regarding the condition because he did not have any documentation of the nature of the injury in September 2001, except for appellant's assertions. Dr. Cromwell indicated that appellant could return to work on July 29, 2002 following physical therapy or any time prior. In a medical note dated September 5, 2002, Dr. Cromwell opined that appellant was unable to work from June 25 through July 29, 2002 due to his neck, shoulder and arm pain, which he stated was caused by a work-related injury; however, the physician noted that there was no single specific traumatic event and that it was likely related to exertion which appellant described as one hour of shoulder level repetitive casing of letters. He noted: "[t]hat event was apparently in July 2001." Dr. Cromwell stated in a September 12, 2002 report that appellant continued to have activity-related neck pain exacerbations with occasional right arm pain with repetitive work activities such as the rewrap of damaged mail activity and that it had really been a subjective level of pain limitation that has caused his necessity for remaining off work for various intervals of time. He indicated that, although the subjective pain complaints raised some confusion and the apparent discrepancy of when appellant was or was not able to return to work, he did have significant activity limitations and difficulty continuing with efforts at work. The Board finds that the reports submitted by Dr. Cromwell are speculative and not well rationalized on the issue of causal relationship. The evidence of record is overall insufficient to establish that appellant was totally disabled for the period in question due to his accepted employment injury of February 23, 2000.

The Board further finds that, with respect to whether appellant is entitled to an additional schedule award as a result of the accepted employment injury, the case is not in posture for a decision.

Appellant timely filed a request for review of the written record dated January 21, 2003 of the January 14, 2003 decision denying an additional schedule award. The request was noted as received at the district Office and date stamped; however, it was not forwarded to the Branch of Hearings and Review as required. The Office procedures require that such requests be

⁴ See *Carolyn F. Allen*, 47 ECAB 240, 245 (1995); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

forwarded to the Branch of Hearings and Review.⁵ Since appellant clearly requested a review of the written record of the January 14, 2003 schedule award denial, the Board finds that the request should have been forwarded to the Branch of Hearings and Review for further consideration. For this reason, the case will be remanded to the Office for further appropriate review.

The May 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed. The case is remanded to the Office for further action consistent with this opinion.

Dated, Washington, DC
February 19, 2004

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.3 (July 1999).