

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Niles, OH, Employer**

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**Docket No. 06-2093
Issued: February 5, 2007**

Appearances:

*John P. Lutseck, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 13, 2006 appellant filed a timely appeal from the June 13, 2006 decision of the Office of Workers' Compensation Programs, which affirmed a May 24, 2006 decision denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained a recurrence of disability on September 24, 2004 causally related to his accepted March 29, 2002 employment injury.¹

¹ On appeal to this Board, as well as to the Office hearing representative, appellant raised arguments related to the termination of his medical benefits. The Board will not consider these arguments as the decision related to appellant's claim of recurrence of disability is the only decision issued within one year of the date the appeal was docketed. See 20 C.F.R. § 501.3(d)(2).

FACTUAL HISTORY

On March 29, 2002 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that he injured his left shoulder when he was pushing a tray of mail in his truck. The Office accepted his claim for left shoulder sprain/strain on July 9, 2002. The Office authorized medical treatment and the employing establishment placed appellant in a light-duty assignment, which continued through September 24, 2004.

On April 1, 2004 the Office requested that Dr. Richard Catterlin, a treating physician Board-certified in osteopathic family practice, provide additional information about appellant's condition, treatment plan and expected return to full duty. Dr. Catterlin did not respond with a narrative medical report. He submitted a duty status report, Form CA-17, on April 27, 2004. Dr. Catterlin indicated that appellant could lift up to 70 pounds and work overtime at his discretion but had to separate all mail into one-hand bundles and could not case from his mailbag.²

On April 29, 2004 Dr. Manhal Ghanma, a Board-certified orthopedic surgeon, conducted a second opinion examination of appellant at the request of the Office. In his report of that date, he opined that appellant had no residuals from his March 29, 2002 employment injury. Dr. Ghanma diagnosed appellant with acromioclavicular (AC) joint hypertrophy, which preexisted the March 29, 2002 work injury. He opined that the AC joint arthritis did not aggravate and was not aggravated by the employment injury. Dr. Ghanma also reported that appellant still had occasional aching in his left shoulder in the evenings and felt a pop in his shoulder when he tried carrying his mailbag on his shoulder or made a "wrong move." However, he stated that these complaints of pain could not be linked to the employment-related shoulder strain, which was a self-limiting condition that healed within a period of several weeks. Dr. Ghanma opined that appellant was at maximum medical improvement within 70 days of the work injury and had no remaining residuals.

By notice dated September 15, 2004, the Office proposed termination of appellant's medical benefits based on Dr. Ghanma's report.

On September 24, 2004 the employing establishment returned appellant to his regular full-duty assignment. On September 25, 2004 appellant filed a recurrence of disability claim, Form CA-2a, alleging that, during his first day back on full duty, his shoulder began to hurt as he used his mailbag on his route. When he got to a street with a heavy sack of mail, the shoulder pain became more intense and he stopped working. The employing establishment returned him to light-duty status on September 25, 2004.

A duty status report, Form CA-17, filed by Dr. Catterlin on September 28, 2004, indicated that appellant could lift up to 70 pounds and work overtime at his discretion but had to bundle all mail and could not case from his mailbag.

² The Board notes that Dr. Catterlin submitted CA-17 reports with identical restrictions on May 21, June 25 and July 23, 2004.

By letter dated October 8, 2004, appellant sought permission to change physicians, as he found Dr. Catterlin to be unresponsive to the paperwork requirements of his workers' compensation claim. The Office approved the request to change the treating physician of record to Dr. Phillip Malvasi, a Board-certified osteopathic family practitioner.

By letter dated February 2, 2005, the Office informed appellant of the definition and requirements of a recurrence of disability and requested specific factual and medical information. Appellant responded with a narrative statement on February 23, 2005. He believed that the shoulder pain he experienced on September 24, 2004 was related to his accepted March 29, 2002 employment injury because he had never had problems with his shoulder prior to the original injury. Appellant reported that up to a week following the alleged recurrence, his left shoulder was more inflamed than usual. Following the alleged recurrence on September 24, 2004, he was returned to the light-duty restrictions under which he previously worked and was prohibited from using a mailbag.

In a letter dated March 1, 2005, Dr. Malvasi requested an extension of time to provide a medical evaluation, as enrollment with the Employment Standards Administration was pending. He also requested authorization for an updated magnetic resonance imaging (MRI) scan to compare with the one of record and for resumption of appellant's physical therapy.

