

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

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K.H., Appellant )  
and ) Docket No. 08-659  
U.S. POSTAL SERVICE, HEADQUARTERS, ) Issued: August 15, 2008  
FIELD INFORMATION SYSTEMS )  
PROGRAMS, Washington, DC, Employer )  
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*Appearances:*

*Martin Kaplan, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 26, 2007 appellant filed a timely appeal from an October 30, 2007 merit decision of the Office of Workers' Compensation Programs that denied modification of previous denials of his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established that on June 5, 2003 he sustained a recurrence of a medical condition causally related to his January 3, 1994 work injury.

**FACTUAL HISTORY**

On January 10, 1994 appellant, then a 42-year-old information systems specialist, filed a traumatic injury claim stating that he sustained right shoulder, buttocks, and back sprains on January 3, 1994 when he slipped on a wet spot while exiting a building and landed in the revolving doors. He did not stop work. In a February 3, 1994 report, Dr. Kevin E. McGovern, a

Board-certified orthopedic surgeon, diagnosed lumbar strain with lumbar radiculopathy and a right shoulder sprain. He explained that appellant's injury occurred when he slipped and fell on January 3, 1994, landing on his back and right side. The Office accepted appellant's claim for right shoulder strain and lumbar strain with left radiculopathy. It also accepted appellant's claims for thoracic or lumbosacral neuritis or radiculopathy, lumbar sprain/strain, and major depressive disorder, single episode. The Office paid appropriate benefits.

Appellant continued to undergo treatment for his work injury and resulting symptoms. On May 19, 1995 Dr. P. Singh Ajrawat, a pain management specialist, explained that appellant had persistent but improving low back pain and hip pain and noted that appellant was motivated to work. On June 6, 1995 he reported that appellant had pain in his middle back radiating to his shoulders. Dr. Ajrawat continued to submit treatment notes from July 25 to November 10, 1995 and received payment for appellant's treatment during that time. On May 13, 1997 he noted appellant's complaints of lower back and bilateral leg pain, as well as depression. On November 2, 1998 Dr. Ajrawat explained that appellant had undergone a lumbar laminectomy secondary to his work injury and had developed chronic low back pain. He stated that appellant was required to stop treatment for a period of time and developed a "severe recurrence" of his pain and symptoms in his lower back, lower extremity, upper back and shoulder, but did not provide any additional details. Dr. Ajrawat continued to treat appellant intermittently. In reports dated December 2, 2002 and January 17, 2003, he again noted appellant's complaints of right shoulder, shoulder blade and upper arm pain. On January 24, 2003 appellant reported continuing left hip, buttock and low back pain.

By correspondence dated June 25, 2003, appellant advised that the employing establishment had informed him that his claim had been closed.<sup>1</sup> He noted that neither he nor his treating physician had received notice of the closing of his claim. On June 26, 2003 and February 26, 2004 appellant filed a claim for recurrence of a medical condition beginning on June 5, 2003. He did not stop work. On December 15, 2003 Dr. Ajrawat explained that he was treating appellant for continuing lower back, buttocks and bilateral leg pain related to his January 3, 1994 work injury. He stated that appellant was unable to work full time without continuing treatment.

On May 13, 2004 the Office referred appellant to Dr. Robert Draper, a Board-certified orthopedic surgeon, to determine the cause and extent of his current condition. In a May 27, 2004 report, Dr. Draper indicated that the Office had previously accepted appellant's claim for sprain and strain of the right shoulder and upper arm, thoracic and lumbosacral neuritis or radiculopathy, lumbar sprain/strain and major depressive disorder, single episode. He also noted that appellant had a herniated lumbar disc and a lumbar laminectomy in 1974, which were not accepted by the Office. Dr. Draper noted appellant's work injury and his subsequent treatment. He noted the results of a May 12, 2004 x-ray, which showed rotary levoscoliosis, degenerative disc disease and osteophyte formation, as well as some mild early osteoarthritis of the medial joint space of the left hip. Dr. Draper diagnosed degenerative arthritis of the acromioclavicular

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<sup>1</sup> The record indicates that, after paying for various medical services from 1994 to 1997, the Office closed the claim on May 27, 2003. On November 9, 1999 it Dr. Ajrawat advised that certain claimed services could not be paid without medical justification. The record does not indicate that, prior to closing the claim on May 27, 2003, the Office issued any decision denying any particular claimed benefit.

joint, preexisting degenerative lumbar disc disease at L1-2 and L5-S1 with osteophyte formation, and mild medial compartment osteoarthritis of the left hip. He opined that appellant's current condition was degenerative in nature, related to the aging process and not to his January 3, 1994 work injury. Dr. Draper explained that appellant had sustained "soft tissue" injuries more than 10 years prior to his examination, and that his present condition was related to his degenerative diagnoses which were not related to work. In a May 27, 2004 work capacity evaluation, he indicated that appellant could work full time without restrictions.

