U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SEAN P. ALLEN and U.S. POSTAL SERVICE,
POST OFFICE, Johnstown, PA

Docket No. 01-1641; Submitted on the Record;
Issued April 9, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty.

This case is on appeal to the Board for the second time.[1] In the first appeal, the Board affirmed the Office of Workers' Compensation Programs June 19, 1997 decision, which found that appellant did not meet his burden of proof in establishing that he had a recurrence of disability after June 12, 1989. The Board found that the medical evidence of record did not establish that appellant's left shoulder condition was causally related to the December 5, 1988 employment injury.

On December 1, 1998 appellant filed an occupational claim, alleging that the employing establishment's failure to follow his physician's recommendations exacerbated his condition to his left upper limb. He stated that he was diagnosed with subacromial impingement of the left shoulder. Appellant underwent left shoulder arthroscopy and arthroscopic acromioplasty on May 23, 1991. He stopped working for the employing establishment in 1993.

By letter dated May 27, 1999, the Office informed appellant that additional evidence was necessary to establish his claim, including a narrative report from his treating physician explaining how his employment contributed to his condition.

In a report dated February 12, 1991, a referral physician, Dr. Michael C. Saltzburg, an orthopedic surgeon, stated that he treated appellant for pain in his left shoulder since June 14, 1989. He considered the history of injury, *i.e.*, that appellant injured himself on December 5, 1988 and stated that when he worked more than four hours on the job, his pain increased in the left shoulder. Dr. Saltzburg performed a physical examination and diagnosed

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[1] Docket No. 97-2667 (issued December 3, 1998). The facts and history surrounding the prior appeal is set forth in the initial decision and is hereby incorporated by reference.

status post sprain of the left hand and left wrist in resolution and chronic sprain of the left shoulder. Dr. Saltzburg stated that appellant was not disabled due to his left hand and left wrist because that condition had resolved. He stated that appellant had limited use of his left shoulder but the pain had not been documented in his chart for a period of six months so there did not appear to be any causal relationship between his left shoulder condition and the June 14, 1989 employment injury.

An assignment of limited duty form signed by appellant and his supervisor on August 24, 1990 showed that the employing establishment provided appellant with a limited-duty assignment as a carrier, with restrictions of no lifting over 20 pounds, no pulling, pushing and no simple grasping.

In a report dated August 28, 1990, appellant's treating physician, Dr. Andrew W. Gurman, a Board-certified orthopedic surgeon, stated that appellant's weight lifting restriction applied only to his left shoulder. He stated that appellant should not work above shoulder level on the left side and should avoid heavy pushing and pulling with his left upper extremity.

In a report dated June 11, 1992, Dr. Gurman stated that he placed appellant on light duty after the December 5, 1988 employment injury, but appellant was not actually placed on light-duty status until one year and a half after his recommendation. He stated that "[i]n the interim, [appellant] had gone on to aggravate problems with his left shoulder" which ultimately led to surgery. Dr. Gurman stated that the "requirements placed upon [appellant's] left upper extremity to accommodate heavy loads in an abnormal fashion because of his inability to bear those loads on the wrist and hand could have been avoided" if the employing establishment had complied with the light-duty restrictions he ordered. He stated that the abnormal stresses placed upon appellant's left shoulder "ultimately led to his shoulder problems."

In a report dated January 17, 1994, Dr. Gurman stated that he had treated appellant for left shoulder pain on June 14, 1989 and had previously treated him for problems in his left hand and wrist. He stated that appellant could work a sedentary job with a lifting restriction of 10 pounds and no reaching with the left upper extremity.

In a statement dated June 18, 1999, appellant stated that the employing establishment failed to comply with his doctor's restrictions, which were placed on him after the December 5, 1988 employment injury, until August 28, 1990. He stated that those restrictions were that he could not lift or carry heavy loads, perform simple grasping or perform heavy pushing or pulling. Appellant stated that on June 6, 1989 the repeated heavy lifting of mail and pushing and pulling of hand trucks and other duties "exacerbated and aggravated" his left shoulder condition.

By decision dated July 16, 1999, the Office denied appellant's claim, stating that appellant failed to establish that he sustained an injury as alleged.

By letter dated July 22, 1999, appellant requested reconsideration of the Office's decision and submitted three-duty status reports dated October 11, 1989, July 2, 1990 and April 15, 1991 from Dr. Gurman. In the October 11, 1989 and July 2, 1990 duty status reports, he indicated that appellant could work 8 hours with a 10-pound lifting restriction and intermittently performing

certain activities such as reaching above the shoulder or standing and sitting. In the April 15, 1991 duty status report, he opined that appellant was totally disabled as of that date.

By decision dated November 2, 1999, the Office denied modification of the July 16, 1999 decision.

By letter dated February 16, 2000, appellant requested reconsideration of the Office's November 2, 1999 decision and submitted additional evidence. A memorandum from the employing establishment dated July 3, 1990 stated that after appellant claimed an injury to his fingers and wrist in December 1988 he was placed on limited duty. In a memorandum of a conference between appellant and the Office dated September 13, 1990, the Office stated that after appellant sustained the December 1988 traumatic injury, he worked limited duty consisting of running express mail and running parcels. A handwritten letter whose author or source is not clear, stated that on several days in August, September and October 1990 appellant either cased or provided assistance.

