

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

LAVERN E. GRIPKA, Appellant

and

**U.S. POSTAL SERVICE, HUNTRIDGE
STATION, Las Vegas, NV, Employer**

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**Docket No. 06-726
Issued: July 13, 2006**

Appearances:
Lavern E. Gripka, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 12, 2006 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 3, 2005 denying his recurrence claim. 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 a recurrence of disability due to his December 4, 1996 employment injury.

FACTUAL HISTORY

On December 9, 1996 appellant, a 64-year-old letter carrier, filed a traumatic injury claim alleging that on December 4, 1996 he injured his left shoulder and left thumb while reaching for packages and mail in the back of his vehicle.¹ The Office accepted the claim for upper shoulder and upper arm and strain/sprain of the metacarpophalangeal hand joint. Appellant returned to light-duty work on December 9, 1996 and returned to regular-duty work on December 19, 1996.

¹ Appellant retired effective October 29, 2004.

On August 5, 2000 appellant filed a claim for a recurrence of disability of his left thumb stating it was a “continuation to present.”² No evidence was received.

In letters dated November 16, 2000, the Office advised appellant regarding the factual and medical information required to support his recurrence claim. No response was received within the time allotted.

By decision dated January 31, 2001, the Office denied appellant’s claim for a recurrence of disability beginning August 5, 2000 due to his accepted December 4, 1996 employment injury.³

On October 21, 2004 appellant filed a claim for a recurrence of disability of his shoulder and hand conditions and stated, it had been continuous since the date of the injury. He noted that he sought treatment in May 1999 from Dr. Buchwald, received treatment during the period 2000 to 2002 by Dr. Mathewson and treatment for the period 2003 to 2004 by Dr. McGenn. In support of his recurrence claim appellant submitted duty status reports dated December 9 and 19, 1996 diagnosing left shoulder myositis by Dr. James R. Collet, a treating Board-certified occupational medicine physician.

In a letter dated December 13, 2005, the Office noted that appellant filed a recurrence claim and requested medical care. The Office noted the evidence of record was insufficient to support his claim and advised him of the medical and factual evidence required to support his recurrence claim. The Office informed appellant that he had 30 days to submit the requested evidence.

On February 11, 2005 the Office received a copy of appellant’s September 28, 2004 light-duty request with restrictions he stated were issued by his physician. No medical evidence was submitted

By decision dated May 3, 2005, the Office denied appellant’s claim for a recurrence of disability as the record contained no medical evidence supporting the claimed recurrence.⁴

² The record also contains a Form CA-2a recurrence claim submitted by appellant on March 9, 2000 in which he stated that he sustained a recurrence of disability for his left shoulder beginning February 2000. Appellant noted that he initially returned to working limited duty four hours per day for 10 days and that there had been a prior recurrence of disability beginning May 1999. The record before the Board does not indicate that the Office issued a final decision regarding this claim and the Board’s jurisdiction is limited to considering and deciding appeals from final decisions of the Office issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *William N. Downer*, 52 ECAB 217 (2001).

³ In his appeal letter, appellant requested the Board to review decisions issued by the Kentucky and San Francisco Offices. The Board regulations provide that an appeal must be filed no later than one year from the date of issuance of the Office’s decision. 20 C.F.R. § 501.3(d)(2). As appellant did not appeal this decision to the Board within one year of the issuance of the decision, the Board lacks the jurisdiction to review the January 31, 2001 decision denying his recurrence claim. See *Leona B. Jacobs*, 55 ECAB ____ (Docket No. 04-1429, issued September 30, 2004).

⁴ Appellant submitted new evidence with his appeal. The Board may not consider new evidence which was not before the Office at the time of its final decision. See 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB ____ (Docket No. 05-1622, issued December 21, 2005).

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides, in pertinent part:

“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.”⁵

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.⁶ 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.⁷ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁸

ANALYSIS

The Office accepted appellant's claim for upper arm and shoulder sprain/strain and strain/sprain of the metacarpophalangeal hand joint. Appellant retired from the employing establishment effective October 29, 2004 and filed a recurrence claim dated October 21, 2004.

In a December 13, 2005 letter, the Office advised appellant of the need to submit a detailed narrative report from his attending physician supporting a causal relationship between the accepted left shoulder condition and the claimed period of disability. However, appellant did not submit such evidence. There is no medical evidence of record addressing the claimed period of recurrence of disability. Although appellant mentioned in his October 21, 2004 claim form that he sought treatment in May 1999 from Dr. Buchwald, received treatment during the period 2000 to 2002 by Dr. Mathewson and treatment for the period 2003 to 2004 by Dr. McGenn, he did not submit any documentation from these visits.

As appellant did not submit medical evidence supporting the claimed causal relationship between a period of disability due to his accepted left shoulder and hand conditions, he has failed to meet his burden of proof.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ Section 10.104(a), (b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

⁸ *Robert H. St. Onge*, *supra* note 6.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing a recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 3, 2005 is affirmed.

Issued: July 13, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board