

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

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<b>ALFRED ATHANASI, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 03-182</b>
	)	<b>Issued: June 10, 2004</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Manchester, NH, Employer</b>	)	
	)	

*Appearances:*  
*Michael Cornelio, Esq., for the appellant*  
*Catherine P. Carter, Esq., for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chairman  
WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member

**JURISDICTION**

On October 22, 2002 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated June 25 and September 11, 2002, finding that he had failed to establish a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability commencing November 2, 2001, due to the accepted June 1, 2001 employment injury.

**FACTUAL HISTORY**

The Office accepted appellant's claim for tendinitis of the left arm and sixth anterior rib fracture due to a June 1, 2001 employment injury. Appellant was a temporary employee at the time of the June 1, 2001 employment injury. After the June 1, 2001 employment injury, he worked light duty from July 28 through August 28, 2001, when he returned to full duty.

Appellant stated that when he returned to work following the June 1, 2001 injury he felt better but never stopped taking medicine. He continued to experience pain and numbness in his chest, back and arms.

On March 9, 2002 appellant filed a claim for a recurrence of disability commencing November 2, 2001.<sup>1</sup> The employing establishment's human relations specialist, Pamela Doucet, indicated that appellant's appointment expired on December 26, 2001.

Appellant submitted a number of medical reports in support of his claim. In a report dated November 27, 2001, Dr. Sally J. Garhart, an attending Board-certified internist and occupational medicine specialist, treated appellant on that date for dizziness and pain to his chest, left shoulder and neck and restricted him to light duty. She considered appellant's history of injury, noting that appellant had worked at full duty since the end of August 2001 and felt okay in September 2001 but experienced recurrent pain in his left anterior chest and his left shoulder in October 2001. Dr. Garhart diagnosed status post left nondisplaced sixth rib fracture with recurrent pain and left rotator cuff symptoms, question of tear. She was "very puzzled" about the worsening rib symptoms. Dr. Garhart stated that appellant needed a good diagnostic examination and might benefit from an injection.

In a progress note dated December 4, 2001, Dr. James C. Vailas, a Board-certified orthopedic surgeon to whom Dr. Garhart referred appellant, stated that he treated appellant for a persistent clicking in the L sternoclavicular joint. He stated that the symptoms were consistent with the mechanism of injury in that appellant "got squashed" between two large containers, spraining his acromioclavicular and super-clavicular joints. He released appellant to full duty. In a state health form dated December 21, 2001, Dr. Vailas restricted appellant to light-duty work.

On December 26, 2001 Dr. Vailas reexamined appellant and diagnosed a chest contusion possibly from some costochondritis. He recommended further evaluation and treatment by either a pulmonologist or a thoracic surgeon regarding appellant's chest symptoms.

In a report dated December 27, 2001, Dr. Garhart stated that it was "very puzzling" that appellant had returned to normal full-duty work but now returned with complaints of pain upon breathing and arm movement. She noted that repeat x-rays were normal and that appellant had no obvious swelling in his left shoulder or anterior ribs, although his left seventh anterior rib was more prominent than on his right. Appellant demonstrated full left shoulder range of motion which was dramatically improved since the last time she saw him.

A chest x-ray and computerized axial tomography (CAT) scan dated January 12, 2002 and a magnetic resonance imaging (MRI) scan dated January 22, 2002 were reported as normal.

In a medical report dated March 4, 2002, Dr. Sayed Asim Razvi, an anesthesiologist, considered appellant's history of injury, performed a physical examination and reviewed an MRI

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<sup>1</sup> The record indicates that appellant missed work intermittently after November 2 until December 26, 2001, when his appointment expired and he stopped work.

scan. He stated that appellant presented a “somewhat puzzling picture” as the cervical and thoracic MRI scans were normal and there was no anatomic evidence of radicular symptoms. Dr. Razvi treated appellant with trigger point injections and suggested a trial of acupuncture and a trial of cervical facet blocks. He stated that concerning his rib pain, appellant: “most likely just has costochondritis after a traumatic rib injury.”

A motion x-ray dated March 15, 2002, showed, in part, “anterollsthesis” secondary to ligamentous trustability at C4-5 and C5-6 and showed damage to the anterior longitudinal ligaments at C5-6. An electomyogram (EMG) and nerve conduction study dated March 27, 2002 were normal.

In a report dated March 27, 2002, Dr. Kathleen C. Leahy, a Board-certified osteopath and physiatrist, stated that appellant sustained a crush type trauma to his chest. She found several inconsistencies on strength testing and the motor and sensory studies were within normal limits. The EMG showed no evidence of radiculopathy.

In a medical report dated April 2, 2002, Dr. Razvi performed a physical examination and diagnosed probable myofascial pain, although mechanical left shoulder pain was also a possibility. He stated that appellant’s history was consistent with radicular pain in the left arm which, given appellant’s normal MRI scan, was probably a peripheral nerve pain. Dr. Razvi prescribed treatment flexeril and doxepin and suggested appellant would benefit from hydrotherapy. He stated: “question of behavior component, given his history of traumatic injury this could be a variant of post-traumatic stress disorder, although this is unlikely it should be considered if the patient continued to do poorly.”

