

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

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**RICHARD A. MATTSON, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Iron Mountain, MI, Employer**

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**Docket No. 04-2128  
Issued: February 1, 2005**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member

**JURISDICTION**

On August 30, 2004 appellant filed a timely appeal of a July 21, 2004 merit decision of the Office of Workers' Compensation Programs, which found that he did not sustain a recurrence of disability beginning November 25, 2002 causally related to his October 8, 1996 employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability and need for medical treatment beginning November 25, 2002 causally related to his October 8, 1996 employment injury.

**FACTUAL HISTORY**

On October 9, 1996 appellant, then a 37-year-old nursing assistant, filed a claim for compensation for a traumatic injury to his neck and left shoulder sustained on October 8, 1996

when the driver of the bus in which he was arranging coolers and luggage braked for two deer, throwing appellant into the aisle with his neck and shoulder hitting the seats. Appellant was seen at the employing establishment's health unit on October 9, 1996 where he complained of pain in the back of his neck radiating down his left shoulder and upper arm.<sup>1</sup> That same day he was examined by Dr. John Lown, an employing establishment osteopath, who reported findings of no fracture on x-rays, pain with flexion and extension and tenderness of the paravertebral and trapezius muscles. He diagnosed cervical whiplash injury and restricted appellant to limited duty for two days. He did not stop work, but performed limited duty for two days.

On January 16, 1997 appellant filed a claim for a recurrence of disability related to his October 8, 1996 injury. He stopped work on January 15, 1997 and returned to work the following day. Appellant stated that he believed his condition was related to the original injury because the pain in his left shoulder never stopped, he just tolerated it until he felt he was taking too much medication. On January 15, 1997 he was examined by Dr. Don Patton, a family practitioner, with complaints of left shoulder muscle pain and numbness at night to the fingers. A January 15, 1997 x-ray of appellant's cervical spine revealed no evidence of acute fracture or subluxation and a minimal anterior wedged compressed deformity with a small bony fragment adjacent to C5, which the radiologist indicated was probably due to old trauma. Dr. Patton diagnosed numbness of the left shoulder and avulsion of C5-old and prescribed physical therapy to his neck and left shoulder for four weeks.

On March 13, 1997 the Office advised appellant that it had accepted that he sustained a cervical whiplash injury on October 8, 1996. The Office advised him that there was no initial diagnosis for his left shoulder and no evidence of ongoing treatment and requested that he submit further evidence to support his claim for a January 15, 1997 recurrence of disability.

In an April 7, 1997 letter, appellant noted that he told his doctors of his left shoulder pain on October 9, 1996 and that his shoulder had never stopped being painful. He acknowledged that he engaged in body building and that he had competed in the 1996 Mr. Universe competition after his October 8, 1996 employment injury. Appellant submitted additional medical evidence. In a February 12, 1997 report, Dr. Barry Johnson, a Board-certified neurologist, described appellant's October 8, 1996 accident and noted that he reported that his neck pain had slowly abated over the last several months but his shoulder pain had continued. On examination appellant had exquisite tenderness over the left acromioclavicular joint and tenderness over the long head of the left biceps. Dr. Johnson had acromioclavicular joint x-rays done on February 12, 1997 to evaluate a possible left acromioclavicular (AC) separation. These x-rays of both AC joints revealed only a minor degree of AC separation of appellant's right shoulder. In a February 24, 1997 report, Dr. Todd T. Hannula, an orthopedic surgeon, reported his history of an October 8, 1996 accident with "a substantial amount of pain in the region of the deltoid, trapezius muscle and down into the mid back as well as pain and burning down the region of the left anterior arm consistent with bicep tendon region. This is now improving slightly." After noting appellant's complaint of paresthesias down the entire left arm into the fingers, Dr. Hannula stated that x-rays demonstrated "osteolysis<sup>2</sup> at the distal clavicle which fits with his

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<sup>1</sup> A nurse prepared some of the notes of this visit; it is unclear who prepared the others.

