

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

JOANN JAMES, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 03-1072
Issued: March 31, 2004**

Appearances:
Joann James, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 17, 2003 appellant filed a timely appeal from a decision January 8, 2003 of the Office of Workers' Compensation Programs, which denied her claim for a recurrence of disability commencing July 2002. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability commencing July 2002, causally related to her September 11, 1997 left shoulder strain injury.

FACTUAL HISTORY

On September 11, 1997 appellant, then a 42-year-old small parcel bundle sorter clerk, sustained a left shoulder injury from throwing mail at work. She filed a traumatic injury claim on September 12, 1997. The Office accepted that appellant sustained left shoulder strain and she lost no time from work.

On August 31, 2002 appellant filed a Form CA-2a claiming that, in July 2002, she sustained a recurrence of disability causally related to her September 11, 1997 employment injury. Appellant did not stop work following the alleged recurrence. She claimed that when she returned to work following her September 11, 1997 employment injury she was unable to repetitively reach above her shoulder, that her shoulder pain varied with the type of work she was performing and that her pain never completely subsided.

Appellant submitted a July 18, 2002 form report, from Dr. Paul C. Thomas, an osteopathic physician, which stated that appellant was seen in his office for right shoulder pain that date and could return to work on July 19, 2002. Appellant also submitted a Form CA-17 dated July 18, 2002, signed by Dr. Thomas. The form noted only “no pushing/pulling [left] arm [for] five days.” Also submitted was an August 3, 2002 Form CA-17 by Dr. Jon M. Rainey, a Board-certified internist. The form noted “no pushing/pulling [and] lifting.”

An August 23, 2002 return to work slip signed by Dr. Rainey noted that appellant had been under his care for left shoulder pain but could continue light duty for 1 week with no lifting over 10 pounds.

On August 31, 2002 appellant stated that the biggest problem she was having was that her injury occurred intermittently usually depending on the type of work that she was doing. Appellant noted that, until recently, she worked first class mail only, but was rotated to working with magazines, which dealt with heavy bundles. Appellant stated that a break from work was needed, but noted that neither she nor her physician knew exactly what to do to “request a break intermittently as a day/week to give the injury time to stop hurting.”

By letter dated September 24, 2002, the Office advised appellant that additional evidence needed for her to establish a recurrence of disability, including a rationalized medical report addressing causation. Appellant did not respond within the time allotted.

By decision dated January 8, 2003, the Office denied appellant’s recurrence claim, of disability finding that she had failed to submit rationalized medical evidence that established that she had sustained a recurrence of disability in July 2002, as alleged or that her present condition was causally related to her original injury of September 11, 1997.

LEGAL PRECEDENT

As used in the Federal Employees’ Compensation Act,¹ the term “disability” means incapacity because of an employment injury to earn the wages that the employee was receiving at

¹ 5 U.S.C. §§ 8101-8193.

the time of injury.² An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing 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.³ Causal relationship is a medical issue and can be established only by rationalized medical evidence.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

ANALYSIS

Appellant claimed that in July 2002 she sustained a recurrence of disability due to her accepted 1997 left shoulder strain. In describing her recurrence, however, appellant was not specific as to any particular date of onset in July 2002. She noted that the pain from her original injury never completely subsided and that her shoulder pain varied with the amount and type of work she was performing. In support of her claim, appellant submitted several form medical reports.

On a July 18, 2002 form report Dr. Thomas stated that appellant was seen in his office for right shoulder pain and could return to work on July 19, 2002. No specific diagnosis was given and no discussion or rationale was provided linking appellant's right shoulder pain to factors of her employment. Further, no disability was noted as Dr. Thomas indicated that appellant could return to work the next day. Therefore, this form report is incomplete and unrationalized and of diminished probative value. Dr. Thomas' report is insufficient to establish appellant's recurrence of disability claim.

Dr. Thomas also submitted a July 18, 2002 Form CA-17, noting only "no pushing/pulling [left] arm [for] five days." As it is incomplete and contains no diagnosis, medical narrative or rationale it fails to establish appellant's claim.

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation. See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury). Cf. 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

³ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁴ *Mary S. Brock*, 40 ECAB 461 (1989); *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁵ *Michael Stockert*, 39 ECAB 1186 (1988).

An August 3, 2002 Form CA-17 report from Dr. Rainey noted activity restrictions. However, the physician did not address the issue of causal relationship, if any, between the specified restrictions and the September 11, 1997 employment injury.

In an August 23, 2002 return to work slip, Dr. Rainey noted that appellant had been under his care for left shoulder pain, but noted that she could continue light duty for 1 week with no lifting over 10 pounds. This medical slip is of diminished probative value as it provided no specific diagnosis, factual or medical history, did not address causal relation or identify any period of disability. The evidence from Dr. Rainey does not support appellant's July 2002 recurrence of disability claim.

Appellant has not presented any probative or rationalized medical evidence, contemporaneous to the alleged recurrence of disability. She has not established that she sustained a recurrence of disability commencing in July 2002, causally related to her September 11, 1997 left shoulder strain injury. Therefore, she has failed to meet her burden of proof.

CONCLUSION

Under the circumstances presented, the Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability commencing in July 2002.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2003 decision of the Office of Workers' Compensation Programs is affirmed.⁶

Issued: March 31, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ Subsequent to the issuance of the Office's January 8, 2003 decision, appellant submitted factual and medical evidence supportive of her claim. As this evidence was not before the Office at the time it issued the January 8, 2003 decision, the Board is precluded from reviewing it for the first time on appeal. *See* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.