United States Department of Labor
Employees' Compensation Appeals Board

LOUIS C. RELFORD, Appellant	)	
and	)	**Docket No. 04-1011**
	)	**Issued: September 30, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, Employer	)	

Appearances:
Louis C. Relford, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 8, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 24, 2003, finding that he had not established a recurrence due to his accepted February 9, 2000 employment injury, and a December 29, 2003 decision which found that appellant had abandoned his request for a hearing. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of these issues.

ISSUES

The issues are: (1) whether appellant established that he sustained a recurrence on November 1, 2002 due to a February 9, 2000 employment injury; and (2) whether the Office properly found that appellant abandoned his request for a hearing. On appeal, appellant contends that he did not receive notice of the scheduled hearing.

FACTUAL HISTORY

On February 9, 2000 appellant, a 60-year-old motor vehicle operator, filed a traumatic injury claim alleging that he injured both his shoulders when he slipped and fell while getting out

of a truck. The Office accepted the claim for bilateral shoulder strains and authorized left arthroscopic surgery, which was performed on June 20, 2000.[1] Appellant did not stop working and first sought medical treatment on February 11, 2000. Dr. Larry Jones, an attending osteopathic physician, indicated that appellant was capable of working with restrictions on February 11, 2000 and he accepted a limited-duty position on February 22, 2000.

On January 14, 2003 appellant filed a notice of recurrence of disability for November 1, 2002 causally related to his February 9, 2000 employment injury. On the form appellant checked the box "Medical Treatment Only" and did not check the box for "Time Loss from Work." On the back of the form, the employing establishment noted that appellant did not stop work after the recurrence.

On December 13, 2002 the Office received a December 3, 2002 progress note from Dr. H. Yates Dunaway, III, an attending Board-certified orthopedic surgeon, who diagnosed left brachioradialis and atrophy. The physician reported that appellant complained that the left elbow was "wasting" and that he "noticed loss of strength and wasting of the area over the brachioradialis" in the past few weeks. A physical examination revealed full extension and flexion of the left elbow, "[l]imited cervical spine motion is noted with negative Spurling's maneuver," essentially full range of motion of the left shoulder, symmetrical reflexes, no sensory deficits, and accepted wrist extension and flexion. With regard to the cause of appellant's atropy, Dr. Yates stated that he could not attribute appellant's atrophy to the employment-related shoulder problem and noted a possible "underlying cervical nerve root problem."

In a progress note dated January 24, 2003, Dr. Dunaway noted that appellant injured himself when he fell off a truck and struck his head. Dr. Dunaway reported an electromyogram "revealed evidence of a left cervical radiculopathy in the C5-6 distribution" and an x-ray interpretation showed an essentially normal cervical spine. The physician diagnosed left C5-6 radiculopathy.

By letter dated February 12, 2003, the Office advised appellant that he needed to submit additional evidence in support of his claim, including a rationalized medical opinion explaining how his recurrence of disability was causally related to the accepted employment injury.

In response, appellant stated that he was not claiming a recurrence of disability, but a deterioration of his left arm strength and muscle tone due to his accepted employment injury.

On February 20, 2003 the Office received a January 31, 2003 report from Dr. Bruce V. Darden, II, a Board-certified orthopedic surgeon. He noted that appellant injured himself on February 9, 2000 when he slipped, fell and hit his head while getting out of a truck and had been on limited duty since February 2000. A physical examination revealed normal range of motion in the back, atrophy of the left shoulder girdle, normal lateral bending and rotation and "bilaterally, shoulders are nontender, R[ange] O[f] M[otion] is full in all planes with no impingement or instability." An x-ray interpretation revealed multilevel degenerative changes in

[1] On May 15, 2002 the Office issued appellant a schedule award for a 16 percent bilateral upper extremity permanent impairment.

the cervical spine "as well as degenerative changes in the facets." Under impression, Dr. Darden noted "Rule out C5 or C6 radiculopathy."

On December 12, 2003 the Office received a December 3, 2002 progress note from Dr. Dunaway. A physical examination revealed limited motion in the cervical spine "with negative Spurling's maneuver" and essentially full range of motion of the left shoulder. With regard to the left elbow, Dr. Darden reported full extension and flexion, "atrophy over the left brachioradialis," acceptable wrist extension and flexion, no sensory deficits and "reasonable strength of elbow flexion and extension." Dr. Dunaway diagnosed left brachioradialis atrophy which he opined was not due to appellant's shoulder problem. Dr. Dunaway stated "perhaps he has an underlying cervical nerve root problem."

By decision dated March 24, 2003, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that his condition on November 1, 2002 was causally related to his February 9, 2000 employment injury.

By letter dated March 31, 2003, appellant requested a hearing on the denial of his claim. In a letter dated May 1, 2003, the Office acknowledged receipt of appellant's request for an oral hearing and provided procedural information regarding the hearing. On October 29, 2003 the Office sent a notice of hearing to appellant to his address of record. The notice stated that a hearing would be held on Wednesday, December 17, 2003 at 12:00 p.m. Appellant did not appear for the proceeding.