Appellant submitted progress notes from Dr. Powen Hsu, an attending Board-certified physiatrist, dated January 10 to April 8, 2002. Dr. Hsu diagnosed cervical strain, thoracic strain and fibromyalgia and prescribed treatment. On January 10, 2002 Dr. Hsu noted that appellant’s return to work had significantly increased the pain in his ribs and diagnosed chronic muscle spasm as well as a cervical strain and left rib fracture. In subsequent notes Dr. Hsu addressed appellant’s ongoing complaints of pain and that the MRI scan showed “a lot of movement artifact” but showed no disc herniation. On March 12, 2002 he diagnosed a cervical and thoracic strain and possible fibromyalgia. Dr. Hsu stated that the MRI scan, EMG and nerve conduction study were all negative. Dr. Hsu stated that he did not have a physical explanation for appellant’s pain. On April 8, 2002 he stated that he stopped appellant’s medication and felt that appellant should be seen for a psychiatric evaluation.

On June 14, 2002 appellant stated that his current condition was related to his work injury because the symptoms of pain to his back, neck, chest and arms began with his June 1, 2001 employment injury and had been the same since the injury. He stated that when he returned to work full time, he hoped the pain would go away, but working only made the problem worse. Appellant noted that he could not engage in sports such as running or hobbies due to pain.

By decision dated June 25, 2002, the Office denied the recurrence of disability claim finding that the evidence of record failed to establish that the claimed recurrence was causally related to the June 1, 2001 employment injury.

By letter dated June 29, 2002, appellant requested reconsideration and submitted additional evidence, including progress notes dated June 10 and July 30, 2002 from Dr. Hsu. Dr. Hsu noted no objective findings on testing and stated that he would obtain a functional capacity evaluation.

By decision dated September 11, 2002, the Office denied modification of the June 25, 2002 prior decision.

Appellant requested an oral argument before the Board which was subsequently canceled at his request and he submitted a brief dated February 27, 2004. Appellant contends that the evidence establishes that he never fully recovered from the June 1, 2001 employment injury. Appellant noted that there was no medical evidence opposing his claim.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury.<sup>2</sup> This burden includes the necessity of furnishing 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.<sup>3</sup>

### **ANALYSIS**

Appellant alleged that his recurrence of disability began on November 2, 2001 and he was unable to work at all after December 26, 2001. The employing establishment's human relations specialist indicated that appellant's temporary appointment expired on December 26, 2001. To the extent appellant's alleged recurrence of disability coincided with the date his appointment with the employing establishment expired, the fact of his work stoppage does not establish that he sustained a recurrence of disability since a work stoppage due to the termination of a temporary appointment does not constitute a recurrence of disability.<sup>4</sup>

Appellant has not submitted medical evidence sufficient to establish a causal connection between his recurrence of disability commencing November 2, 2001 and the June 1, 2001 employment injury. Appellant contends that Dr. Garhart's opinion establishes that he had the same symptoms after the June 1, 2001 employment injury and had never recovered. The Board finds, however, that Dr. Garhart's opinion does not establish that appellant had any work-related disability after November 2, 2001. Dr. Garhart's November 27, 2001 report noted appellant's complaints of worsening rib symptoms, but noted that she was very puzzled by his symptoms. On December 27, 2001 she again indicated that appellant's complaints were "very puzzling."

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>3</sup> *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

<sup>4</sup> *Sandra K. Cummings*, 54 ECAB \_\_\_\_ (Docket No. 03-101, issued March 13, 2003); *Steven A. Andersen*, 53 ECAB \_\_\_\_ (Docket No. 01-1376, issued February 19, 2002).

She noted that x-rays were normal, he had a full range of motion in his left shoulder and no obvious swelling. She did not relate appellant's shoulder problem to the accepted work injury. Dr. Garhart did not provide an explanation as to why appellant was medically disabled for work after November 2, 2001 and why this disability was causally related to the accepted injury. The Board has held that a medical opinion that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>5</sup> Dr. Garhart's reports are of diminished probative value.

Appellant also contends that Dr. Vailas' December 4, 2001 progress note establishes his claim of recurrence. Dr. Vailas merely noted appellant's symptoms but offered no medical explanation for the claimed recurrence of disability commencing November 2, 2001. Dr. Vailas' opinion, therefore, does not constitute a rationalized medical opinion explaining how appellant's chest condition is work related. His opinion, therefore, does not establish a recurrence of disability commencing November 2, 2001.

Dr. Razvi was unsure what caused appellant's medical problem. On March 21, 2001 he stated that appellant presented a "puzzling picture" because his MRI scans were normal and there was no anatomic evidence of radicular symptoms. Dr. Razvi stated that appellant's rib pain was "most likely" costochondritis after a traumatic rib injury but his statement is speculative. On April 2, 2002 Dr. Razvi stated that appellant's behavior "could" be a variant of traumatic stress disorder although that was "unlikely" if appellant continued to do poorly. His reports are speculative and he does not relate appellant's condition to the accepted work injury. Dr. Razvi's opinion is, therefore, of diminished probative value.<sup>6</sup>

Dr. Hsu's progress notes provided diagnoses of cervical strain, thoracic strain and fibromyalgia and Dr. Hsu prescribed or suggested different types of treatment such as acupuncture. Dr. Hsu, however, did not relate appellant's ongoing symptoms to his employment or address causation. In fact, in his March 29, 2002 report, he stated that he had no physical explanation for appellant's pain. Dr. Hsu's opinion is, therefore, of diminished probative value. In her March 27, 2002 report, Dr. Leahy found no evidence of radiculopathy based on the EMG and did not address causation. Her opinion is, therefore, of little probative value to the issues presented. The Board finds that appellant did not submit the sufficient medical evidence to establish his recurrence of disability claim.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability, due to the June 1, 2001 employment injury, commencing November 2, 2001.

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<sup>5</sup> *Linda I. Sprague*, 48 ECAB 386, 390 n.11 (1997).

<sup>6</sup> *See Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999); *William S. Wright*, 45 ECAB 498, 504 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 11 and June 25, 2002 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 10, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member