

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

ROBERT BATEMAN, Appellant

and

**GENERAL SERVICES ADMINISTRATION,
Chicago, IL, Employer**

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**Docket No. 04-2106
Issued: February 1, 2005**

Appearances:
Robert Bateman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On August 26, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 4, 2004 denying his claim for a recurrence of disability. Pursuant to 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 he sustained a recurrence of disability from March 2 to 19 and March 29 to April 16, 2004 causally related to his November 19, 2003 employment injury.

FACTUAL HISTORY

On November 21, 2003 appellant, then a 56-year-old electrician helper, filed a claim for a traumatic injury occurring on November 19, 2003 in the performance of duty. He stopped work on November 21, 2003. The Office accepted appellant's claim for a traumatic dislocation of the

left shoulder. He received continuation of pay from November 20, 2003 to January 4, 2004 and compensation for temporary total disability from January 5 to February 6, 2004.

Appellant's attending physician, Dr. Richard N. Egwele, an orthopedic surgeon, released him to return to light-duty employment on February 9, 2004 with restrictions against climbing and working overhead on the left side. Appellant returned to full-time limited-duty work on February 9, 2004.

In a report dated March 1, 2004, Dr. Egwele recommended a magnetic resonance imaging (MRI) scan study to rule out a rotator cuff tear of the left shoulder. In a letter to the employing establishment of the same date, Dr. Egwele reported that appellant required an MRI scan study and noted that he should continue with the same work restrictions.

On April 22, 2004 appellant submitted a claim for compensation (Form CA-7) requesting compensation from March 2 to 19 and March 29 to April 16, 2004.

In a letter dated May 4, 2004, the Office notified appellant that the medical evidence was insufficient to support his claim for compensation from March 2 to 19 and March 29 to April 19, 2004. The Office informed appellant of the definition of a recurrence of disability and requested additional factual and medical evidence in support of his claim.¹

Dr. Egwele, in a report dated April 21, 2004, diagnosed ankylosis of the left shoulder and to rule out a rotator cuff tear. He stated that appellant "was reportedly sent home from work for lack of availability of light work."

In a report dated May 3, 2004, Dr. Egwele diagnosed a full thickness rotator cuff tear by an MRI scan study.² He also discussed appellant's complaints of a "tingling sensation of radicular pain along the ulnar sensory distribution of [the] left forearm and fingers of several weeks' duration." Dr. Egwele recommended nerve conduction velocity (NCV) studies and an electromyogram (EMG) to rule out left ulnar neuropathy.

By letter dated May 18, 2004, appellant requested information on the status of his claim for compensation from March 2 to 19 and March 29 to April 19, 2003. He indicated that he had given the Office's letter requesting additional information to his physician.

In a report dated May 18, 2004, Dr. Egwele diagnosed ankylosis/insufficiency of the left shoulder and a full rotator cuff tear of the left shoulder according to the preliminary report. He recommended occupational therapy by a shoulder specialist to increase appellant's range of motion prior to performing a rotator cuff repair. Dr. Egwele noted that EMG and NCV studies did not show entrapment neuropathy or radiculopathy. He found that appellant could "[c]ontinue light work."

¹ In a progress report dated March 19, 2004, a nurse related that appellant had other medical conditions for which he missed work periodically.

² An MRI scan study of appellant's left shoulder revealed a full thickness tear of the distal end of the tendon of the rotator cuff.

By decision dated August 4, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not establish that he sustained recurrences of disability on March 2 and 29, 2004 causally related to his November 19, 2003 employment injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.³

Where 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 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 to show that he cannot perform the light-duty position. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.⁴

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁵

ANALYSIS

Appellant stopped work following his accepted employment injury on November 21, 2003 and returned to limited-duty employment on February 9, 2004. He filed a claim requesting compensation from March 2 to 19 and March 29 to April 16, 2004. The issue, therefore, is whether he sustained a recurrence of disability during these periods causally related to his November 21, 2003 employment injury.⁶ In this case, appellant has not demonstrated a change in the nature and extent of his limited-duty employment. In a note dated April 21, 2004, Dr. Egwele indicated that appellant was "reportedly sent home for lack of availability of light work;" however, appellant has not submitted any evidence supporting that he was sent home by the employing establishment because there was no work for him and has not raised this as a reason for filing his claim for compensation before the Office, who, in a letter dated May 4, 2004, requested additional information from appellant, including a description of his work activities since his return to work on February 9, 2004 and whether his work assignment had changed. Appellant did not provide the Office with the requested information. He has not,

³ 20 C.F.R. § 10.5(x).

⁴ *Mary G. Allen*, 50 ECAB 103 (1998); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *James H. Botts*, 50 ECAB 265 (1999).

⁶ Although appellant did not specifically file a claim for a recurrence of disability (Form CA-2a), Office regulations defining a recurrence of disability are applicable to this situation. *See* 20 C.F.R. § 10.5(x).

consequently, established a recurrence of disability based on a change in the nature or extent of his light-duty assignment.

Additionally, the medical evidence fails to establish that appellant's employment-related left shoulder condition worsened from March 2 to 19 and March 29 to April 16, 2004 such that he was unable to perform his limited-duty work employment. In a note dated March 1, 2004, Dr. Egwele recommended an MRI scan study to rule out a rotator cuff tear and opined that appellant could continue working with the same restrictions. His report, therefore, does not support that appellant was unable to perform his limited-duty employment beginning March 2, 2004.

Dr. Egwele, in a report dated April 21, 2004, diagnosed ankylosis of the left shoulder and ruled out a rotator cuff tear. He stated that appellant "was reportedly sent home from work for lack of availability of light work." Dr. Egwele did not find appellant disabled from his light-duty employment but instead merely noted appellant's assertion that he was sent home because there was no light-duty available.

On May 18, 2004 Dr. Egwele diagnosed a rotator cuff tear of the left shoulder and recommended occupational therapy prior to a rotator cuff repair.⁷ He opined that appellant should continue his light-duty employment. As Dr. Egwele did not address the relevant issue of whether appellant was disabled from employment during the periods March 2 to 19 and March 29 to April 16, 2004, his report is of little probative value.⁸

As appellant has not submitted rationalized medical evidence supporting that he was disabled from his light-duty job during the claimed period of disability as a result of his employment injury, the Office properly denied his claim for compensation from March 2 to 19 and March 29 to April 16, 2004.⁹

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability from March 2 to 19 and March 29 to April 16, 2004 causally related to his November 19, 2003 employment injury.

⁷ The record contains reports from the occupational therapist; however, these reports are of no probative value as an occupational therapist is not considered a physician under the Federal Employees' Compensation Act and are not competent to provide a medical opinion. *See* 5 U.S.C. § 8101(2); *see also* *Jerre R. Rinehart*, 45 ECAB 518 (1994).

⁸ Appellant submitted additional evidence subsequent to the Office's August 4, 2004 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting this evidence to the Office with a valid request for reconsideration under 5 U.S.C. § 8128(a).

⁹ *See Helen K. Holt*, 50 ECAB 279 (1999).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 4, 2004 is affirmed.

Issued: February 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member