

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH W. KEEFE and U.S. POSTAL SERVICE,  
POST OFFICE, Cheyenne, WY

*Docket No. 03-685; Submitted on the Record;  
Issued May 1, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant established that he sustained a recurrence of disability causally related to his January 21, 1997 employment injury.

On September 6, 2001 appellant, then a 61-year-old carrier, filed a claim alleging that he sustained a recurrence of disability of his January 21, 1997 employment-related shoulder injury. He indicated that he improved during the first month or so, but his shoulder never recovered and it hurt while doing simple tasks such as, driving, closing and opening the door and window of a long-life postal vehicle (LLV).

In a December 6, 2001 letter, the Office of Workers' Compensation Programs advised appellant that his original work injury claim had been reconstructed to process his recurrence claim. The Office requested that appellant submit all medical evidence regarding this claim from the date of injury as soon as possible. The Office also requested that the employing establishment submit copies of all documents regarding this claim. Appellant did not respond.

By decision dated August 13, 2002, the Office found the evidence of record insufficient to establish a recurrence of disability.

Subsequently, the Office received a November 7, 2002 prescription note from Dr. Michael Wasser, a Board-certified orthopedic surgeon, requesting authorization for right shoulder arthroscopy, acromioplasty, debridement and open rotator cuff repair. The Office also received Dr. Wasser's October 22, 2002 treatment notes providing a history of injury that in January 1997 appellant was working and fell on his right shoulder and appellant's medical treatment. He noted appellant's medical background and his findings on physical and objective examination. Dr. Wasser diagnosed right shoulder impingement syndrome and stated that he wished to rule out a rotator cuff tear. He planned to schedule an arthrogram of the shoulder and follow-up with appellant. In his November 5, 2002 treatment notes, Dr. Wasser again provided a history of injury that appellant fell in 1997 and indicated since that time appellant had a significant decrease in function of the right shoulder. He noted that appellant did not undergo a

magnetic resonance imaging (MRI) scan or an arthrogram at that time, but he went to physical therapy, which provided minimal improvement in his symptoms. Dr. Wasser further noted appellant's medical history and stated that he conducted a physical examination, but he did not dictate his findings. He conducted an arthrogram of appellant's right shoulder, which revealed a small full-thickness tear. Dr. Wasser diagnosed right shoulder rotator cuff tear and recommended surgery.

In an undated letter received by the Office on November 20, 2002, appellant requested reconsideration of the Office's decision. In support of his request, he submitted Dr. Wasser's October 22 and November 5, 2002 treatment notes.

By decision dated December 30, 2002, the Office denied appellant's request for modification based on a merit review of his claim.

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 a claimant 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.<sup>1</sup>

Causal relationship is a medical issue<sup>2</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>3</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

In this case, Dr. Wasser's treatment notes are insufficient to establish that work factors or appellant's January 1997 employment injury caused a recurrence of disability. While Dr. Wasser noted a history of injury that appellant fell on his right shoulder in January 1997 and diagnosed right shoulder impingement and right shoulder rotator cuff tear in his October 22 and November 5, 2002 treatment notes, he did not address whether appellant's current shoulder conditions and resultant disability were caused by the January 21, 1997 work injury.

It is appellant's burden of proof to establish that he sustained a recurrence of disability. In the absence of a reasoned medical opinion to causally relate appellant's disability to the

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<sup>1</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>2</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>3</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>4</sup> *Gary L. Fowler*, 45 ECAB 365 (1994).

January 21, 1997 work injury, appellant has failed to establish that he sustained a recurrence of disability. Because appellant failed to carry his burden of proof, the Office properly denied his claim for compensation.<sup>5</sup>

The December 30 and August 13, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
May 1, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> The Board notes that appellant submitted new evidence with his appeal. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued its final decision in the case. 20 C.F.R. § 501.2(c).