

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

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**BRADLEY R. CROAD, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bozeman, MT, Employer**

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**Docket No. 04-1327  
Issued: November 19, 2004**

*Appearances:*  
*Timothy Quinn, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

*Before:*

ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On April 22, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 31, 2004, denying his claim that he sustained a recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of total disability on or after February 1, 2001 due to his accepted employment injuries, a left rotator cuff tear and right shoulder impingement.

**FACTUAL HISTORY**

On December 18, 1998 appellant, then a 51-year-old mail carrier, sustained a left rotator cuff tear due to a fall at work. On January 21, 1999 he underwent left shoulder surgery authorized by the Office, including debridement of an anterior labral tear, arthroscopic subacromial decompression and rotator cuff repair. The Office later accepted that appellant

sustained right shoulder impingement due to repetitive duties required by his job. He indicated that he first became aware of his right shoulder condition in February 1999. On April 20, 2000 appellant underwent right shoulder surgery authorized by the Office, including debridement of a partial thickness articular-sided rotator cuff tear, arthroscopic subacromial decompression and distal clavicle excision. Both surgeries were performed by Dr. Mark C. Deibert, an attending Board-certified orthopedic surgeon.<sup>1</sup>

In June 2000, appellant returned to work for the employing establishment in a light-duty desk job which involved such duties as answering telephone calls, assisting with carrier edit books, following up on misdelivery complaints and occasionally making computer entries. The position was based on the medical restrictions provided by Dr. David McLaughlin, an attending Board-certified family practitioner, and restricted appellant from lifting more than 10 pounds and from casing or carrying mail. The position required appellant to intermittently use his hands from waist to chest level in front of his body and was designed to avoid strong grasping or twisting motions.

Appellant stopped work on February 1, 2001 and filed a claim alleging that he sustained a recurrence of total disability on that date due to his December 18, 1998 employment injury. He indicated that even the minor repetitive duties required by his job caused him to have pain in both his shoulders. Appellant later asserted that both his accepted employment injuries contributed to his claimed recurrence of total disability.

In a series of form reports dated, beginning in January 2001, Dr. McLaughlin indicated that appellant was totally disabled from all work. In several treatment notes from the same period, Dr. McLaughlin noted that appellant reported increased pain in both shoulders.

By decision dated June 26, 2001, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an employment-related recurrence of total disability on or after February 1, 2001.

In a report dated July 17, 2001, Dr. McLaughlin noted that he had been appellant's primary care physician since 1996 and stated:

“It is my opinion and the opinion of his primary orthopedic surgeon, Dr. Mark Deibert, that his initial injuries are the reason that he had to sign a recurrence claim on February 2, 2001 for disability starting on February 1, 2001. These injuries have never totally resolved and he was instructed and followed instructions concerning work restrictions. However, these light[-]work restrictions exacerbated the underlying problem dating back to the original injury. There is no question that his present day complaints are related back to the original injuries.”

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<sup>1</sup> In a report dated July 24, 2001, Dr. Deibert indicated that appellant expressed his wish to not have a right rotator cuff repair performed in connection with his right shoulder surgery on April 20, 2000.

In a report dated September 20, 2001, Dr. McLaughlin noted that he and Dr. Deibert agreed that appellant had been totally disabled since February 1, 2001 and stated, "We feel that his shoulders preclude him from doing any work whatsoever even on a limited basis."

In a report dated December 4, 2001, Dr. Deibert noted that appellant had been disabled from light-duty positions since February 1, 2001. He stated:

"[Appellant's] disability is related to the accepted condition. In addition, I am not aware of any intervening cause or exposure. [Appellant] does not describe any intervening injury; however, his symptoms do very likely represent a natural progression of the accepted injury."

In a January 23, 2002 report, Dr. Deibert indicated that the symptoms related to appellant's C6-7 herniation had resolved<sup>2</sup> and noted that he had minimal remaining symptoms in his right shoulder and persisting symptoms in his left shoulder. He also diagnosed bilateral epicondylitis and bilateral carpal tunnel syndrome.

