

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD C. TREICHEL and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MN

*Docket No. 98-91; Submitted on the Record;
Issued September 7, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an employment-related left shoulder condition causally related to his federal employment.

On July 7, 1995 appellant, then a 55-year-old rural mail carrier, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that the "continued use of his left arm to reach over into the back seat [of his mail truck] to retrieve 10 to 16-pound bundles of mail" caused him to sustain an employment related rotator cuff tear -- osteoarthritis in his left shoulder. Appellant indicated that he first became aware of and first realized that the disease or illness was caused or aggravated by his federal employment on February 1, 1995. Appellant also indicated that he first reported his condition to his supervisor and first sought medical treatment on February 27, 1995. He then explained that he did not file his occupational disease claim within the required 30-day time period because he was under the impression that all sick leave had to be used before he could file a workers' compensation claim. Surgery to repair appellant's rotator cuff tear and the debridement of the glenoid labrum tear in his left shoulder was performed on May 9, 1995. On July 11, 1995 appellant filed a separate claim for compensation on account of traumatic injury or occupational disease, Form CA-7, indicating that he stopped work due to his diagnosed condition beginning May 9, 1995 and continuing (which was July 11, 1995 at the time).¹ Appellant returned to his normal work duties on July 31, 1995.

Appellant submitted in support of his claim, an attending physician's report, Form CA-20, from Dr. Ben R. Mayne, III, a Board-certified orthopedic surgeon, dated July 12, 1995 and medical progress notes ranging in intermittent dates beginning February 27 through July 31, 1995. In the attending physician's report, Dr. Mayne, III, stated that appellant was reaching for an object when he injured his shoulder; he diagnosed appellant with rotator cuff tear --

¹ The record shows that appellant was in a payment status during this documented time period and continued.

osteoarthritis; he stated that appellant's condition was caused or aggravated by an employment activity, which is possibly due to reaching over appellant's seat to grab bundles of mail; that he performed a surgical repair rotator cuff and a debridement of the glenoid labrum tear on appellant's left shoulder. Appellant was placed on total disability from May 9 through July 31, 1995. In the medical note dated July 31, 1995, Dr. Mayne, III advised appellant that he could return to his normal work duties.

By letter dated July 25, 1995, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office stated that they had received appellant's medical notes, work activities, etc. but indicated that "It is unclear as to whether [appellant is] claiming an occupational illness or traumatic injury. [The Office] have received information that you injured your left shoulder on February 1, 1995 reaching out to open a gate on a mail container. Your occupational claim states that the continued usage of your left arm to reach into the back seat to retrieve bundles of mail caused your left shoulder injury. Please clarify how your injury occurred." The Office particularly requested that appellant have his physician provide a comprehensive medical report describing appellant's symptoms; results of examination and tests; firm diagnosis; treatment provided; a physician's medical reasons on the cause and effect of appellant's condition; and a physician's reasoned opinion addressing the causal relationship between appellant's diagnosed condition and any workplace factors whether it be employment or nonemployment work factors. Appellant was allotted 30 days within which to submit the requested information.

In response to the Office's July 25, 1995 letter, appellant submitted a medical report from Dr. Mayne, III dated August 2, 1995. In this report, Dr. Mayne, III stated that he saw appellant with respect to his left shoulder pain on February 27, 1995. Dr. Mayne, III indicated that appellant explained that he had been having pain in his left shoulder for about three weeks when he reached out in order to grab something. He then explained that appellant said that the pain was sudden in onset, quite severe and that he had experienced a sensation with his shoulder locking up. Dr. Mayne, III again provided the history of injury as presented by appellant, as appellant was reaching into the back seat to grab 20-pound mailbags on a repeated basis, causing him considerable discomfort. Dr. Mayne, III also indicated that appellant's range of motion was very painful and noted that he had reviewed x-rays which showed "moderate prominence of the anterior part of the acromion bone on the front of [appellant's] shoulder;" that appellant had an impingement problem in the shoulder and perhaps an acute bursitis. Dr. Mayne, III then injected appellant's left shoulder with medication. After several follow-up visits, Dr. Mayne, III performed May 9, 1995 surgery on appellant to correct the full thickness tear in the rotator cuff. In addition, Dr. Mayne, III stated:

"There was also a tear in the glenoid labrum, which is the lining around the socket of the shoulder joint. I feel that this may be indicative of some mild anterior instability in the shoulder. I also felt that there was some osteoarthritis at the acromioclavicular joint at the end of your [appellant's] collar bone. The surgery was done to remove the prominence on the anterior acromion, repair the torn rotator cuff, trim up the tear in the glenoid labrum and remove a spur on the distal end of the clavicle."

Dr. Mayne, III then opined that “I certainly feel that [appellant’s] activities at work contributed to the problem with your shoulder. Unfortunately, that is about as specific as I can get.”