<sup>2</sup> Osteolysis: dissolution of bone; applied especially to the removal or loss of the calcium of bone. DORLAND'S *Illustrated Medical Dictionary* (30<sup>th</sup> ed. 2003).

competitive weight lifting” and that examination revealed pain with flexion and internal rotation, no weakness or pain on supraspinatus testing and pain and weakness in external rotation of the shoulder. He felt that appellant primarily had overuse tendinitis in his rotator cuff and instructed him in rotator cuff strengthening and range of motion exercises. An April 22, 1997 magnetic resonance imaging (MRI) scan of appellant’s left shoulder showed an intact rotator cuff, normal biceps tendon, a possible small labral tear of questionable significance and acromioclavicular joint synovial hyperplasia.

In a May 19, 1997 report, Dr. Hannula reported that appellant’s biceps pain was basically resolved, that he had good function in his left upper extremity, that he had pain at the top of his shoulder and tenderness localizing to the AC joint and that radiographically there was no evidence of osteolysis. He diagnosed left AC joint inflammation and injected the joint with Lidocaine resulting in complete pain relief. In a June 9, 1997 report, Dr. Hannula stated that appellant was essentially asymptomatic, with some crepitation in the region of the left AC joint but “no pain at all.” Regarding the etiology of his shoulder complaints, Dr. Hannula stated, “This appears to have been an osteolysis to some extent related to appellant’s weight lifting although, I feel the fall probably exacerbated this.”

In an August 11, 1997 report, Dr. Hannula stated that, about two weeks ago appellant started having severe pain in the region of his left AC joint half way through his second set of chin ups and that his pain had substantially worsened to the point he could hardly tolerate it. On examination he had “tenderness in the region of the left AC joint consistent with symptomatic osteolysis. This has worsened again despite three months of excellent pain relief following his cortisone injection.” In a September 8, 1997 report, Dr. Hannula stated that appellant had “some crepitation in the left shoulder that is really essentially asymptomatic at this point.”

By decision dated February 2, 1998, the Office found that the evidence failed to establish appellant’s claimed recurrence of January 14, 1997 was causally related to his October 8, 1996 employment injury.

On December 16, 2002 appellant filed a claim for a recurrence of disability related to his October 8, 1996 employment injury. He stopped work on November 25, 2002 and returned to work part time on December 9, 2002. Appellant indicated that the recurrence occurred when he slipped and fell on his way to his car going to work and contended that his original diagnosis of whiplash was wrong, as his initial complaints of shoulder pain and tingling in his fingers were ignored. The employing establishment stated that he had been fully functional in his job.

In a November 25, 2002 note, Dr. Edward A. Perez-Conde, Board-certified in emergency medicine, diagnosed left AC dislocation and prescribed rest for three days. In a December 20, 2002 report, he set forth a history of progressive discomfort of appellant’s left shoulder since an October 1996 left shoulder and neck blunt trauma injury. Dr. Perez-Conde noted that February 1997 x-rays showed no evidence of degenerative joint disease (DJD) of his left shoulder, but that November 2002 films showed severe left AC joint DJD and concluded, “[T]he relationship of [appellant’s] work injury and the current findings take me to the conclusion that both events are related and this p[atien]t developed a [left] AC joint DJD secondary to his trauma in Oct[ober] 1996.” He recommended evaluation by an orthopedic surgeon for left shoulder surgery. In a December 30, 2002 report, Dr. Denise L. Steiner, an osteopath, indicated that she

concurrent with Dr. Perez-Conde's history and opinion on causal relation. She diagnosed neurogenic and musculoskeletal pain and multiple trigger points. In a January 3, 2003 report, Dr. Gary Roberts, a Board-certified orthopedic surgeon, diagnosed post-traumatic AC arthritis and recommended resection of appellant's distal left clavicle.

By letter dated March 14, 2003, the Office advised appellant that the evidence was insufficient to show that his condition was causally related to the original injury, that it was not responsible for the recommended left shoulder surgery and that he needed to submit medical records from his other injuries. In a March 21, 2003 letter, appellant noted that left shoulder surgery had been performed and that his job required lifting of patients. He acknowledged that he slipped and fell on the way to his car, characterized it as "not that big of a deal as a fall would go" and stated that he went to the emergency room and saw Dr. Perez-Conde when his anti-inflammatory medicine did not take the pain away as it had in the past.

Appellant submitted an April 1, 2003 report from Dr. Perez-Conde describing his October 8, 1996 employment injury and stating that he had "consistently sought treatment for this injury." Dr. Perez-Conde diagnosed traumatic osteolysis, cervical disc herniation, compression fracture at C-5 and neurologic deficit and stated that these diagnoses were consistent with his accident. Also diagnosed was lateral epicondylitis and compensatory pain of the right arm. Dr. Perez-Conde concluded: "It is my opinion that the injuries above were sustained by the accident [appellant] was involved in on October 8, 1996. [He] has no prior history of any neck or shoulder trauma that would warrant these types of injuries."

