



In a report dated March 5, 2003, Dr. Thomas W. Kneifel, an attending Board-certified orthopedic surgeon, stated that he treated appellant for right shoulder pain “after [a] fall” that day. A nurse’s form report also dated March 5, 2003, noted that appellant slipped but prevented his fall by stretching his right arm to catch a nearby wall, at which time he felt a tear in his shoulder. The report included a diagnosis of muscle strain. A March 5, 2003 hospital registration form, noted that appellant had right shoulder pain after a fall. The record also includes a return to work form, which released appellant to work on March 6, 2003 and restricted the use of his right arm to lifting no more than 10 pounds. Appellant accepted a limited-duty assignment effective March 6, 2003 with restrictions against lifting more than 10 pounds.

On March 8, 2004 appellant filed a claim for a recurrence of disability alleging that his initial injury was on November 30, 1999 and that he sustained a “second injury” on March 5, 2003. Appellant noted that he “fell on March 5, 2003 and reinjured the right shoulder.” He noted that he has had constant pain in his right shoulder and arm since the injury and that on February 25, 2004 he received medical treatment based on a recurrence of disability of his right shoulder injury. Appellant did not stop work. On the reverse side of the form, the employing establishment stated that appellant’s initial injury on November 30, 1999 was to his left shoulder and that his March 5, 2003 injury was to his right shoulder. The record includes a March 3, 2004 right shoulder magnetic resonance imaging (MRI) scan, which revealed tears of the supraspinatus and infraspinatus tendons.

On April 7, 2004 the Office advised appellant of the receipt of his recurrence of disability claim. The Office advised appellant regarding the additional medical and factual evidence needed to support his claim for a recurrence of disability due to the accepted March 5, 2003 injury. The Office noted that appellant claimed that his March 5, 2003 right shoulder recurrence of disability claim was based on a prior left shoulder November 30, 1999 injury. Since appellant claimed medical treatment on February 24, 2004 for his right shoulder, the Office noted it would develop this claim as a recurrence of disability of the March 5, 2003 injury with a date of recurrence of disability of February 24, 2004. The Office requested that appellant provide a comprehensive medical report from his physician that would include a history of recurrence, medical findings before and after the date of recurrence of February 25, 2004, a firm diagnosis, dates of examinations and treatment, prognosis and the period and extent of any disability, if any. He should also include his physician’s opinion, with supporting medical rationale, as to how his preset condition was causally related to the March 5, 2003 injury.

In a report dated March 24, 2004, Dr. Kneifel stated that appellant had persistent right shoulder pain, a right rotator cuff partial thickness tear, right acromioclavicular (AC) joint arthropathy and possible internal derangement with interior instability. He noted that appellant previously injured his shoulder falling on a porch while delivering mail and that on March 2003 he slipped again and caught himself with his right arm outstretched. Upon examination, he noted positive cross arm abduction, a prominent AC joint, a positive impingement sign, a positive crank test and a positive apprehension sign and an equivocal relocation test. He also noted that the shoulder motion was normal and that his elbow, wrist and hand examinations were normal. He provided appellant with injection treatment and referred him to physical therapy. In a report dated April 28, 2004, Dr. Kneifel noted right shoulder pain with AC joint arthropathy, a right torn rotator cuff and possible internal derangement. Appellant was again injected. On June 9,

2004 Dr. Kneifel essentially repeated his earlier reports and requested approval for right shoulder arthroscopy, distal clavicle excision with possible rotator cuff repair and open mass excision.

By decision dated September 23, 2004, the Office denied appellant's claim that he sustained a recurrence of disability on February 25, 2004 causally related to the March 5, 2003 right shoulder injury. The Office found that Dr. Kneifel indicated that appellant slipped in March 2003, but did not provided a specific date nor did he provide a rationalized medical opinion relating how appellant's right shoulder condition worsened as of February 25, 2004.

### **LEGAL PRECEDENT**

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she 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 or she cannot perform such light duty. As part of this burden, 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 light-duty requirements.<sup>1</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>2</sup>

Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.<sup>3</sup>

### **ANALYSIS**

Appellant claimed that his February 25, 2004 recurrence of his medical condition was due to a November 30, 1999 work-related left shoulder injury. The Office noted that the March 5, 2003 injury was to his right shoulder and adjudicated the claim with regard to the 2003 accepted right shoulder strain. At the time that appellant received medical care on February 25, 2004 he was assigned to a limited-duty position effective on March 6, 2003 and included casing

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<sup>1</sup> *Ralph C. Spivey*, 53 ECAB 248 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986). See also 20 C.F.R. § 10.5(x).

<sup>2</sup> *Allen C. Hundley*, 53 ECAB 424 (2002).

<sup>3</sup> 20 C.F.R. § 10.5(y).

mail routes, answering telephones, filing in the safety office and restricted lifting to no more than 10 pounds. Therefore, appellant must show either a change in the nature and extent of his accepted right shoulder condition or a change in the nature and extent of the limited-duty assignment as the cause of his recurrence.

Initially, the Board notes that appellant is not alleging that his claimed recurrence has resulted from a change in the nature and extent of his limited-duty assignment. With regard to whether appellant has established a change in the nature and extent of the accepted right shoulder condition, he submitted reports from Dr. Kneifel, who noted treating appellant for a right shoulder injury sustained in March 2003. In a March 24, 2004 report, he indicated that appellant had a prior shoulder injury that produced intermittent symptoms until appellant slipped again in March 2003 and caught himself with his right arm outstretched. Dr. Kneifel did not provide any details of the prior shoulder injury, specify which shoulder was involved in the prior injury, or otherwise exhibit a full knowledge of appellant's history distinguishing the left shoulder injury of 1999, from the right shoulder injury of March 5, 2003. The Office advised appellant on April 7, 2004 that it was developing his claim as a recurrence of disability due to the March 5, 2003 injury as it related to his right shoulder and requested medical evidence to support his claim.

The additional reports of Dr. Kneifel addressed his treatment of appellant's right shoulder with injection and physical therapy. He diagnosed a partial tear of the right rotator cuff for which he sought authorization for surgery. The reports of Dr. Kneifel are deficient in that the physician failed to provide any explanation of how the diagnosed rotator cuff tear was caused or contributed to by the March 5, 2003 injury which was accepted for a right shoulder stain. Dr. Kneifel did not address how appellant's need for treatment commencing February 25, 2004 was causally related to the 2003 injury.

As the record does not include reasoned medical evidence explaining how the claimed recurrence of a medical condition beginning on about February 25, 2004, was due to the March 5, 2003 employment injury, appellant failed to meet his burden of proof.<sup>4</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained a hearing loss in the performance of duty.

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<sup>4</sup> The Board notes that this case record contains evidence submitted subsequent to the Office's September 23, 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); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 23, 2004 is affirmed.

Issued: June 6, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member