

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

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Peru, IN, Employer**

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**Docket No. 08-1378
Issued: December 1, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 8, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 28, 2008 which denied his claim for a recurrence of disability commencing November 21, 2007. 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 established that he sustained a recurrence of disability on November 21, 2007 causally related to his September 7, 2006 employment injury.

FACTUAL HISTORY

On September 7, 2006 appellant sustained injury when he lost control of a postal vehicle and rolled numerous times. His claim was accepted for bilateral closed fracture of the scapula, bilateral closed fracture of the ribs, bilateral sprain of shoulder and upper arm, subscapularis and other specified sites, bilateral joint derangement in upper arms, pain in thoracic spine, and pain in

joint lower right leg. On September 26, 2006 appellant was terminated from his employment for administrative reasons: two separate motor vehicle accidents during his probationary period.

Appellant filed claims for compensation from October 23, 2006 to April 2, 2007 for which he was paid on the periodic and supplemental rolls. On March 28, 2007 he had right shoulder arthroscopy with subacromial decompression and open subscapularis repair with biceps tenodesis. On May 23, 2007 appellant had a left shoulder scope with arthroscopic subacromial decompression, open subscapularis tendon repair, and biceps tenodesis.

In a September 10, 2007 report, Dr. Brett F. Gemlick, a Board-certified orthopedic surgeon, stated that appellant was six months post right open subscapularis repair and four months status post left open subscapularis repair, had completed formalized physical therapy and was doing well. He found that appellant could return to work without restrictions.

In a December 14, 2007 report, Dr. Gemlick noted that appellant was performing physical work at his job and became very sore. He reported that appellant was released from his job when he could not perform due to pain in both shoulders. Dr. Gemlick noted that he did not see any significant retearing upon physical examination. He also stated that appellant could not do the kind of job he was used to doing.

On January 7, 2008 appellant filed a recurrence of disability claim alleging that on November 21, 2007 he sustained disability due to his accepted conditions. He argued that the repetitive arm movement caused him pain and loss of strength. Appellant also informed the Office that Dr. Gemlick released him to full duty on September 10, 2007.

In a January 18, 2008 letter, the Office requested additional information from appellant, specifically the reason for his work stoppage on November 21, 2007.

In a February 5, 2008 note, Dr. Gemlick opined that appellant had reached maximum medical improvement and that the current work restrictions of 10 pounds constantly, 10 to 25 pounds frequently and 40 pounds occasionally, were valid. He also opined that appellant's condition worsened before he stopped work, and that, as he did not have any impairment prior to the injury, he thought the worsening was a result of the work-related injury. A January 29, 2008 functional capacity evaluation report from a physical therapist addressed appellant's physical abilities and limitations.

Referral forms from Dr. Gemlick and Dr. Roger Thomas, Board-certified in physical medicine and rehabilitation, were submitted. In a February 8, 2008 memorandum, appellant's former employer verified that appellant was hired on October 4, 2007 and terminated on November 21, 2007 due to his inability to perform the job.

In a March 28, 2008 decision, the Office denied appellant's claim for a recurrence of disability beginning on November 21, 2007. It found that appellant had not established that his claimed disability was a result of his accepted work injury.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”¹ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² Where no such rationale is present, medical evidence is of diminished probative value.³

ANALYSIS

The Office accepted that appellant sustained bilateral closed fracture of the scapula, bilateral closed fracture of the ribs, bilateral sprain of shoulder and upper arm, subscapularis and other specified sites, bilateral joint derangement in upper arms, pain in thoracic spine, and pain in joint lower right leg as a result of his federal employment.

On September 10, 2007 appellant was approved by his attending physician to return to work without restrictions. On October 4, 2007 he began private-sector employment. On November 21, 2007 appellant was terminated due to not being able to perform his job. He alleged that he sustained a recurrence of total disability on November 21, 2007 due to his September 7, 2006 employment injury. Appellant has the burden of providing sufficient evidence, including rationalized medical evidence, to establish the causal relationship asserted.⁴

Appellant submitted reports from Dr. Gemlick. On December 14, 2007 Dr. Gemlick stated that appellant was performing physical work at his job in the private sector and became sore. He also noted that appellant was released from work due to shoulder pain. In a February 5, 2008 note, Dr. Gemlick opined that appellant’s condition had worsened before he stopped work. As appellant did not have impairment prior to injury, the worsening was a result of the work-related injury. The brief notes of Dr. Gemlick are not sufficient to establish appellant’s claim. He did not provide a history of appellant’s work duties in the private sector or address how his disability related to any residuals of the accepted injury. Additionally, Dr. Gemlick has not explained how appellant’s current physical condition is causally related to his accepted employment injury.

¹ *R.S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5(x).

² *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ *Ricky S. Storms*, 52 ECAB 349 (2001).

The Board notes that on September 10, 2007 appellant was released to return to his federal employment without any work restrictions. Dr. Gemlick did not describe the nature of the duties appellant performed in the private sector or how residuals of his accepted injury would contribute to his disability. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his opinion.⁵ The medical reports are insufficient to establish that appellant sustained a recurrence of disability causally related to his September 7, 2006 injury.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability commencing November 21, 2007 causally related to his accepted September 7, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 28, 2008 is affirmed.

Issued: December 1, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁵ *D.D.*, 57 ECAB 734 (2006), *Calvin E. King*, 51 ECAB 394 (2000).