

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

G.S., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Bluefield, WV, Employer**

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**Docket No. 09-1074
Issued: January 12, 2010**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 16, 2009 appellant filed a timely appeal from August 4 and December 23, 2008 merit decisions of the Office of Workers' Compensation Programs denying his claim for a recurrence. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability on July 20, 2007 causally related to his March 9, 2007 employment injury.

FACTUAL HISTORY

On March 20, 2007 appellant, then a 43-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on March 9, 2007, while pushing a container of mail over to the loading truck staging area, he felt a pull in his left shoulder socket and experienced pain and throbbing in the left shoulder, upper arm and rotator cuff. He stopped work on March 12, 2007.

The Office accepted the claim for sprain of the left shoulder, upper arm and acromioclavicular joint.

On April 19, 2007 Dr. Robert P. Kropac, an orthopedic surgeon,¹ released appellant to light duty with a 10-pound restriction on lifting, pushing and pulling and a total restriction on reaching. Appellant did not return to work at this time and continued to receive wage-loss compensation.²

In a July 12, 2007 medical report, Dr. Kropac released appellant for full duty effective July 16, 2007 based on the results of a functional capacity evaluation demonstrating appellant's ability to lift 75 pounds occasionally and 55 pounds frequently, which satisfied the demands of a heavy work position. The record reveals that appellant returned to full duty on July 16, 2007 but stopped working four days later on July 20, 2007.

In attending physician reports (Forms CA-20) dated July 18 and August 10, 2007, Dr. Kropac indicated that appellant was totally disabled from March 29 through August 10, 2007 related to shoulder pain with bursitis and tendinitis.

On August 7, 2009 appellant filed a claim for a July 20, 2007 recurrence of disability (Form CA-2a). He stated that Dr. Kropac suggested he return to work on a trial basis to determine whether he could perform his job adequately. Appellant claimed that his injury was never healed and that upon his return to work his left shoulder continued to worsen.

By letter dated August 17, 2007, the Office advised appellant of the deficiencies in his recurrence claim and requested additional evidence.

In an August 9, 2007 medical report, Dr. Kropac reported appellant's complaints of persistent left shoulder pain. Appellant stated that he was not allowed to return to work with the restrictions in the functional capacity evaluation and that he was told he should be in work conditioning to increase his tolerance to work in a full-duty capacity. Physical examination revealed some tenderness around the left shoulder although the range of motion was normal. A neurological examination was objectively normal. Dr. Kropac stated that appellant should begin work conditioning and hardening to improve his overall functional capacity to very heavy work. He commented that appellant could return to work in a light-duty capacity if available.

In a letter dated August 23, 2007, appellant alleged that his position required him to lift over 70 pounds dozens of times during his entire tour of duty. Further, he claimed that Dr. Kropac sent him back to work on a trial basis prior to undergoing an extensive work-release program as recommended by a physical therapist. Appellant alleged that the doctor told him that, if his left shoulder continued to hurt, he should stop working and schedule an appointment. He stated that he returned to work on July 16, 2007 and worked four eight-hour days, during

¹ It does not appear that Dr. Kropac is Board certified in a particular specialty.

² There is conflicting evidence in the record regarding whether there was light duty available at the employing establishment at this time.

which time his left shoulder continued to hurt to the point where he could no longer sleep at night. Appellant stopped work on July 20, 2007.

By decision dated October 10, 2007, the Office denied appellant's claim for a July 20, 2007 recurrence of disability on the grounds that he did not establish with sufficient medical evidence that the claimed recurrence was related to the March 9, 2007 employment injury.

On December 20, 2007 appellant filed a request for reconsideration. In a December 11, 2007 statement, he claimed that Dr. Kropac returned him to work in July based on a mistaken assumption that he was only required to lift 70 pounds occasionally. He alleged that his entire job consisted of lifting excessive weight over his head and placing the bulk packages in various containers, as well as pushing and pulling numerous pallets containing thousands of pounds of weight. Appellant further reiterated that the doctor only returned him to work on a trial basis due to his ability to pick up 70 pounds during the functional capacity evaluation.