In a June 4, 2004 statement, appellant asserted that his January 3, 1994 work injury caused permanent disability. He characterized his treatment as "maintenance mode" and explained that he required continuing medical treatment. Appellant stated that he continued to work full time. In a June 4, 2004 report, Dr. Ajrawat stated that appellant was being treated for symptoms of pain arising from his January 3, 1994 work injury. He explained that appellant had not sustained any other injuries in the time since his work accident and that his current symptoms were related to his work accident. Dr. Ajrawat diagnosed moderate degenerative joint disease in the acromioclavicular joint, a rim-rent tear of the rotary cuff, supraspinatus component, and a juxta-synovial cyst.

By decision dated June 21, 2004, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not establish that appellant's present condition was causally related to his 1994 work injury.

Appellant requested an oral hearing that was held on December 7, 2004. At the hearing, he reiterated that his injury had not resolved and recurred, but rather had never resolved. Appellant explained that filing a recurrence of medical condition claim was the only way to have his claim reopened. In a December 7, 2004 statement, he explained that he had received pain medication and treatment of his right shoulder, lumbar and hip pain on a continual basis and without interruption since his 1994 work injury. Appellant explained that, at the end of May 2003, his supervisor informed him that his claim had been closed and presented him with forms for reopening his claim. He stated that the employing establishment advised him that the only way to have his claim reopened was to file a recurrence claim. Appellant stated that he understood that "recurrence implies that there was an interruption in treatment" and that there had been no such interruption in his case, but that filing a claim for recurrence of medical condition was "the only acceptable way to get the Office to correct their error in closing this case to begin with."

In a February 2, 2005 report, Dr. Ajrawat noted that appellant's accepted conditions included right shoulder and upper arm sprain/strain, thoracic and lumbar radiculopathy, lumbar sprain/strain and major depressive disorder. He reported that an orthopedic surgeon had examined appellant and diagnosed subacromion bursitis, severe right shoulder impingement and partial/full thickness rotator cuff tear. Dr. Ajrawat stated that the other physician<sup>2</sup> found that appellant's pain was not related to degenerative changes in his acromioclavicular joint. He explained that appellant's condition was not age related, but rather was related to his January 3, 1994 work injury. Dr. Ajrawat diagnosed right rotator cuff tear, right subacromion bursitis, left

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<sup>2</sup> The report of the other physician is not of record.

hip medial compartment osteoarthritis, myofascial pain disorder, lumbosacral neuritis and depression related to chronic pain. He opined that appellant's diagnosed conditions were directly related to continuing and chronic pain arising from his 1994 work injury.

By decision dated March 28, 2005, the hearing representative affirmed the June 21, 2004 decision on the grounds that the medical evidence was insufficient to establish that appellant's current condition was related to his accepted 1994 work injury.

On March 21, 2006 appellant requested reconsideration. In support of his reconsideration request, he submitted a February 14, 2006 report from Dr. Jeffrey D. Gaber, a Board-certified internist, who noted appellant's history of injury on January 3, 1994 and explained that appellant was asymptomatic prior to his injury and had experienced chronic pain since. Dr. Gaber stated that appellant's current condition was related to his work injury based on the fact that he was asymptomatic prior to his injury and had required continuing treatment since. He disagreed with Dr. Draper's assessment that appellant's 1994 work injury was a "soft tissue" injury, noting that appellant had since developed arthritis, lumbosacral radiculopathy and subacromial bursitis.

By decision dated October 5, 2006, the Office denied modification of its previous denials of appellant's recurrence claim.

