United States Department of Labor
Employees' Compensation Appeals Board

MICHAEL S. ADAMS, Appellant	)	
and	)	**Docket No. 06-786**
	)	**Issued: July 25, 2006**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Bay Pines, FL, Employer	)	

Appearances:
Michael S. Adams, 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 February 17, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 8, 2005 in which the Office denied appellant's claim for a recurrence of disability. He also appealed a decision dated November 18, 2005 which denied merit review. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability beginning September 18, 2002 due to his October 13, 2001 employment injury; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On October 26, 2001 appellant, then a 37-year-old nursing assistant, injured his right shoulder, on October 13, 2001, while restraining a patient. The Office accepted a contusion of the right shoulder and arm. He did not stop work but returned to a light-duty position.

In support of his claim, appellant submitted emergency room treatment notes dated October 13, 2001 which diagnosed right shoulder trauma without dislocation or fracture. An x-ray of the right shoulder revealed no abnormalities. Also submitted were employing establishment treatment notes dated October 13 and 19, 2001 which indicated that he would be off duty on October 13 and 14, 2001. An incident report dated October 13, 2001 noted that appellant attempted to restrain a patient and injured his right shoulder.

On October 13, 2001 the employing establishment offered appellant a limited-duty position, eight hours per day with a tour of duty from 3:30 p.m. to 12:00 a.m. The physical requirements of the position included lifting/carrying up to five pounds, four hours per day, kneeling, bending, stooping, twisting up to four hours per day, sitting, standing, walking, climbing stairs/ladder, simple grasping, fine manipulation and working with chemical solvents up to eight hours per day, and no pulling/pushing, or reaching above the shoulder. The position specifically indicated that appellant was unable to answer "CIT" calls, escort patients in a wheelchair, give care that requires total "ADL/ES" to patients, float to any other area in the hospital, and any other duties that appellant felt would possibly cause him to reinjure himself. He verbally accepted the position.

Appellant came under the care of Dr. Philip Christ, an osteopath and Board-certified orthopedist, and submitted various reports diagnosing right acromioclavicular (AC) joint and sternoclavicular separation with clicking and severe sprain of the right shoulder. Dr. Christ advised that on February 9, 2002 appellant reinjured his right shoulder and clavicle after being attacked by a patient and recommended that appellant return to work light duty and wear a clavicle brace. On April 9, 2002 he prepared a duty status report noting that appellant could return to work full time with a lifting restriction of 10 pounds for 8 hours per day, no pushing/pulling, reaching above the shoulder limited to 4 hours per day, sitting, standing, walking, climbing, kneeling, bending/stooping, simple grasping and fine manipulation up to 8 hours per day; and no take downs or restraining patients. In an August 20, 2002 report, Dr. Christ noted a history of appellant's injury and reinjury on February 9, 2002 and diagnosed sternoclavicular and AC joint separation. He advised that appellant was working light duty but reported that his employer did not follow the light-duty restrictions. Dr. Christ advised that appellant could work light duty but not restrain patients. On September 16, 2002 he advised that appellant stopped work after reinjuring his right shoulder when he pushed a gurney for a 250-pound patient. Dr. Christ reported that appellant's employer was not honoring the light-duty restrictions. He noted examination findings of minimal tenderness over the sternoclavicular joint of the right shoulder, moderate tenderness over the AC joint, intact sensation and good grasp strength. Dr. Christ took appellant off work since he was being made to do more than the light duty. In a duty status report dated September 16, 2002, he advised that appellant could not work. In attending physician's reports dated September 30 and October 7, 2002, Dr. Christ noted that appellant was injured at work on October 13, 2001 and February 9, 2002 and diagnosed right sternoclavicular and AC joint separation and severe sprain of the right shoulder. He noted with a

checkmark "yes" that appellant's condition was caused or aggravated by employment activity and advised that appellant was totally disabled beginning September 16, 2002. On October 7, 2002 Dr. Christ noted appellant's continuing symptoms and treatment. He recommended shoulder exercises and physical therapy. Dr. Christ advised that appellant could not work.

Also submitted were an August 13, 2002 bone scan revealing no abnormalities and reports from Dr. Walter E. Afield, a Board-certified neurologist and psychiatrist, dated September 13 to November 18, 2001. He noted treating appellant for depression caused by physical injury and pressure from his supervisors and diagnosed depressive reaction severe and post-traumatic stress disorder.

On October 7, 2002 appellant filed a Form CA-7, claim for compensation, noting that he was totally disabled beginning September 18, 2002. With his claim and thereafter, he and the employing establishment submitted additional evidence.