Appellant also submitted progress notes from Dr. Gurman dated from December 22, 1988 through July 7, 1993. Dr. Gurman initially stated that appellant should perform light duty and as of March 10, 1989 stated that appellant should return to full duty. He noted that appellant continued to have left shoulder pain and on April 6, 1990 stated that appellant should continue to work light duty. After his surgery in May 1991, on October 16, 1991 he stated that appellant could return to light duty. On November 25, 1991 Dr. Gurman stated that appellant had not been allowed to go back to light duty pending the outcome of a scheduled hearing. On July 7, 1993 Dr. Gurman stated that appellant had been "fired" from his job at the employing establishment and remained disabled from his job.

In a report dated August 23, 1999, Dr. Angela W. Rowe, an osteopath, considered appellant's history of injury, performed a physical examination and reviewed x-rays. She diagnosed mild impingement syndrome of the left shoulder and prescribed medication and physical therapy.

By decision dated April 17, 2000, the Office denied modification of the prior decisions. The Office noted that there were inconsistencies between appellant's current assertion that he was not placed on restricted duty after the December 5, 1988 employment injury and statements he made in his emotional claim in 1990 (which the Office accepted) that he performed limited duty after the December 1988 employment injury. The Office also considered the employing establishment's statements that appellant had been placed on light duty following his December 5, 1988 employment injury.

By letter dated April 28, 2000, appellant requested reconsideration and argued that there was no documentation to support the Office's finding that he was placed on limited duty after his December 5, 1988 employment injury. He stated that management's assertions that he was placed on limited duty were "untrue." Appellant also argued that the Office accepted his claim in 1990 for adjustment disorder with depressed mood and statements made by him at that time that he performed light duty should not have any weight.

By decision dated June 29, 2000, the Office denied modification.

By letter dated July 10, 2000, appellant requested reconsideration of the Office's decision and submitted additional evidence including a statement from a coworker, Ron Nicewonger, dated April 6, 1990 stating that appellant "was assigned to auxiliary help" on his route, a grievance dated July 18, 1990 in which appellant objected to his receiving a notice of suspension for 14 days when he was provided with no work to do, a job description of a letter carrier and a letter dated October 21, 1993 from John Race stated that he had received a call from the president of the carriers' union regarding a disciplinary action concerning appellant and stated that the president referred to appellant's being on limited duty but that he had no job description. Appellant also submitted a report from a psychologist, Dr. Daniel Palmer, covering evaluation dates April 24, May 1 and 15, 2000, in which, he noted that appellant complained that his physical restrictions were ignored by his supervisor following the December 5, 1988 employment injury.

By letter dated October 6, 2000, the Office denied modification.

By letters dated November 13 and December 4, 2000, appellant requested reconsideration of the Office's decision and submitted additional evidence including a more detailed statement from Mr. Nicewonger. He explained that when appellant assisted him, he performed regular carrier duties including loading trays weighing over 40 pounds and delivering packages and parcels which "could easily weigh" over 25 pounds.

By decision dated February 7, 2001, the Office denied modification of its prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. 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 appellant.[2]

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease

[2] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[3]

In this case, appellant has not presented medical evidence that the employing establishment gave him work which exceeded his physical restrictions following his December 5, 1988 employment injury. The employing establishment made the statement, while not very detailed, in its July 3, 1990 memorandum that appellant performed light duty after the December 5, 1990 employment injury. The Office had a memorandum of conference dated September 13, 1990, stating that appellant had been working limited duty since the December 1988 traumatic injury. This evidence contradicts appellant's assertion that his post December 5, 1988 employment exceeded his restrictions. Further, Mr. Nicewonger's statement that appellant performed heavy lifting when he helped him does not show that the employing establishment required appellant to perform that activity. The July 18, 1990 grievance and the October 21, 1993 letter from Mr. Race do not show that appellant exceeded his restrictions after the December 5, 1988 employment injury and, therefore, are not relevant.

The medical evidence does not establish that appellant's left shoulder condition resulted from his employment duties performed on or after December 5, 1988. The February 12, 1991 opinion of Dr. Saltzburg, that appellant's left shoulder problem was not work related, supports there was no causal connection. Dr. Gurman's reports dated from August 28, 1990 through January 17, 1994 suggest that appellant's having to perform normal duties after the December 5, 1988 employment injury for a year and a half aggravated his left shoulder. Dr. Gurman obtained his information, however, that appellant exceeded his work restrictions from appellant and there was no corroborating evidence of appellant's assertion that he exceeded his restrictions. Dr. Gurman's reports also provide no rationalized medical opinion as to how appellant's work duties caused his left shoulder conditions and, therefore, are of diminished probative value.[4] The duty status reports from Dr. Gurman dated from October 11, 1989 through April 15, 1991 indicate that appellant required a lifting restriction but these reports do establish that appellant's left shoulder condition arose from his employment. Dr. Gurman's progress notes dated from December 22, 1988 through July 7, 1993 document that he prescribed light duty through March 10, 1989 and then again on April 6, 1990, but they also do not establish that appellant's employment activities after December 5, 1988 caused or contributed to his left shoulder condition.

Dr. Rowe's August 23, 1999 opinion in which she diagnosed mild impingement syndrome and prescribed medication and physical therapy provides no rationalized medical opinion that appellant's left shoulder condition arose from his employment and, therefore, it is of diminished probative value.

[3] *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985)

[4] *See Annie L. Billingsley*, 50 ECAB 210, 213 (1998).

The Office of Workers' Compensation Programs February 7, 2001, October 6 and June 29, 2000 decisions are hereby affirmed.

Dated, Washington, DC
April 9, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member