

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

THOMAS B. SMITH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jersey City, NJ, Employer**

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**Docket No. 04-1743
Issued: February 2, 2005**

Appearances:
Thomas Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated February 9, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning September 24, 2001 due to his July 30, 1999 employment injury.

FACTUAL HISTORY

On July 30, 1999 appellant, then a 54-year-old tractor trailer operator, injured his elbow when he was hit with a trailer door handle. The Office accepted that he sustained a contusion of the left elbow. The accepted condition was later expanded to include left elbow neuritis.

Appellant continued to work sporadically in a light-duty position until September 28, 2001 when he stopped completely.¹

Accompanying appellant's claim were several reports from Dr. Mark A.P. Filippone, Board-certified in physical medicine and rehabilitation, dated August 4, 1999 to September 30, 2000; and a magnetic resonance imaging (MRI) scan dated October 7, 1999. His report dated August 4, 1999 noted a history of appellant's work-related accident on July 30, 1999 and diagnosed him with contusion of the left elbow; internal derangement of the left elbow; internal derangement of the left shoulder and cervicalgia. Dr. Filippone's report dated August 9, 1999 noted the x-ray of the left shoulder did not reveal a fracture. He released appellant to a full-time light-duty position. The MRI scan of the elbow revealed osteoarthritis changes medially and the MRI scan of the left shoulder revealed mild rotator cuff impingement secondary to productive changes at the acromioclavicular joint.

Thereafter, in the course of developing the claim, the Office referred appellant to several second opinion physicians.²

On December 13, 2000 the employing establishment offered appellant a modified position which complied with the medical restrictions set forth by his treating physician. On February 5, 2001 he returned to work on limited duty, four hours per day. On April 6, 2001 appellant filed a CA-2a, notice of recurrence of disability. He indicated a recurrence of back pain, left and right knee pain, right foot pain, left wrist pain and shoulder pain in April 2001. Appellant stopped work on April 4, 2001.

In support of his claim, appellant submitted several reports from Dr. Filippone dated January 18 to July 19, 2001, in which he advised that appellant experienced increasing pain in his left shoulder, left elbow and left wrist. He noted that appellant stopped work on March 2, 2001 due to the persistent pain. Dr. Filippone indicated in his report dated April 11, 2001, that appellant started back to work and stopped on April 4, 2001 due to persistent pain in the scapular abductor area of the left shoulder and tingling in the left elbow. In reports dated April and May 2001, he noted appellant's complaints of pain in the left elbow, forearm and hand and indicated that he was totally disabled from work since April 4, 2001. In his report dated June 6, 2001, Dr. Filippone advised that appellant was temporarily totally disabled due to a flare up of his injuries of July 30, 1999. His note dated July 19, 2001 advised that appellant could return to work on a light-duty full-time basis on July 23, 2001, subject to various restrictions on climbing and lifting by the left upper extremity.

On July 31, 2001 the employing establishment offered appellant a modified position which complied with the medical restrictions set forth by Dr. Filippone. He accepted this position and returned to work on August 2, 2001.

¹ The record reflects that appellant had a work-related injury on August 27, 1997, file number 02-0732831, which was accepted by the Office for a right foot injury, right knee injury and lumbosacral condition.

² On June 27, 2000 appellant filed a Form CA-2a, notice of recurrence of disability. He indicated a recurrence on June 27, 2000, noting that he only requested continuing medical treatment for his elbow injury. Appellant did not stop work. The Office accepted the recurrence for medical treatment only.

The Office referred appellant to Dr. Sebastian O. Adibe, a Board-certified orthopedist, for a second opinion evaluation. In a report dated August 17, 2001, Dr. Adibe properly noted a history of appellant's work-related injury on July 30, 1999 and his continued complaints of pain in the left elbow and shoulder blade. He noted that appellant had a previous work-related accident in 1997, when he was run over by a trailer and sustained injuries to his right foot, right leg and lower back. Dr. Adibe noted an essentially normal orthopedic evaluation with no findings to suggest any residual physical impairment as a result of July 30, 1999 employment injury.

On September 26, 2001 appellant filed a CA-2a, notice of recurrence of disability, stating that on September 24, 2001 he experienced shoulder, neck and back pain. He stopped work on October 1, 2001. The MRI scan of the cervical spine dated September 19, 2001 noted disc herniations at C3-4, C4-5, C5-6 and C6-7. The MRI scan of the left shoulder revealed tendinitis. Appellant submitted several reports from Dr. Filippone dated July 30 to October 25, 2001. In reports dated August 13 and September 24, 2001, he indicated that appellant returned to work on July 24, 2001 to a limited-duty position but continued to experience persistent pain in his left shoulder and increased soreness and weakness in the left hand. Dr. Filippone noted the MRI scan findings and noted that nerve conduction studies were unremarkable. In a September 24, 2001 report, he advised that appellant could return to work four hours per day subject to the same work restrictions as set forth in July 2001. Dr. Filippone's reports dated October 4, 11 and 25, 2001 noted appellant's persistent complaints of pain in the cervical area, left shoulder and left upper extremity. He advised that he last worked on September 28, 2001 and remained totally disabled.