In an October 11, 2007 medical report, Dr. Kropac stated that appellant had improved and progressed in work conditioning and that he was ready to return to work in a full-duty capacity. Physical examination revealed continued tenderness over the rotator cuff and bicipital groove area of the left shoulder. Dr. Kropac also noted occasional crepitation in the area but that range of motion was full. He diagnosed supraspinatus tendinitis with subacromial bursitis of the left shoulder secondary to the March 9, 2007 compensable injury and released appellant for full duty. In a subsequent December 10, 2007 report, Dr. Kropac reported that appellant only returned to work for one day but that he experienced increased shoulder pain. He stated that appellant could return to work in a modified capacity with restrictions precluding heavy lifting and using his left upper extremity.

In a December 13, 2007 attending physician's report, Dr. Kropac indicated that appellant was totally disabled until October 15, 2007 and partially disabled from October 16, 2007 through January 8, 2008. He indicated work restrictions including no heavy lifting using the upper extremities.

In a report dated January 7, 2008, Dr. Kropac reported appellant's complaints of continued shoulder pain aggravated by overhead and outstretched reaching. Physical examination revealed tenderness and crepitation over the left shoulder and full range of motion with pain. Dr. Kropac diagnosed supraspinatus tendinitis with subacromial bursitis and indicated that appellant could work modified duty with the same restrictions previously provided.

In a January 9, 2008 attending physician's report, Dr. Kropac indicated that appellant was totally disabled during the period March 29 through October 22, 2007 and that he was able to resume light duty on December 27, 2007.

By decision dated February 12, 2008, the Office denied modification of the October 10, 2007 decision on the grounds that the medical evidence did not establish that appellant experienced a worsening of his condition on July 20, 2007 causally related to the March 9, 2007 employment injury. It noted that, although Dr. Kropac stated that appellant could not return to work due to the conditions of tendinitis, bursitis and impingement, these conditions were not accepted as work related.

On February 29, 2008 appellant filed a request for reconsideration.

In a February 27, 2008 medical note, Dr. Kropac stated that appellant's current left shoulder condition of supraspinatus tendinitis and subacromial bursitis was a direct result of the employment-related March 9, 2007 injury.

By decision dated March 14, 2008, the Office modified its prior decision in part to accept the conditions of left shoulder rotator cuff tendinitis with subacromial bursitis as employment related. However, it found that the medical evidence was still insufficient to support appellant's claim for a recurrence of disability.

On July 28, 2008 appellant filed a request for reconsideration.

In a February 27, 2008 medical report, Dr. Kropac stated that appellant had not experienced any changes with regards to his subjective complaints and that he still experienced left shoulder pain aggravated by overhead and outstretched reaching. He noted crepitation in the left shoulder area and pain on abduction and flexion of the left shoulder against resistance. Dr. Kropac diagnosed supraspinatus tendinitis with subacromial bursitis of the left shoulder secondary to the March 9, 2007 employment injury. He stated that appellant could continue to work if modified duty was available. However, since modified duty was apparently not available, appellant could not return to work due to his symptomatology.

By decision dated August 4, 2008, the Office denied modification of its prior decisions on the grounds that there was no rationalized medical evidence of record establishing that appellant experienced a recurrence of disability causally related to the March 9, 2007 employment injury.

In a June 24, 2008 medical report, Dr. Jack R. Steel, a Board-certified orthopedic surgeon, stated that appellant experienced persistent left shoulder pain and had not worked since March 9, 2007 due to an employment injury. He noted appellant's complaints of anterior left shoulder pain with lifting activities, lying on the involved side and overhead activities. Physical examination of the left shoulder revealed abduction to 95 degrees with anterior pain, forward flexion to 180 degrees with anterior pain, external rotation to 90 degrees and internal rotation to 85 degrees with mild pain. Further, external rotation strength was graded five out of five with mild anterior pain. Dr. Steel diagnosed a sprain of the left rotator cuff. He opined that there was no clinical or magnetic resonance imaging (MRI) scan evidence of a rotator cuff tear. Appellant had similar findings on the right shoulder but the left was more symptomatic presumably related to the injury. Dr. Steel recommended physical therapy for three weeks, followed by three weeks work hardening and then a functional capacity evaluation with work release based on the evaluation findings.