The findings of a March 5, 2002 arthrogram of the left shoulder indicated a rotator cuff tear, most likely in the infraspinatus area and a possible tear of the anterior labrum. In a March 8, 2002 report, Dr. Deibert indicated that on examination appellant had full range of motion of his left shoulder but reported having constant pain. Regarding the rotator cuff tear found on the March 5, 2002 arthrogram, he stated, "As the tear is difficult to visualize, [sic] it is suggested that [it] is small."

Appellant requested a hearing before an Office hearing representative which was held on May 13, 2002. By decision dated August 20, 2002, the Office hearing representative affirmed the Office's June 26, 2001 decision.

After the hearing appellant submitted an October 10, 2002 report in which Dr. McLaughlin discussed his shoulder injuries and subsequent rehabilitation and stated:

"Throughout the entire time of this course of events neither shoulder has really healed. He [has] had continuous pain in the left and then after surgery in the right until the present day.... Despite all these therapeutic interventions, neither shoulder has recovered from the original injury and there is no question, either in my mind or after careful evaluation of the notes by myself or Dr. Deibert that he has had consistent chronic pain since the initial event. All of the complications have been related to work events and I believe that this is primarily repetitive motion at the shoulders."

By decision dated January 21, 2003, the Office affirmed the August 20, 2002 decision of the Office hearing representative.

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<sup>2</sup> The findings of July 9, 2001 magnetic resonance imaging scan testing showed degenerative changes at several cervical levels, with foraminal narrowing most pronounced at C3-4 and a small disc bulge at C6-7, with mild canal stenosis and minimal left foraminal narrowing.

Appellant also submitted an undated report of Dr. McLaughlin which was received by the Office in March 2003. In this report, Dr. McLaughlin stated:

“The light[-]duty work that I prescribed for [appellant] included answering [tele]phones, filing, handling reference books and sorting mail. I feel that this exacerbated his original injury through the mechanism of repetitive use. It was not necessarily the exact duty that is in question. It is the idea that anything that caused repetitive motion at the shoulder would exacerbate his underlying condition, which was the original injury to his shoulders. But again, specifically, it was the reaching overhead, the sorting of mail, the lifting of reference books, the picking up of a [tele]phone, opening and closing drawers. Again these are all manifestations and exacerbation of the underlying original injury.

“All of the manifestations of the signs and symptoms of his problem can be traced back to his original shoulder injury. Prior to that, he had none of these complaints. After the original injury to his shoulder anything that caused repetitive motion at that joint would exacerbate his symptoms and signs.”

By decision dated July 24, 2003, the Office affirmed its January 21, 2003 decision.

The Board issued an order remanding case on January 30, 2004 which set aside a July 24, 2003 decision of the Office.<sup>3</sup> The Board indicated that medical reports dated December 4, 2001 and March 8, 2002 of Dr. Deibert were missing from the record and determined that their absence precluded an informed adjudication of the case.<sup>4</sup> The Board remanded the case to the Office for reconstruction of the case record and the issuance of an appropriate merit decision to preserve appellant’s appeal rights.

Upon remand to the Office, the December 4, 2001 and March 8, 2002 reports of Dr. Deibert were returned to the present case record. By decision dated March 31, 2004, the Office affirmed its January 21, 2003 decision.

### **LEGAL PRECEDENT**

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>5</sup>

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<sup>3</sup> Docket No. 03-2244 (issued January 30, 2004).

<sup>4</sup> The Board noted that the Office partially based its August 20, 2002 decision on these reports of Dr. Deibert.

<sup>5</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

## ANALYSIS

In the present case, the Office accepted that on December 18, 1998 appellant sustained an employment-related left rotator cuff tear due to a fall at work and that he subsequently sustained right shoulder impingement due to his repetitive work duties. In June 2000, appellant returned to work for the employing establishment in a light-duty desk job which did not require lifting more than 10 pounds, casing or carrying mail or using his hands above the chest level.