On August 21, 2007 appellant requested reconsideration. In support of his request, he submitted an August 20, 2007 report from Dr. Robert W. Macht, a Board-certified surgeon, who diagnosed right shoulder strain and lumbar strain with left radiculopathy. Dr. Macht noted appellant's history of a prior back injury, from which appellant claimed he fully recovered and several motor vehicle accidents in which appellant stated he was not injured. He concluded that appellant's condition was related to his 1994 work injury because appellant had undergone continuous care since 1994 for his back, legs and right shoulder conditions.

By decision dated October 30, 2007, the Office denied modification of its previous denials of appellant's claim.

#### **LEGAL PRECEDENT**

A claimant seeking compensation under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.<sup>4</sup> In this case, appellant has the burden of establishing that he sustained a recurrence of a medical condition<sup>5</sup> on June 5, 2003 causally related to his January 3, 1994 employment injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history,

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Edward W. Spohr*, 54 ECAB 806 (2003).

<sup>5</sup> Recurrence of a 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. Continuing treatment for the original condition or injury is not considered a "need for further medical treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002).

concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>6</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>7</sup>

## ANALYSIS

The Office accepted appellant's claim for right shoulder strain, lumbar strain with left radiculopathy, lumbosacral neuritis, and major depressive disorder, single episode in connection with his January 3, 1994 traumatic injury. Appellant sought treatment from Dr. Ajrawat, who provided continuing treatment of appellant's chronic pain symptoms from 1994 until the filing of appellant's recurrence of disability claims in 2003 and 2004. He filed a claim alleging that he sustained a recurrence of a medical condition on June 5, 2003. Appellant did not stop work. He explained that the Office closed his claim and that the "only appropriate way" to have his claim reopened was to file a recurrence claim. Appellant stated that he understood that a recurrence implied that the injury resolved and then recurred, whereas his injury had simply never resolved. In June 4, 2004 and February 2, 2005 reports, Dr. Ajrawat, appellant's treating physician, also stated that appellant's injury had never resolved, but rather that he had experienced chronic pain and continuing symptoms, requiring treatment without interruption. As noted above, a need for continuing medical treatment does not establish a recurrence of a medical condition.<sup>8</sup>

Furthermore, the weight of the medical evidence does not establish that appellant's continuing treatment is necessitated by his January 3, 1994 employment injury. Dr. Ajrawat has submitted several reports asserting that appellant's continuing condition and need for treatment are due to his employment injury. However, he has not provided medical rationale to support his opinion on causal relationship. For example, Dr. Ajrawat referenced the report of another physician, which is not of record, in support of his opinion but he did not provide his own opinion in which he explained the medical reasons by which appellant's accepted conditions would persist since 1994 nor did he explain why appellant's continuing need for treatment would not be the result of appellant's several degenerative conditions which were not accepted as being employment related. As noted, part of a claimant's burden of proof to establish includes the submission of rationalized medical evidence supporting that the continuing condition is causally related to the employment injury.<sup>9</sup> Dr. Gaber's report is also insufficient to establish the claim as the only reasoning he provided in support of causal relationship was that appellant was asymptomatic prior to his injury and required treatment afterward. However, the Board has held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to establish causal relationship.<sup>10</sup> Similarly, Dr. Macht's report is also insufficient as he also supported causal relationship on the basis that appellant had

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<sup>6</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>7</sup> *Id.*; *Albert C. Brown*, 52 ECAB 218 (2000).

<sup>8</sup> *Supra* note 5.

<sup>9</sup> See *supra* notes 6, 7.

<sup>10</sup> *Thomas R. Horsfall*, 48 ECAB 180 (1996).

undergone continuous care since 1994 for his back, legs and right shoulder. He provided no other reasoning or rationale to explain his opinion.

Dr. Draper, however, opined in his May 27, 2004 report that appellant's current condition was caused by degenerative changes relating to the aging process, not by the work injury. He conducted a thorough examination, reviewed the record and found no basis on which to attribute any medical condition or work restriction to the original 1994 employment injury. Dr. Draper noted that appellant's original injury was a soft tissue injury and that his current conditions were degenerative in nature and due to the aging process. He stated that appellant may occasionally need some pain medication or other pain management treatment to alleviate his symptoms, but that the symptoms in question were not work related.

Accordingly, the Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of his medical condition in June 2003, causally related to his January 3, 1994 work injury.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a recurrence of a medical condition causally related to his January 3, 1994 work-related injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the October 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 15, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board