Thereafter, in a letter dated August 10, 1995 appellant responded to the Office’s July 25, 1995 informational letter by stating:

“I believe that the daily activity of reaching over the back seat of the mail car with my left arm to retrieve mail bundles of approximately 15 pounds has caused this injury. This is done at least 23 times per day, over 6 hours, 5 to 6 days per week for approximately 6 years full time and 6 years as a sub[stitution] carrier.”

Appellant went on to report the development of his claimed condition as follows:

“This injury occurred February 1, 1995 upon attempting to open a gate to a mail container at the [employing establishment]. I experienced a popping sensation in my left shoulder, extreme pain and shoulder seemed to lock up. This pain intensified and I saw Dr. Mayne on February 27, 1995. The condition was treated as bursitis and I was given medication to ease the pain. This did not alleviate the pain. Pain continued to radiate from my left shoulder to my forearm. Dr. Mayne suggested arthroscope, as the treatment we were administering was not helping. If upon this scoping procedure it was determined necessary to do surgery, this would be performed. Surgery was performed on May 9, 1995. It was found that a rotator cuff tear was present. I have been in physical therapy since about May 24, 1995, two to three times per week until August 3, 1995. The surgery has helped the condition. Dr. Mayne has stated it will be at least nine months before complete recovery is achieved and I am completely pain free. I continue to do therapy at home on my own, so as not to lose range of motion. My condition is improving and I have minimal amount of pain.”

In a decision dated November 16, 1995, the Office rejected appellant’s claim for compensation. The Office found that “[appellant] related that his problems began when he attempted to open a gate to a mail container at the [employing establishment]. He also stated that the continued reaching into the back seat of his vehicle contributed to his left shoulder condition. Therefore, there are conflicting statements as to how the actual injury occurred. If the injury occurred on February 1, 1995, when he opened a gate, this claim would be traumatic in nature. If he incurred this condition as a result of continuous reaching into the back seat of his vehicle, this claim would be occupational in nature.” The Office then concluded “that the evidence of file failed to demonstrate that the claimed condition and disability beginning May 9, 1995 is causally related to the February 1, 1995 occupational illness.”

In a letter dated December 14, 1995, appellant, through his representative, requested an oral hearing before an Office hearing representative.² Prior to the hearing, however, appellant submitted an April 29, 1996 letter addressed to him from Dr. Mayne, III. In this letter,

² By letter dated June 3, 1996, appellant’s representative withdrew as counsel for appellant in this matter.

Dr. Mayne, III noted that he had received the Office's November 16, 1995 denial of appellant's claim for compensation and noted his disagreements by stating:

"It is my feeling that there are many, many work-related situations that can be related to repetitive gradual trauma over time as opposed to one single definite injury. I feel that the activities you have done at work over the years have contributed to your present situation. It is impossible to know exactly when the rotator cuff actually tore, but again I feel that your activities at work have definitely played a part in your ongoing shoulder problem."

* * *

"In reading the note from the [Senior] Claims Examiner there appears to be slight discrepancies between your story and what exist in my medical records. I would like the examiner to know however, that my medical record is not a direct transcription of our visit. I do not have a tape recorder running in my office when I talk to patients. I make notes and try to summarize things. It is entirely possible that my office notes do not reflect your history down to every last detail."

* * *

"As I stated before I feel your activities at work have contributed, aggravated and/or exacerbated your shoulder problem. Again, I am willing to state this to whoever is interested."

On May 15, 1996 a hearing was held by an Office hearing representative. The above-cited April 29, 1996 letter was also considered by the Office hearing representative. Thereafter, on July 9, 1996 a decision affirming the Office's November 16, 1995 decision was issued by the Office hearing representative. The Office hearing representative found that while Dr. Mayne, III stated that the work activities played a part in appellant's left shoulder condition, he gave no explanation or medical rationale for how the activities of constant lifting of heavy bundles of mail played a part in the shoulder condition. The Office hearing representative also stated that "While it may very well be true that [appellant's] job duties did contribute to his rotator cuff tear, I do not find that the medical evidence at this point supports the fact."

By letter dated June 23, 1997, appellant requested reconsideration of the Office's July 9, 1996 decision which was issued by the Office hearing representative. Appellant also submitted a June 17, 1997 medical report from Dr. Mayne, III which stated: "I feel as though I have already answered [the Office's] question to the best of my ability. There is no history of any other injury to his [appellant's] shoulder that could have caused his problem. I therefore believe that his shoulder problem is directly related to his activities at work. I hope this letter is sufficient for your [The Office's] purposes. Again, there is no evidence that something else caused this problem."

In a July 16, 1997 merit decision on reconsideration, the Office denied appellant's application for review on the grounds that the evidence submitted in support of his request for reconsideration was insufficient to warrant modification of the prior decisions.

The Board finds this case is not in posture for a determination of whether appellant sustained a left shoulder rotator cuff tear condition and/or an aggravation thereof in the performance of duty.