In a statement dated August 8, 2002, appellant indicated that a supervisor, Hal Bookstaver, assigned him to the "ESO" because there was a staff shortage and advised him to call for help if he needed assistance. In a statement dated August 14, 2002, appellant reported that a meeting occurred between Marion LeBonte, appellant's supervisor, and Mr. Bookstaver regarding his job duties and the incident of August 8, 2002. He informed his supervisors that he was on light duty and was assigned work beyond his restrictions. Appellant indicated that he could perform duties within his restrictions with no lifting, pushing or pulling over 10 pounds. In a statement dated August 22, 2002, he indicated that Ms. LeBonte informed him that he would be changed to the day shift.

In a memorandum dated August 21, 2002, Ms. LeBonte advised that she reassigned appellant to the day shift because of patient and staff safety and would accommodate appellant's requested days off of Monday and Tuesday. In letters dated September 19 and November 12, 2002, Catherine Cramer, the employing establishment program manager, noted that appellant was injured on October 13, 2001 and had been on light duty since that time and worked the 3:30 p.m. to midnight shift. On August 15, 2002 Ms. LeBonte requested that appellant be changed to the day shift due to staffing limitations from illness and high acuity level. She noted that there was more staff available on days and the employing establishment would be able to accommodate appellant's light-duty limitations in a safe manner for both patients and staff during the day shift. Ms. Cramer informed appellant that the Office would pay his night differential and Sunday premium; however, appellant did not want to work the day shift, rather he wanted to be placed in a medical clerks job. She indicated that the employing establishment followed appellant's light-duty restrictions. Ms. Cramer also noted that an employing establishment physician felt that appellant was capable of working his regular duties. In a report dated September 19, 2002, Dr. Thomas Sutton, Board-certified in occupational medicine and rehabilitation, noted that he reviewed appellant's medical records but did not perform a physical examination. He opined that appellant's injury was not the type that would prevent him from performing his normal duties.

By a letter dated October 31, 2002, the Office advised appellant that further evidence was needed to establish his claim and requested that he submit such evidence, particularly requesting a physician's opinion addressing why a change to the day shift would cause disability.

In a letter dated December 4, 2002, appellant noted that his duties included taking vital signs and accu-checks, computer entry, distributing dinner trays, close observation of patients, monitoring a relaxation group, opening the shower room, stocking linen, emptying linen bags, assisting in restraining patients, pushing patients in wheelchairs and performing electrocardiographs.

On December 16, 2002 Ms. LeBonte noted that after appellant's injury in October 2001 he worked as a nursing assistant but was not permitted to answer "CIT calls," escort patients in a wheelchair, give care requiring "ADL/ES," float to other areas or any other duties appellant felt would possibly cause him to reinjure himself. She indicated that appellant's limitations and assignments were discussed with staff and charge nurses on the day and evening shifts. Appellant's duties included vital signs, accu-checks, withdrawal checks, verbally communicating with patients, close observation, relaxation group, anger management groups, and psycho-education groups. She noted that appellant wanted to stay on the evening shift because of family and financial reasons.

In a decision dated January 24, 2003, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his accepted condition caused the claimed disability.

By letter dated February 5, 2003, appellant requested an oral hearing which was held on October 1, 2004. He submitted a report from Dr. Christ dated September 23, 2003, who treated him for continued complaints of right shoulder pain and cervical pain and recommended that he continue light-duty work. On October 12, 2004 Dr. Christ advised that appellant reached maximum medical improvement with regard to his right shoulder. Also submitted were reports dated January 2 to June 6, 2003, from Dr. Afield who noted appellant's continuing treatment for depression.

In a decision dated April 8, 2005, the hearing representative affirmed the decision of the Office dated January 24, 2003. The hearing representative adjudicated the matter as a claim for a recurrence of disability and found that the evidence established that appellant's work was within his light-duty restrictions and that the medical evidence did not show a change in the nature and the extent of the injury-related condition. The hearing representative noted that appellant should file an occupational disease claim if he wished to pursue an emotional condition claim.

By letter dated October 27, 2005, appellant requested reconsideration. He indicated that there was additional medical evidence attached to the request; however, no such evidence was received.

By decision dated November 18, 2005, the Office denied appellant's reconsideration request on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

When 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 of record

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 show that he cannot perform such light duty. As part of this burden, the employee must show 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.[1]

Causal relationship is a medical issue,[2] 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.[3]

ANALYSIS -- ISSUE 1

After his injury of October 13, 2001, appellant returned to a limited-duty position as a nursing assistant. In the instant case, appellant has not submitted sufficient evidence to support 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.