By decision dated July 31, 2003, the Office found that the evidence was not sufficient to establish that appellant's claimed recurrent disability for work beginning November 25, 2002 and his need for ongoing medical treatment were due to the accepted employment injury. He requested a review of the written record. By decision dated July 21, 2004, an Office hearing representative found that the evidence was not sufficient to establish that appellant's disability beginning November 25, 2002 was causally related to his accepted injury of October 8, 1996.

### **LEGAL PRECEDENT**

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which he or she claims compensation is causally related to the accepted injury.<sup>3</sup> This burden includes the necessity of furnishing evidence from a qualified physician who on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup> The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. Medical evidence of bridging symptoms between the recurrence and the accepted injury are important in supporting the physician's conclusion of a causal relationship.<sup>5</sup>

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<sup>3</sup> *John E. Blount*, 30 ECAB 1374 (1974).

<sup>4</sup> *Frances B. Evans*, 32 ECAB 60 (1980).

<sup>5</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.

### ANALYSIS

The medical evidence is not sufficient to establish that appellant's left shoulder condition beginning November 25, 2002 is causally related to his October 8, 1996 employment injury. The only medical evidence that supports his claim for a recurrence of disability and need for medical treatment beginning November 25, 2002 are the reports of Dr. Perez-Conde. Dr. Steiner indicated in a December 30, 2002 report, that she concurred with Dr. Perez-Conde's opinion on causal relation but does not explain why and does not express her own opinion on causal relation. Dr. Roberts, in a January 3, 2003 report, diagnosed post-traumatic acromioclavicular arthritis but did not state this condition was related to appellant's October 8, 1996 employment injury.<sup>6</sup>

Dr. Perez-Conde stated in December 20, 2002 and April 1, 2003 reports, that appellant's shoulder condition beginning November 25, 2002 was causally related to his October 8, 1996 employment injury. In the earlier report, he based this opinion on the absence of degenerative joint disease in his acromioclavicular joint in February 1997 x-rays and its presence in November 2002 x-rays. That appellant exhibited degenerative joint disease in November 2002 but not in February 1997 does not explain why the degenerative joint disease in November 2002 should be attributed to his October 8, 1996 employment injury. In his April 1, 2003 report, Dr. Perez-Conde stated that appellant's diagnosed conditions were consistent with his October 8, 1996 accident and were sustained in that accident, but the only rationale offered for this opinion is that appellant had no prior history of neck or shoulder trauma. An opinion supporting causal relation for the reason that the doctor knows no other cause for the condition is of little probative value and not sufficient to meet the employee's burden of proof.<sup>7</sup> Stating that the diagnosed conditions were consistent with appellant's accident does not explain how the accident caused the conditions.

Further reducing the probative value of the reports of Dr. Perez-Conde is his reliance on an inaccurate history<sup>8</sup> that appellant had progressive discomfort of his left shoulder since his October 1996 injury and that he consistently sought treatment for this injury. The evidence shows that he was essentially asymptomatic on June 9 and September 8, 1997 and does not show any treatment for over five years, between September 8, 1997 and November 25, 2002. Lastly, Dr. Perez-Conde does not show an awareness of and, therefore, does not address the significance, if any, of appellant's fall on his way to his car on or about November 25, 2002. He stated that this fall was the reason he first sought treatment by Dr. Perez-Conde. Given the inaccurate and incomplete history and absence of rationale in Dr. Perez-Conde's reports, they are not sufficient to meet appellant's burden of proof.

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<sup>6</sup> *Jaja K. Asramo*, 55 ECAB \_\_\_\_ (Docket No. 03-1327, issued January 5, 2004).

<sup>7</sup> *Virginia A. Vance*, 31 ECAB 1489 (1980).

<sup>8</sup> Reports based on an inaccurate history have little probative value. *Peter Seaman*, 34 ECAB 1735 (1983).

**CONCLUSION**

The evidence does not establish that appellant sustained a recurrence of disability and need for medical treatment beginning November 25, 2002 causally related to his October 8, 1996 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 21, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member