In the instant case, the Office found that the claimed events, incidents or exposures occurred at the time, place and in the manner alleged; however, the medical evidence of file failed to demonstrate a causal relationship between the February 1, 1995 occupational illness and the claimed condition or disability. The Office further found that the medical evidence of file failed to demonstrate that the claimed condition and disability beginning May 9, 1995 was causally related to the February 1, 1995 occupational illness.

Dr. Mayne, III, a Board-certified orthopedic surgeon, provided two reasons for appellant's left shoulder condition. First, he attributed appellant's left shoulder condition and the surgery of May 9, 1995, to appellant's February 1, 1995 incident in which appellant attempted to open a gate to a mail container and experienced a popping sensation in his left shoulder which resulted in extreme pain and a lock up in the shoulder. Secondly, he attributed appellant's left shoulder condition and surgery to appellant's repetitive employment-related use of his left arm to reach into the back seat of his mail vehicle to retrieve bundles of mail weighting approximately 15 to 20 pounds. While Dr. Mayne, III's medical reports of file are insufficient to discharge appellant's burden of proof by proving by the weight of the reliable, substantial and probative evidence that appellant's left shoulder condition and surgery was causally related to his federal employment, they constitute sufficient support of appellant's claim to require further development of the record by the Office. The factors of appellant's work activities as indicated by the Office and Dr. Mayne, III are the same which appellant described and as such are specific enough to provide an adequate background for the support of Dr. Mayne, III's, medical opinion. Further, it is unclear which of the two employment factors submitted by Dr. Mayne, III was the most significant in producing appellant's diagnosed condition and the May 9, 1995 surgery. Whenever a factor of employment aggravates, accelerates, or otherwise combines with a preexisting occupational, nonoccupational, or traumatic pathology, the claimant is still entitled to compensation. Causal relationship does not denote a single and exclusive causative factor nor does it preclude aggravation of an underlying condition by employment-related factors.³ The fact that repetitive work activities may have also contributed to an employee's disability is not sufficient enough to take the case out of coverage under the Federal Employees' Compensation Act.⁴ Where the medical evidence reveals that factors of employment contributed in any way to the disabling condition, such condition is considered employment related for the purpose of compensation under the Act.

³ *John Van Swearingen*, 33 ECAB 55 (1981).

⁴ *Arthur R. Jones*, 16 ECAB 458 (1965).

The Office denied appellant's claim because appellant's physician, Dr. Mayne, III, a Board-certified orthopedic surgeon, noted a "mix" of employment-related factors. However, in the case of *Beth P. Chaput*,⁵ the Board set aside and remanded the case to the Office, stating:

"It is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. If the medical evidence revealed that [a work factor] ... contributed in any way to [the employee's] ... condition, such condition would be considered employment related for the purpose of compensation benefits under the Federal Employees' Compensation Act [FECA]."⁶

The Office may undertake to develop either factual or medical evidence for determination of the claim.⁷ It is, further, well established that proceedings under the Act are not adversarial in nature,⁸ and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁹ The Office has the obligation to see that justice is done.¹⁰

The Board will, therefore, set aside the Office's July 16, 1997, July 9, 1996 and November 16, 1995 decisions and remand the case for further development of the medical evidence and the appropriate final decision. Dr. Mayne's inability to state that any one particular factor was "the" cause or "specific" cause of appellant's diagnosed condition is not an opinion negating work relationship. Therefore, there was an uncontroverted inference of causal relationship and the Office was obligated to request further information from appellant's treating physician or refer appellant for a second opinion evaluation or seek the review of an Office medical adviser.¹¹

On remand the Office shall prepare a new statement of accepted facts which shall include a description of the February 1, 1995 incident and appellant's employment activities, the dates and types of treatment afforded appellant for his left shoulder condition and the pertinent mix of factors as described by appellant's attending physician. The Office shall then submit the statement of accepted facts, together with appellant's medical records, to an appropriate Board-certified specialist for an examination and a well-reasoned medical opinion and explanation of how and why the repetitive arm activities, if indicated and/or the specific employment incident or exposure enumerated by appellant, caused, contributed or aggravated any medical condition in

⁵ 37 ECAB 158 (1985).

⁶ *Id.* at 161.

⁷ 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

⁹ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹⁰ *William J. Cantrell*, 34 ECAB 1233 (1983).

¹¹ *See Beth P. Chaput*, *supra* note 5, (noting that it is not necessary to prove a significant contribution of employment factors to a condition for the purpose of establishing a causal relationship).

appellant's left shoulder, or resulted in the May 9, 1995 surgery. Whether appellant's employment duties aggravated his underlying condition and whether such aggravation was temporary or permanent. The Board-certified specialist shall then clarify whether appellant's May 9, 1995 surgery was a consequence of appellant's February 1, 1995 incident, or the May 9, 1995 repetitive work factors expressed, or a combination of both. Following such further development as it deems necessary, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated July 16, 1997, July 9, 1996 and November 16, 1995, are hereby set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
September 7, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member