Appellant submitted reports from Dr. Christ dated September 16 and 23, 2002, who advised that appellant sustained another injury of his right shoulder when he pushed a gurney for a 250-pound patient and reported that his employer was not honoring his light-duty restrictions. Dr. Christ diagnosed sternoclavicular and AC joint separation. In a duty status report dated September 16, 2002, he advised that appellant could not work. However, none of Dr. Christ's reports, most contemporaneous with the recurrence of injury, noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing his light-duty position.[4] Additionally, the Board notes that there is no "bridging evidence" which would relate the sternoclavicular and AC joint separation to the accepted employment injury.[5] That is, he does not explain how the accepted contusion of the right shoulder and arm was exacerbated by appellant's employment factors to result in a sternoclavicular and AC joint separation. The Office never accepted that appellant developed a sternoclavicular and AC joint separation as a result of his October 13, 2001 work injury and there is no medical evidence to

[1] *Terry R. Hedman*, 38 ECAB 222 (1986). *See* 20 C.F.R. § 10.5(x) for the definition of a recurrence of disability.

[2] *Mary J. Briggs*, 37 ECAB 578 (1986).

[3] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

[5] For the importance of bridging evidence in establishing a claim of continuing disability see *Robert H. St. Onge*, 43 ECAB 1169, 1175 (1992).

support such a conclusion.[6] The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[7]

Also submitted were attending physician's reports dated September 30 and October 7, 2002 from Dr. Christ who noted that appellant was injured at work on October 13, 2001 and reinjured on February 9, 2002. He diagnosed right sternoclavicular and AC joint separation and severe sprain of the right shoulder. Dr. Christ noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and advised that appellant was totally disabled from September 16, 2002 to the present. However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[8]

Other reports from Dr. Afield dated September 13 to November 18, 2002 and January 2 to June 6, 2003 diagnosed work-related depressive reaction severe and post-traumatic stress disorder and advised that appellant was totally disabled. However, Dr. Afield does not explain how the accepted contusion of the right shoulder and arm resulted in depression. The Office never accepted that appellant developed a depressive condition as a result of his October 13, 2001 work injury and there is no medical evidence to support such a conclusion.[9]

Likewise, the Board finds that there is no credible evidence which substantiates that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded his medical restrictions. Appellant submitted a report from Dr. Christ dated August 20, 2002 which noted that he was working light duty but reported that his employer did not follow the light-duty restrictions. In a report dated September 16, 2002, he indicated that appellant reported another reinjury of his right shoulder when he pushed a gurney for a 250-pound patient and indicated that his employer was not honoring his light-duty restrictions. However, Dr. Christ appears merely to be repeating appellant's assertions regarding his work duties. The record does not establish that appellant's work exceeded his light-duty restrictions. Thus, Dr. Christ's opinion on causal relationship, due to a change in light-duty requirements, is of diminished probative value.[10] The record is void of evidence indicating that there was a change in the nature and extent of the light-duty requirements or that he was required to perform duties which exceeded his medical restrictions. Rather, the record reflects that the only change in appellant's light-duty position was that appellant was transferred from the night shift to the day shift. The medical record does not show that appellant was restricted from

[6] *See Terry R. Hedman, supra* note 1.

[7] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[9] As noted in the text of this decision, the Office's hearing representative's April 8, 2005 decision advised appellant to file an occupational disease claim if he wished to pursue a claim for an emotional condition.

[10] Medical conclusions based on inaccurate or incomplete histories are of diminished probative value. *Beverly R. Jones*, 55 ECAB ___ (Docket No. 03-1210, issued March 26, 2004).

working the day shift. Both Ms. LeBonte, appellant's supervisor and Ms. Cramer, the employing establishment program manager, noted that appellant was transferred to the day shift because there was more staff available on days and the employing establishment would be able to accommodate appellant's light-duty limitations in a safe manner for both patients and staff during the day shift. Ms. Cramer informed appellant that the Office would pay his night differential and Sunday premium.

Appellant has not met his burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit him from performing the light-duty position he assumed after he returned to work.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[11] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[12] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by the [Office]; or
>
> "(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[13]

ANALYSIS -- ISSUE 2

Appellant's October 27, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

[11] 5 U.S.C. § 8128(a).

[12] 20 C.F.R. § 10.606(b).

[13] 20 C.F.R. § 10.608(b).

Appellant's reconsideration request indicated that he had medical evidence supporting his claim for recurrence of disability. However, at the time of the Office decision on November 18, 2005, the record did not contain new medical evidence and his letter did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant, as noted above, did not submit any new evidence with his reconsideration request.

The Board finds that appellant did not show that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office, nor did he submit relevant and pertinent evidence not previously considered by the Office.[14] Consequently, appellant was not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on September 18, 2002 causally related to his accepted employment-related injury on October 13, 2001. The Board further finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 18 and April 8, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 25, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[14] 20 C.F.R. § 10.606(b).