In several reports dated starting in January 2001, Dr. McLaughlin, an attending Board-certified family practitioner, generally stated that appellant was totally disabled from all work beginning February 1, 2001. In a report dated September 20, 2001, he indicated that appellant's shoulders prevented him from working but he did not provide a clear opinion on the cause of these shoulder problems. In a report dated July 17, 2001, Dr. McLaughlin provided a more detailed discussion of appellant's condition, but this report is of limited probative value due to the fact that it is vague and equivocal regarding the cause of appellant's disability on or after February 1, 2001.<sup>6</sup> For example, he suggested that appellant's "initial injuries" were the reason that he filed a claim for recurrence of total disability and noted that his present complaints were related to the "original injuries." Dr. McLaughlin also suggested in the same report that appellant's problems were due to the duties of the light-duty position he began performing in June 2000. The Board notes that appellant has not filed a claim alleging that he sustained a new injury on or after February 1, 2001 due to the duties of his limited-duty job. Dr. McLaughlin did not provide any significant discussion of appellant's two accepted employment injuries or explain the medical process through which they would have worsened to the point that they caused total disability.

An October 10, 2002 report of Dr. McLaughlin is vague and equivocal for similar reasons. In this report, Dr. McLaughlin indicated that appellant's shoulders never "really healed" and stated that he had not recovered from the "original injury."<sup>7</sup> Hence he suggested that appellant's accepted bilateral shoulder conditions worsened to the point that they caused total disability. However, in the same report, he suggested that appellant sustained a new injury due to the duties of his light-duty position.<sup>8</sup> Moreover, this report also fails to provide an explanation of how appellant's bilateral shoulder condition worsened such that he was no longer able to work on or after February 1, 2001. In an undated report received by the Office in March 2003, Dr. McLaughlin indicated that appellant's bilateral shoulder condition was exacerbated by the duties of his light-duty position, including sorting mail and reaching overhead. As previously noted, appellant has not filed a claim alleging that he sustained a new

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<sup>6</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is vague or equivocal is of limited probative value regarding the issue of causal relationship).

<sup>7</sup> He stated that appellant had consistent chronic pain since the "initial event," but the Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors. *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> Dr. McLaughlin stated, "All of the complications have been related to work events and I believe that this is primarily repetitive motion at the shoulders."

injury due to the duties of his light-duty position. Moreover, the opinion on causal relationship is of limited probative value for the reason that it is not based on a complete and accurate factual history.<sup>9</sup> For example, Dr. McLaughlin indicated that sorting mail and reaching overhead contributed to appellant's condition, but the record does not support that appellant performed such duties after he began working in his light-duty position beginning in June 2000.

Appellant also submitted a December 4, 2001 report of Dr. Deibert, a Board-certified orthopedic surgeon, who performed operations on January 21, 1999 and April 20, 2000. In this report, Dr. Deibert stated that appellant had been disabled from light-duty positions since February 1, 2001 and generally noted that his disability was related to the "accepted condition" and very likely represented "a natural progression of the accepted injury."<sup>10</sup> This report is of limited probative value due to its vague opinion on causal relationship and its lack of medical rationale. For example, Dr. Deibert did not discuss the two accepted employment injuries nor did he indicate whether appellant's disability was due to the accepted left shoulder injury (a rotator cuff tear), the accepted right shoulder injury (impingement syndrome) or some combination of the two injuries. Dr. Deibert did not explain the medical process through which the accepted employment injuries would have worsened to the point that they caused total disability on or after February 1, 2001. Such medical rationale is especially necessary as Dr. Deibert also noted around this period that appellant had a C6-7 herniation, bilateral epicondylitis and bilateral carpal tunnel syndrome which affected his upper extremities. He indicated that a March 8, 2002 arthrogram showed a tear of the left rotator cuff, but he emphasized that poor visualization meant that the tear was small and he provided no clear indication that this apparent finding was related to the accepted left shoulder condition or caused disability. For these reasons, appellant has not shown a change in the nature and extent of the injury-related condition; nor has he shown a change in the nature and extent of his light-duty job requirements.

### CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of total disability on or after February 1, 2001 due to his accepted employment injuries, a left rotator cuff tear and right shoulder impingement.

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<sup>9</sup> See *William Nimitz, Jr.*, *supra* note 7 (finding that a medical opinion on causal relationship must be based on a complete and accurate factual history).

<sup>10</sup> He also noted that he was not aware of any intervening cause or exposure.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member