By decision dated December 29, 2003, the Office determined that appellant had abandoned his request for a hearing. The Office noted that the hearing was scheduled for December 17, 2003, that appellant received written notification of the hearing 30 days in advance, that appellant failed to appear and that the record contained no evidence that appellant contacted the Office to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential element of his claim by the weight of the reliable probative and substantial evidence.[3] In this case, appellant has the burden of establishing that he

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joan R. Donovan*, 54 ECAB ____ (Docket No. 03-297, issued June 13, 2003); *Nathaniel Milton*, 37 ECAB 712, 722 (1986).

sustained a recurrence of a medical condition[4] on November 1, 2002 causally related to the February 9, 1999 employment injury. To establish the requisite causal connection, appellant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between appellant's current and the accepted condition.[5]

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.[6]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral shoulder strains on February 9, 2000 and authorized left arthroscopic surgery, which was performed on June 20, 2000. There is no evidence in the record establishing any change in the nature and extent of his limited-duty position as a cause of his claimed disability beginning November 1, 2002.[7]

The Board finds that appellant did not submit sufficient medical evidence to support a causal relationship between his condition as of November 1, 2002 and the February 9, 2000 employment injury. The medical evidence submitted in support of appellant's claim for a recurrence of a medical condition consists of reports from Drs. Dunaway and Darden. In progress notes dated December 3, 2002 and January 24, 2003, Dr. Dunaway diagnosed left cervical C5-6 radiculopathy and left brachioradialis. He opined that appellant's left brachioradialis atrophy was unrelated to his shoulder problems. Dr. Dunaway noted appellant's February 9, 2000 employment injury, but provided no opinion as to whether the current medical condition was related to his accepted bilateral shoulder strain injury. In a January 31, 2003 report, Dr. Darden noted the February 9, 2000 employment injury and diagnosed degenerative changes in the cervical spine and bilateral full range of motion in the shoulders. While noting atrophy of the left shoulder girdle, Dr. Darden did not address the causal relationship of the physical findings to appellant's accepted shoulder strains.

[4] Recurrence of medical condition means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment. 20 C.F.R. § 10.5(y) (2002). In this case, appellant's treatment for the accepted bilateral shoulder strain was not continuous but appeared to stop on March 1, 2002. *See Joan R. Donovan*, *supra* note 3.

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrence of Medical Condition*, Chapter 2.1500.5.b (May 1993).

[6] *Beverly A. Spencer*, 55 ECAB ___ (Docket No. 03-2033, issued May 3, 2004); *John A. Ceresoli, Sr.*, 40 ECAB 305, 311 (1988).

[7] *Terry R. Hedman*, 38 ECAB 222 (1986).

While noting atrophy of the left shoulder girdle, Dr. Darden did not address the causal relationship of the physical findings to appellant's accepted shoulder strains. These reports are not sufficient to meet appellant's burden of proof as the physicians did not provide a rationalized medical opinion addressing the causal relationship between appellant's current medical condition and the February 9, 2000 employment-related injury. Without such a rationalized medical opinion, the reports by Drs. Darden and Dunaway are insufficient to establish causal relationship.[8] Medical evidence 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.[9]

The Board has held that an award of compensation may not be based on surmise, conjecture or speculation, or upon appellant's belief that there is a causal relationship between his condition and his employment.[10] To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, states whether these employment factors caused or aggravated appellant's diagnosed condition and present medical rationale in support of his or her opinion.[11]

It is appellant's burden of proof to submit the medical evidence necessary to establish a claim for a recurrence. The record does not contain a medical report providing a reasoned medical opinion that appellant sustained a recurrence of her medical condition beginning November 1, 2002 as causally related to his accepted February 9, 2000 employment injury. The Board finds that appellant did not meet his burden of proof and the Office properly denied the claim.

LEGAL PRECEDENT -- ISSUE 2

With respect to abandonment of hearing requests, Chapter 2.1601.6.e of the Office's procedure manual provides in relevant part:

> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.
>
> "Under these circumstances, [the Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [District Office]. In cases involving

[8] *Jennifer L. Sharp*, 48 ECAB 209 (1996).

[9] *Conard Hightower*, 54 ECAB ___ (Docket No. 02-1568, issued September 9, 2003).

[10] *John D. Jackson*, 55 ECAB ___ (Docket No. 03-2281, issued April 8, 2004); *Patricia J. Glenn*, 53 ECAB ___ (Docket No. 01-65, issued October 12, 2001).

[11] *Bonnie Goodman*, 50 ECAB 139 (1998).

prerecoupment hearings, [the Branch of Hearings and Review] will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [District Office]."

ANALYSIS -- ISSUE 2

In finding that appellant abandoned his March 31, 2003 request for a hearing, the Office noted that a hearing had been scheduled in Columbia, South Carolina on December 29, 2003, that appellant received written notification of the hearing 30 days in advance, that appellant failed to appear and that the record contained no evidence that appellant contacted the Office to explain his failure to attend the hearing. On appeal, appellant asserts that he did not receive notice of the scheduled hearing date. However, the record reflects that, in a letter dated October 29, 2003, the Office mailed appropriate notice of the December 29, 2003 scheduled hearing to appellant's last known address of record. It is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by the individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.[12]

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on and after November 1, 2002 due to his accepted February 9, 2000 employment injury.

The Board further finds that the Office properly determined that appellant had abandoned his request for a hearing.

[12] *Newton D. Lashmett*, 45 ECAB 181 (1993); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 29 and March 24, 2003 and are affirmed.

Issued: September 30, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member