By letter dated November 5, 2001, the Office requested detailed factual and medical evidence from appellant, stating that the information submitted was insufficient to establish that he sustained a recurrence on September 24, 2001.

In response, appellant submitted a narrative statement which he noted that on August 27, 1997 he injured his back, right leg, right knee and right foot in a work-related accident and that on July 30, 1999 he injured his left elbow and shoulder at work. He contended that the limited-duty position to which he was assigned was not limited duty as he is required to sit for long periods of time and use his hands, which aggravated his neck condition. Appellant noted that the employing establishment advised him that, if he did not accept the limited-duty position there would be no other work for him. He concluded that there had been both a change in the nature and extent of his injury in that he now had a neck problem as diagnosed by an MRI scan and that the limited-duty job was not truly a limited-duty position. Appellant also submitted medical records from Dr. Filippone dated November 8 to December 20, 2001 and a narrative statement. By report dated November 8, 2001, Dr. Filippone indicated that appellant continued to complain of cervical and left shoulder pain and remained totally disabled. His reports dated December 6 and 20, 2001 noted that appellant's injuries in the cervical area and left shoulder were a direct and sole result of his injury of July 30, 1999. Dr. Filippone noted that he also experienced low back pain radiating into his right testicle which related back to the 1997 work-related injury.

In a decision dated January 28, 2002, the Office denied appellant's claim on the grounds that the evidence of record did not establish a change in the nature and extent of his injury-related disability or a change in the nature of his light-duty job.

In a letter dated May 8, 2002, appellant requested a hearing before an Office hearing representative. The hearing was held on January 23, 2003 appellant was not present but was represented by counsel. Counsel submitted numerous medical records from Dr. Filippone dated January 10 to March 22, 2003, in which he noted appellant's continued complaints and his treatment for cervical, left shoulder and upper extremity pain. Counsel opined that appellant's left shoulder, left elbow, wrist and cervical conditions were all causally related to the work-related accident on July 30, 1999.

In a decision dated March 20, 2003, the Office hearing representative affirmed the prior decision, finding that appellant failed to establish that there was a material change in the nature and extent of his injury-related condition which would prevent him from performing his limited-duty job.³

By letter dated October 15, 2003, appellant requested reconsideration and submitted additional medical reports from Dr. Filippone dated March 11 to November 26, 2003. His reports of March 11 and 27, 2003 noted persistent shoulder pain radiating to the left cervical area. Dr. Filippone advised that appellant demonstrated no change in the neurological examination with positive findings over the left upper arm, thigh, calf and foot. He noted on April 10, 2003 persistent partial atrophy on the left first dorsal interosseous muscle, left hand and fingers, pain in the left cervical paraspinal and left shoulder. Dr. Filippone opined that appellant's total disability was solely and directly the result of the injuries sustained at work. On April 24, 2003 he noted continuing cervical paraspinal pain radiating into the left shoulder, pain in the shoulder and elbow, radicular complaints into the left upper extremity, numbness and tingling in the left hand. Dr. Filippone opined that appellant's injuries to the neck, shoulder, elbow and left upper extremities were directly and solely the result of the injury on July 30, 1999. His reports dated May 8 and 22, 2003 noted appellant's continued complaints of pain in the left elbow, left shoulder, cervical paraspinal radiating to the left upper extremity and fingers. Dr. Filippone noted findings of the electromyogram (EMG) revealed left ulnar neuropathy, left C5-6-7 cervical radiculopathy. He diagnosed multiple trauma directly and solely the result of being struck by a truck door on July 30, 1999, internal derangement of the left elbow, ulnar neuropathy at the elbow, internal derangement of the left shoulder, cervical radiculopathy with radiculitis, herniated nucleus pulposus and right cervical radiculopathy. Dr. Filippone opined that all of these diagnoses were directly and solely the result of the July 30, 1999 work injury. His June 12, 2003 report reiterated his findings on April 24, 2003 but noted that appellant returned to limited-duty work but suffered a recurrence of injury on September 24, 2001 and has been totally disabled since this time. Dr. Filippone's reports on June 26 to September 11, 2003, noted appellant's persistent complaints of neck, left shoulder and elbow pain, low back and lower extremity complaints. In reports dated October 21 and 29, 2003, he noted that appellant was hit as a pedestrian by a car on September 22, 2003 and sustained a cerebral concussion, a fracture of the right zygoma, multiple rib fractures and a fracture of the transverse process of the C5 vertebra. On November 26, 2003 Dr. Filippone noted an essentially normal neurological examination and diagnosed pain of the left cervical paraspinals, weakness in

³ On May 21, 2003 appellant filed an appeal to the Board which was docketed as 03-1596. Appellant, through his attorney, requested that the appeal be dismissed. The Board issued an order dismissing the appeal on December 10, 2003.

the hand intrinsic. He advised that the EMG performed in November 2003 revealed left ulnar neuropathy, cervical radiculopathy of C5-6-7 and right cervical radiculopathy at C5-6. The physician opined that all of the abnormalities were the direct result of appellant's work-related injury on July 30, 1999.

