

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID C. JONES and DEPARTMENT OF JUSTICE,
EXECUTIVE OFFICE FOR U.S. ATTORNEYS, Springfield, Mo.

*Docket No. 96-1207; Submitted on the Record;
Issued April 24, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on September 16, 1994 causally related to his March 14, 1994 employment injury.

On March 25, 1994 appellant, then a 40-year-old deputy United States attorney, sustained cervical spasms in the performance of duty when a file drawer fell out of a cabinet and struck him on the head. He stated that he developed a severe headache, tenderness to the neck and head, loss of range of motion of the neck, and fatigue.

In notes dated April 11, 1994, Dr. Thomas P. Davis, a Board-certified internist, provided a history of appellant's condition and noted that he complained of a headache for one week and pain and spasms in his neck. He noted that x-rays were negative and a neurologic examination was normal.

In a narrative report dated July 11, 1994, Dr. Bert E. Park, a Board-certified neurosurgeon, provided a history of appellant's condition and stated that his physical examination was negative for any residual cervical problems. He noted that appellant had full range of motion in his neck with only a minimal degree of discomfort when rotating the chin to the right.

In a claim form dated September 20, 1994, appellant alleged that he sustained a recurrence of disability on September 16, 1994 which he attributed to his March 14, 1994 employment injury.

In a letter dated January 5, 1995, an employing establishment representative stated that since appellant's March 14, 1994 employment injury, he had been allowed to work irregular hours using a combination of annual, sick and administrative leave in addition to continuation of pay and that he had never been placed on "light duty" but rather had been performing his work in a different manner. The representative stated that appellant had been giving lectures, performing

trial evaluations, and other activities that did not require sitting for extended periods of time rather than sitting at his desk at a computer.

By decision dated March 16, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he had sustained a recurrence of disability causally related to his March 14, 1994 employment injury.

By letter dated March 31, 1995, appellant requested an oral hearing before an Office hearing representative.

On August 23, 1995 a hearing was held before an Office hearing representative at which time appellant testified.

In a narrative report dated January 9, 1995, Dr. Guy F. Miller, an osteopath, related that he had examined appellant on September 21, 1994 for a complaint of low back pain. He stated that findings on examination revealed some cervical and lower lumbar muscle tenderness and he diagnosed muscle spasm and somatic dysfunction. Dr. Miller related that appellant asked the reason for his low back problems considering that on March 14, 1994 the file drawer had struck him in the upper thoracic and neck area and that he had explained to appellant that it was not uncommon to compensate when an area was injured by picking up some of the work load and doing more with other muscles to help support the weakened muscles. He stated that appellant was more susceptible to this situation with his history of a herniated disc in his lower back but that the two symptoms of upper and lower back problems might not be related.

In notes dated May 9, 1995, Dr. Davis related that appellant was beginning to have more pain in his neck. He stated that appellant had good range of motion in the neck but some tenderness. Dr. Davis stated his opinion that appellant's muscle strain and soreness were the result of the employment injury which occurred one year previously.

By decision dated December 5, 1995, the Office hearing representative affirmed the Office's March 16, 1995 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on September 16, 1994 causally related to his March 14, 1994 employment injury.

An individual 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 compensation is claimed is causally related to the accepted injury.¹ 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 the employment injury and supports that

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

In this case, appellant sustained cervical spasms in the performance of duty when a file drawer fell out of a cabinet and struck him on the head. He subsequently claimed that he sustained a recurrence of disability on September 16, 1994 which he attributed to his March 14, 1994 employment injury.

In a narrative report dated July 11, 1994, Dr. Park, a Board-certified neurosurgeon, provided a history of appellant's condition and stated that his physical examination was negative for any residual cervical problems.

In a narrative report dated January 9, 1995, Dr. Miller related that he had examined appellant on September 21, 1994 for a complaint of low back pain. He stated that findings on examination revealed some cervical and lower lumbar muscle tenderness and he diagnosed muscle spasm and somatic dysfunction. Dr. Miller related that appellant had asked the reason for his low back problems considering that on March 14, 1994 the file drawer had struck him in the upper thoracic and neck area and that he had explained to appellant that it was not uncommon to compensate when an area was injured by picking up some of the work load and doing more with other muscles to help support the weakened muscles. Dr. Miller stated that appellant was more susceptible to this situation with his history of a herniated disc in his lower back but that the two symptoms of upper and lower back problems might not be related. As Dr. Miller could not definitely state that appellant's low back problems in September 1994 were causally related to the March 14, 1994 employment injury, particularly in light of the fact that appellant had a herniated disc in his lower back, this report does not suffice to establish a causal relationship between the low back problems and appellant's employment. In any event, he did not opine that appellant was disabled due to his low back condition. Regarding the cervical tenderness found on examination on September 21, 1994, as Dr. Miller did not opine that appellant was disabled due to this symptom and provided only a speculative opinion as to the causal relationship between the symptom and the March 1994 employment injury, the report does not establish that appellant had a recurrence of disability causally related to the cervical employment injury.

In notes dated May 9, 1995, Dr. Davis related that appellant was beginning to have more pain in his neck. He stated that appellant had good range of motion in the neck but some tenderness. Dr. Davis stated his opinion that appellant's muscle strain and soreness were the result of the employment injury which occurred one year previously. However, as he provided insufficient medical rationale linking the neck pain to the March 1994 employment injury and also did not opine that appellant was disabled as a result of the neck pain, these notes are not sufficient to establish that appellant sustained a recurrence of disability on September 16, 1994 causally related to his March 14, 1994 employment injury.

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁴ Appellant failed to submit sufficient rationalized medical evidence establishing that the claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The December 5 and March 16, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
April 24, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).