



received continuation of pay. Appellant stopped work completely on August 25, 1994. He sought medical treatment from Dr. George E. Medley, his treating orthopedic surgeon, for his right arm. By letter dated March 15, 1994, the Office accepted appellant's claim for right bicipital tendinitis and right lateral epicondylitis. On November 17, 1994 he accepted the employing establishment's limited-duty job offer of a modified automotive mechanic under protest.

By decision dated January 23, 1995, the Office terminated appellant's compensation effective January 19, 1995 based on the December 9, 1994 medical report of Dr. Bruce Beavers, a Board-certified orthopedic surgeon and Office referral physician, who found that appellant no longer had any residuals causally related to the accepted January 21, 1994 employment injuries.

Appellant filed several requests for reconsideration which were repeatedly denied by the Office. The Office also denied appellant's request for an oral hearing before an Office hearing representative as he had previously requested reconsideration and the issues could equally well be addressed on reconsideration. By decision dated January 5, 2000, the Board affirmed the Office's denial of appellant's request for a hearing and its determination that appellant's request for reconsideration received on January 8, 1998 was untimely filed and did not present clear evidence of error.<sup>1</sup> Subsequently, appellant filed several more requests for reconsideration which were denied by the Office.

On July 19, 2002 appellant filed a claim alleging that he sustained a recurrence of disability beginning December 29, 1995. He indicated that he did not return to work after his January 21, 1994 employment injuries.<sup>2</sup> In support of his claim, appellant submitted a December 29, 1995 medical report of Dr. Christopher J. Tucker, a Board-certified physiatrist. In this report, Dr. Tucker provided a history of appellant's January 21, 1994 employment injuries and medical and social background. He reported his findings on physical and neurological examination and diagnosed right C7 radiculopathy, right bicipital tendinitis and right lateral epicondylitis. Dr. Tucker advised appellant to have a magnetic resonance imaging (MRI) scan performed of his cervical spine and to consider taking anti-inflammatory medications on a daily basis, cervical traction, physical therapy for the cervical spine and cervical epidural steroid injections depending on the MRI scan results. Appellant also submitted a May 30, 2001 medical report of Dr. Kathy A. Toler, a Board-certified neurologist, in which she provided a history of appellant's accepted employment injuries and medical and social background. She noted her findings on physical and neurological examination and diagnosed post-traumatic right shoulder contusion with chronic pain and post-traumatic chronic right epicondylitis. Dr. Toler stated that she was not sure why appellant continued to experience discomfort so long after his employment-related injuries. She stated that, in the shoulder region, it was "possible" he had developed a degree of arthritic changes accelerated by his employment injuries that were causing chronic pain. Dr. Toler recommended surgical exploration of the lateral epicondyle and concluded that appellant was going to have to live with his symptoms.

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<sup>1</sup> Docket No. 98-1653 (issued January 5, 2000).

<sup>2</sup> The record reveals that appellant retired on disability from the employing establishment effective January 12, 1996.

In a May 7, 2003 letter, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office further advised that he submit additional medical and factual evidence supportive of his claim. In response, he submitted duplicate copies of Dr. Tucker's and Dr. Toler's reports. He also submitted an unsigned report dated May 19, 2003 which contained the typed name of Dr. Michael M. Taba, a Board-certified orthopedic surgeon. This report noted the history of appellant's January 21, 1994 employment injuries and medical and social background and range of motion and strength findings. The report contained the opinion that appellant's chronic right shoulder tendinitis and right lateral epicondylitis were a direct result of his employment at the employing establishment. It indicated that appellant did not have any other risk factors that would account for these injuries noting that appellant denied any previous trauma or participation in sports. It also indicated that there was a direct relationship timewise between appellant's activities at work and the onset of his symptoms. The report noted that several physicians including, Dr. Tucker, Dr. Toler and Dr. James O. Royder, an osteopath, agreed with these diagnoses. A May 16, 2000 report from Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, noted appellant's employment injuries and medical and social background and his findings on physical examination. He diagnosed lateral epicondylitis of the right elbow, he suspected cubital tunnel syndrome of the right upper extremity and noted a history of abnormal electromyogram (EMG) and nerve conduction study with C7 changes, chronic tendinitis of the biceps tendon and chronic impingement syndrome of the right shoulder. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed.) (A.M.A., *Guides*),<sup>3</sup> Dr. Shade determined that appellant had a 13 percent permanent impairment of the right upper extremity.

By decision dated July 23, 2003, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability beginning December 29, 1995 causally related to his January 21, 1994 employment injuries. Accordingly, the Office denied appellant's claim and terminated prior authorization of his medical treatment.

In a letter dated May 10, 2003, appellant requested an oral hearing before an Office hearing representative. He submitted Dr. Tucker's December 23, 1995 EMG report which revealed evidence of right C7 radiculopathy and no evidence of peripheral neuropathy/entrapment or myopathy. He also submitted a duplicate copy of Dr. Tucker's December 29, 1995 report, Dr. Toler's May 30, 2001 report and the May 19, 2003 report.

