

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSE MARIE A. PERRY and U.S. POSTAL SERVICE,
POST OFFICE, Indian Orchard, MA

*Docket No. 99-2551; Submitted on the Record;
Issued October 19, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability in 1996 causally related to her May 7, 1994 employment injury.

On May 7, 1994 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a right elbow contusion and laceration when her employing establishment vehicle struck a curb and she hit her arm. The Office of Workers' Compensation Programs accepted appellant's claim for a right elbow contusion. Appellant worked light duty from May 9 to 10, 1994 and returned to regular duty on May 11, 1994.

On June 16, 1998 appellant filed a recurrence of disability claim (Form CA-2a) alleging that she sustained worsening shoulder pain in 1996 causally related to her May 7, 1994 employment injury. She stated that although her traumatic injury claim was accepted for an elbow contusion, the May 7, 1994 employment incident also caused her shoulder injury. On the claim form appellant noted that since her employment-related injury she sustained tendinitis in her shoulder, left carpal tunnel syndrome and a back injury.

To support her recurrence claim, appellant submitted a May 7, 1994 form report from Dr. Stuart Rose, Board-certified in internal and emergency medicine, in which he diagnosed a right arm laceration and contusion. Appellant also submitted a May 9, 1994 x-ray report from Dr. Eckart Sachsse, a Board-certified radiologist, in which he found no bone or joint injury, effusion or swelling of the right elbow.

By letter dated July 29, 1998, the Office requested additional factual and medical evidence from appellant supporting her claim. Appellant submitted a note dated August 5, 1998 from Dr. Arthur Krulewitz, Board-certified in internal medicine and pulmonary disease, who diagnosed chronic right shoulder impingement syndrome with periodic work-related exacerbation in the form of pain and limited motion. His remarks and prognosis were illegible.

Appellant also submitted a narrative statement dated June 6, 1998 recounting the facts of her May 7, 1994 employment injury. She alleged that she experienced worsening shoulder pain “off and on,” which she treated with aspirin and Ben Gay. Appellant stated that she sought therapy but continued working.

Appellant further submitted a narrative statement dated August 1998 alleging that her recurrence of disability was caused by the impact of hitting her arm on the vehicle window when she sustained her May 7, 1994 employment injury. She stated that she had pain in her entire arm but the only visible injury was a cut on her elbow. Appellant asserted that she did not return to her doctor when the pain returned because medication made her feel better. She explained her letter carrier duties and alleged that they aggravated her shoulder pain. Appellant stated that she did not sustain any other shoulder injury and her pain was not aggravated by a hobby or outside activity.

By decision dated September 9, 1998, the Office denied appellant’s claim on the grounds that the evidence of record failed to show that her alleged recurrence on after 1996 was causally related to her May 7, 1993 employment injury. The Office noted that the evidence of record failed to establish a causal relationship between her accepted injury and her diagnosed shoulder impingement condition.

By letter dated December 12, 1998, appellant requested reconsideration of the Office’s September 9, 1998 decision denying her recurrence claim. To support her request, appellant submitted a physical therapy prescription note dated October 5, 1998, medical invoices dated October 26 and November 30, 1998 and an undated magnetic resonance imaging (MRI) scan order form. Appellant also submitted a report dated November 30, 1998 from Jeffrey Wyman, a physician’s assistant.

By merit decision dated March 15, 1999, the Office denied appellant’s request to modify its prior decision on the grounds that the evidence submitted to support her request was insufficient to establish that her right shoulder condition was causally related to her May 7, 1994 employment injury. The Office found that Mr. Wyman’s report was of no probative value because a physician’s assistant is not considered a physician under the Federal Employees’ Compensation Act and, therefore, is not competent to render a medical opinion.

By letter dated April 29, 1999, appellant again requested reconsideration. To support her request, she submitted a January 22, 1999 report from Dr. J.R. Corsetti, a Board-certified orthopedic surgeon and progress notes dated October 30, 1991 to February 10, 1998 from a physician whose signature is illegible. In his report, Dr. Corsetti provided a history of appellant’s May 7, 1994 employment injury and noted that an MRI scan showed evidence of tendinosis but not a full-thickness rotator cuff tear. He also noted the findings of his physical examination and diagnosed right shoulder rotator cuff tendinitis with acromioclavicular joint arthropathy. Dr. Corsetti recommended shoulder arthroscopy, acromial spur removal and distal clavicle excision. In February 10, 1998 progress it is noted that appellant began having shoulder pain “2 or 3 weeks ago” but had “no problem performing her job.”

By merit decision dated July 29, 1999, the Office denied appellant’s request for modification of its prior decision on the grounds that the evidence submitted to support her

request was insufficient to show that her shoulder condition was causally related to her May 7, 1994 employment injury.

The Board finds that appellant failed to establish a causal relationship between her May 7, 1994 elbow contusion and her alleged recurrence of disability sustained in 1996.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.¹ Such proof must include 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 employment factors and supports that conclusion with sound medical reasoning.² An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.³

The medical evidence submitted to support appellant's recurrence claim does not establish a causal relationship between her 1996 alleged recurrence of disability and her May 7, 1994 accepted employment injury. The progress notes dated October 30, 1991 to February 10, 1998 did not conclude that appellant's shoulder condition was causally related to her original right elbow contusion. Similarly, Dr. Krulewitz's August 5, 1998 report diagnosing right shoulder impingement syndrome did not contain a rationalized medical opinion relating appellant's shoulder condition to her May 7, 1994 employment injury.

Mr. Wyman's November 30, 1998 report has no probative value as causal relationship is a medical issue and he is not considered a physician under the Act⁴ and, therefore, is not competent to render a medical opinion.⁵ Dr. Corsetti's January 22, 1999 report failed to address the issue of whether appellant's shoulder condition was causally related to her May 7, 1994 employment injury. He merely provided a history of the May 7, 1994 employment incident and noted his diagnoses and treatment recommendations. No other evidence of record establishes a causal relationship between appellant's alleged recurrence of disability and her May 7, 1994 employment injury.⁶

¹ *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

² *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

³ *See id.*

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *John H. Smith*, 41 ECAB 444 (1990).

⁶ The Board notes that appellant submitted additional evidence to the Board with her appeal subsequent to the Office's July 29, 1999 decision. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated July 29 and March 15, 1999 and September 9, 1998 are hereby affirmed.

Dated, Washington, DC
October 19, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member