On September 29, 2008 appellant filed a request for reconsideration. He also submitted a September 19, 2008 letter essentially reiterating his arguments supporting prior reconsideration requests.

By decision dated December 23, 2008, the Office denied modification of its prior decisions on the grounds that the medical evidence of record was insufficient to establish that on July 20, 2007 appellant sustained a change in the nature and extent of his employment injury or a

change in limited-duty requirements. Thus, it found that he did not establish a recurrence of disability.

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.”³ 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 he 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.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

ANALYSIS

The Office accepted that appellant sustained a sprain of the left shoulder, upper arm and acromioclavicular joint on March 9, 2007 while pushing a container of mail at work. It subsequently accepted the conditions of left shoulder rotator cuff tendinitis with subacromial bursitis as employment related. Dr. Kropac, appellant’s treating physician, released appellant to limited duty on April 19, 2007 and full duty on July 16, 2007. Appellant returned to full duty from July 16 through 19, 2007, working eight-hour days. The issue is whether he established that he sustained a recurrence of disability on July 20, 2007 causally related to the March 9, 2007 employment injury. The Board finds that appellant has not produced any rationalized medical opinion evidence establishing that he was disabled on or after July 20, 2007 as a result of the accepted March 9, 2007 employment injury.

In support of his claim, appellant submitted several medical reports from Dr. Kropac dated August 9, 2007 through February 27, 2008. Dr. Kropac diagnosed supraspinatus tendinitis with subacromial bursitis secondary to the March 9, 2007 employment injury. He reported appellant’s complaints of consistent pain, aggravated by overhead and outstretched reaching and difficulties performing daily activities. In attending physician’s reports dated July 18 through December 13, 2007, Dr. Kropac stated that appellant had been totally disabled since March 29, 2007 due to shoulder pain with bursitis and tendinitis.

The Board finds that Dr. Kropac’s medical reports are insufficient to establish appellant’s recurrence claim. Dr. Kropac released appellant to full duty on July 16, 2007 based on the results of a functional capacity evaluation demonstrating his ability to perform heavy work. He

³ R. S., 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ See *Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

did not state at this time that the return to work was on a trial basis or that the release to full duty was only due to appellant's request. In subsequent medical records, after the alleged July 20, 2007 recurrence, Dr. Kropac merely opined that appellant was currently disabled and had been since March 29, 2007 due to tendinitis and bursitis. He did not explain how the nature and extent of appellant's employment-related condition changed after he released him to full duty on July 16, 2007 or why he changed his medical opinion regarding appellant's disability after this date.⁶ Moreover, Dr. Kropac never addressed appellant's return to work on July 16, 2007 or provided any rationalized explanation as to why appellant could not continue working after July 20, 2007 due to the employment injury. Thus, his reports are insufficient to establish appellant's burden of proof.⁷

Further, appellant submitted a June 24, 2008 medical report from Dr. Steel, who reported appellant's persistent left shoulder pain. Dr. Steel diagnosed rotator cuff sprain and recommended physical therapy and work hardening with subsequent release to work. This report is also insufficient to establish appellant's claim for a recurrence. Dr. Steel did not provide any explanation as to how the diagnosed rotator cuff strain caused appellant to be disabled from returning to work or performing his employment duties. In fact, he did not provide any specific opinion regarding appellant's current or prior disability, nor did he indicate any knowledge of a recurrence of disability on or after July 20, 2007.⁸ Thus, this report is also insufficient to establish appellant's claim for a July 20, 2007 recurrence.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability on July 20, 2007 causally related to his March 9, 2007 employment injury.

⁶ See *K.C.*, 60 ECAB ___ (Docket No. 08-2222, issued July 23, 2009); *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁷ See *Joan R. Donovan*, 54 ECAB 615 (2003).

⁸ See *Conard Hightower*, 54 ECAB 796 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 23 and August 4, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 12, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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