At the May 10, 2004 hearing, appellant testified that he was only applying for reinstatement of medical benefits for his right arm. He stated that he was seeking medical treatment at the Veterans Administration Hospital and that he received medical treatment from 1996 until 2000.

By decision dated July 27, 2004, the hearing representative affirmed the Office's June 23, 2003 decision. She found that appellant failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability causally related to his accepted employment injury.

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<sup>3</sup> Dr. Shade did not indicate the year of the fourth edition of the A.M.A., *Guides*, he used to calculate appellant's right upper extremity impairment rating.

## 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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment.<sup>4</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which he claims compensation is causally related to the accepted employment injury.<sup>5</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between his recurrence of disability and his employment injury.<sup>6</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.<sup>7</sup> Moreover, the physician’s conclusion must be supported by sound medical reasoning.<sup>8</sup>

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.<sup>9</sup> In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician’s conclusion of a causal relationship.<sup>10</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>11</sup>

## ANALYSIS

In this case, the Office accepted that appellant sustained right bicipital tendinitis and right lateral epicondylitis on January 21, 1994. He retired from the employing establishment on January 12, 1996 and filed a recurrence of disability claim on July 19, 2002. He only sought medical treatment for his ongoing right arm problems. The Board finds that appellant has failed to submit rationalized medical evidence establishing that the claimed recurrent right arm

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<sup>4</sup> 20 C.F.R. § 10.5(x) (2002).

<sup>5</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>6</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>8</sup> *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>9</sup> *See Ricky S. Storms*, *supra* note 7; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

<sup>10</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 30 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 at 753 (1986).

<sup>11</sup> *See Ricky S. Storms*, *supra* note 7; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

problems are causally related to his accepted employment-related right bicipital tendinitis and right lateral epicondylitis.

Appellant submitted Dr. Tucker's December 29, 1995 report in which he found that appellant has right C7 radiculopathy, right bicipital tendinitis and right lateral epicondylitis which required an MRI scan of the cervical spine, daily doses of anti-inflammatory medications, cervical traction, physical therapy for the cervical spine and cervical epidural steroid injections. Dr. Tucker, however, failed to address whether appellant's right C-7 radiculopathy was causally related to his January 21, 1994 employment injuries. Further, Dr. Tucker failed to explain how or why appellant continued to have residuals of his January 21, 1994 employment injuries and why it was necessary for him to receive continuing medical treatment for these injuries. Therefore, the Board finds that his report is insufficient to establish that appellant sustained a recurrence of disability beginning December 29, 1995 causally related to his accepted employment injuries.

Appellant also submitted Dr. Tucker's EMG report which revealed evidence of right C7 radiculopathy and no evidence of peripheral neuropathy/entrapment or myopathy. This report failed to discuss whether the diagnosed conditions were caused by appellant's accepted employment injuries. Therefore, Dr. Tucker's report is insufficient to establish appellant's burden of proof. Similarly, Dr. Shade, who diagnosed lateral epicondylitis of the right elbow, suspected cubital tunnel syndrome of the right upper extremity, noted a history of abnormal EMG and nerve conduction study with C7 changes, chronic tendinitis of the biceps tendon and chronic impingement syndrome of the right shoulder and determined that appellant sustained a 13 percent permanent impairment of the right upper extremity based on the A.M.A., *Guides*, failed to discuss whether the diagnosed conditions and impairment were causally related to appellant's January 21, 1994 employment injuries. Thus, the Board finds that his report is insufficient to establish appellant's burden of proof.

In a May 30, 2001 medical report, Dr. Toler diagnosed post-traumatic right shoulder contusion with chronic pain and post-traumatic chronic right epicondylitis but she expressed uncertainty as to why appellant continued to experience discomfort so long after his accepted employment-related injuries. In addition, she stated that, in the shoulder region, it was "possible" he had developed a degree of arthritic changes accelerated by his employment injuries that were causing chronic pain. Dr. Toler's report is speculative with regard to the causal relationship between appellant's January 21, 1994 employment injuries and his current right arm conditions as she expressed doubt as to why he had continuing problems more than seven years after his January 21, 1994 employment-related injuries.<sup>12</sup> Thus, the Board finds that her report is insufficient to establish appellant's burden of proof.

The May 19, 2003 report, which contains Dr. Taba's typed name, found that appellant's chronic right shoulder tendinitis and right lateral epicondylitis were a direct result of his federal employment. This report is of no probative value because it is not signed by a physician.<sup>13</sup> As

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<sup>12</sup> *Ricky S. Storms, supra* note 7.

<sup>13</sup> *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

the report lacks proper identification, the Board finds that it does not constitute medical evidence sufficient to establish appellant's burden of proof.

As appellant has failed to submit rationalized medical evidence establishing that he sustained a recurrence of disability beginning December 29, 1995 that was causally related to his January 21, 1994 employment injuries, he has not met his burden of proof.

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained a recurrence of disability beginning December 29, 1995 causally related to his January 21, 1994 employment injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 12, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

A. Peter Kanjorski  
Alternate Member