By decision dated May 24, 2005, the Office denied appellant's claim for a recurrence of disability. The Office found that the narrative statement and letter from Dr. Malvasi were insufficient to establish that appellant had sustained a recurrence of the March 29, 2002 employment injury.

By decision dated May 25, 2005, the Office terminated appellant's medical benefits on the grounds that the weight of the medical evidence lay with the report of Dr. Ghanma, who stated that his current condition was unrelated to the March 29, 2002 employment injury.

On June 21, 2005 appellant requested an oral hearing to review the Office's May 24, 2005 decision denying his recurrence of disability claim. He updated the record by submitting medical progress notes from Dr. Malvasi dated from November 2, 2004 to July 14, 2005. On March 30, 2006 the Office hearing representative informed appellant that she would conduct a review of the written record in lieu of an oral hearing, as a hearing was incompatible with appellant's representative's schedule.

By decision dated June 13, 2006, the Office hearing representative denied appellant's claim for a recurrence of disability on the grounds that appellant had not submitted any rationalized medical evidence showing that the claimed recurrence was due to the accepted work-related injury.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of reliable, probative

³ 5 U.S.C. §§ 8101-8193.

and substantial evidence.⁴ To establish a claim for recurrence of disability, a claimant must establish that he experienced a spontaneous material change in the employment-related condition without an intervening injury or new exposure to the work environment that caused the illness.⁵ A claimant's burden of proof 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 condition is causally related to the employment injury and supports the conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.⁶

ANALYSIS

Appellant sustained injury on March 29, 2002, accepted for a left shoulder sprain. He alleged on September 24, 2004 that he sustained a recurrence of his shoulder condition causally related to the accepted employment injury. The record shows that, following appellant's accepted injury, the employing establishment provided a light-duty assignment based on working restrictions recommended by his physician. Appellant alleged that, when the employing establishment returned him to full duty on September 24, 2004, he experienced pain in his left shoulder as a result of having to wear a bag over his shoulder to deliver mail.

The Board finds that appellant has not established a recurrence of disability because he has not shown that the alleged change in his condition was spontaneous. For a change to be spontaneous, it cannot be the result of any intervening employment factors. Appellant stated that he returned to full duty and was required to carry a bag over his shoulder, which caused shoulder pain on September 24, 2004. These factors are intervening causes implicating a new injury in 2004 due to work factors. The alleged change in appellant's condition was not spontaneous.

The Board further finds that appellant has not established by rationalized medical opinion evidence that he sustained an injury on September 24, 2004 or that it was causally related to the accepted March 29, 2002 employment injury. Appellant provided narrative statements stating that his left shoulder hurt and that use of the mailbag was the cause of his pain. However, a claimant's own statements and belief are not adequate to establish his claim. Under the Act, only the medical opinion of a physician can form the basis for compensation.⁷ The mere fact that a disease or condition manifests itself during a period of employment nor the claimant's belief that the condition was caused or aggravated by employment factors is sufficient to establish causal relationship.⁸ Causal relationship is a medical issue to be established through the submission of probative medical evidence.⁹

⁴ *Edward W. Spohr*, 54 ECAB 806 (2003).

⁵ *Carlos A. Marrero*, 50 ECAB 117 (1998); *Philip L. Barnes*, 55 ECAB 426 (2004); 20 C.F.R. § 10.5(x).

⁶ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁷ See *Kenneth R. Love*, 50 ECAB 193 (1998) (an award for compensation may not be based upon a claimant's own belief that there is a causal relationship between the claimed condition and the employment); 5 U.S.C. § 8121.

⁸ See *Patricia J. Glenn*, 53 ECAB 159 (2001).

⁹ See *Richael O'Brien*, 53 ECAB 234 (2001).

The record contains no medical opinion evidence directly addressing the alleged recurrence. Dr. Catterlin's September 29, 2004 duty status report does not mention the alleged recurrence of appellant's disability or provide a diagnosis or medical rationale. The patient progress notes from Dr. Malvasi, dated November 2, 2004 to July 14, 2005, do not discuss the alleged injury. Dr. Malvasi did not provide a diagnosis or explain a causal relationship to the accepted employment injury. The Board finds that, in the absence of relevant medical evidence, appellant has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to his accepted March 29, 2002 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2006 is affirmed.

Issued: February 5, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board