In a merit decision dated February 9, 2004, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior 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 requirements.⁴

ANALYSIS

In the instant case, appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.

Appellant submitted numerous reports from Dr. Filippone indicating that he was being treated for left shoulder, left elbow and cervical problems that he sustained in the work-related accident on July 30, 1999. However, none of Dr. Filippone's reports, most contemporaneous with the recurrence of injury noted a specific date of a recurrence of disability, nor did he note a particular change in the nature of appellant's physical condition arising from the employment injury, which prevented him from performing his light-duty position.⁵ Rather, his report's dated August 13 through October 25, 2001 address appellant's complaints of left shoulder pain, left hand pain and cervical herniations, all conditions which were not accepted by the Office as work related. Dr. Filippone indicated that appellant returned to work on July 24, 2001 to a limited-duty position and indicated that he experienced persistent pain in his left shoulder and increased soreness and weakness in the left hand since July 30, 1999. He noted that the MRI scan of the cervical spine revealed herniations at C3-4, C4-5, C5-6 and C6-7. Dr. Filippone's reports dated October 4, 11 and 25, 2001 all note persistent pain in the cervical area, left shoulder and left upper extremity. However, the Board notes that there is no "bridging evidence" which would relate the left shoulder condition, hand condition and cervical herniations to the accepted employment injury. That is, he does not explain, how, over two years following the accepted contusion of the left elbow and elbow neuritis, it was exacerbated by appellant's employment

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

factors to result in a left shoulder condition, a left hand condition and cervical herniations. The Office has not accepted that he sustained a left shoulder condition, left hand condition or cervical herniations as a result of his July 30, 1999 work injury and there is no medical evidence to support such a conclusion.⁶ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁷

Other reports from Dr. Filippone dated November 8 to December 6, 2001 and January 10, 2002 to March 22, 2003 noted appellant's complaints of cervical herniation, left shoulder pain and upper extremity pain, but as noted above, the Office never accepted that he sustained cervical herniations or a left shoulder injury as a result of his July 30, 1999 work injury and there is insufficient medical evidence to support such a conclusion.⁸

Dr. Filippone's reports dated December 6 and 20, 2001 noted that appellant's injuries to the cervical area and left shoulder were a direct and sole result of his injury of July 30, 1999. Although he provided some support for causal relationship in a conclusory statement which indicated that appellant's conditions of cervical herniation, left shoulder pain and left upper extremity pain were a consequence of his July 30, 1999 work-related injury, he did not provide a rationalized opinion regarding the causal relationship between his cervical and shoulder conditions and the employment incident believed to have caused or contributed to such condition. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁹

In his reports dated March 11 through May 22, 2003, June 26 to September 11 and November 26, 2003, Dr. Filippone noted persistent shoulder pain radiating to the left cervical area. He diagnosed multiple trauma directly and solely the result of being struck by a truck door on July 30, 1999, internal derangement of the left elbow, internal derangement of the left shoulder, cervical radiculopathy with radiculitis, herniated nucleus pulposus and right cervical radiculopathy. Although the physician opined that all of these diagnoses were directly and solely the result of the July 30, 1999 work injury, as noted above, the Office has not accepted these conditions as a result of his July 30, 1999 work injury and there is insufficient medical evidence to support such a conclusion.¹⁰ The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹¹

Dr. Filippone's June 12, 2003 report noted that appellant returned to limited-duty work, but suffered a recurrence of injury on September 24, 2001 and has been totally disabled since this time. Although he provided some support for causal relationship in a conclusory statement,

⁶ See *Terry R. Hedman*, *supra* note 4.

⁷ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ See *Terry R. Hedman*, *supra* note 4.

⁹ See *Jimmie H. Duckett*, *supra* note 7.

¹⁰ See *Terry R. Hedman*, *supra* note 4.

¹¹ See *Jimmie H. Duckett*, *supra* note 7.

he did not provide a rationalized opinion regarding the causal relationship between appellant's recurrence of disability and the employment incident believed to have caused or contributed to such condition, nor did he note a particular change in the nature of appellant's physical condition arising from the employment injury which prevented him from performing his light-duty position. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹²

Other reports from Dr. Filippone dated October 21 and 29, 2003 note that appellant was hit as a pedestrian by a car on September 22, 2003 and sustained a cerebral concussion, however, these records are unrelated to the recurrence of disability.

Appellant also alleged that his limited-duty position was not truly a limited-duty position. He noted that he was required to sit for long periods of time and use his hands which aggravated his neck problem. Appellant also noted that there was a change in the nature and extent of his injury in that he now has a neck problem as diagnosed by MRI scan and the limited-duty job was not truly a limited-duty position. However, there is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by his treating physician Dr. Filippone and the record is void of evidence which would indicate that there was a change in the nature and extent of the light-duty requirements or that appellant was required to perform duties which exceeded his medical restrictions.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning September 24, 2001 causally related to his accepted employment-related injury on July 30, 1999.

¹² See *Jimmie H. Duckett*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member