

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESTER H. MORAN and DEPARTMENT OF THE ARMY,
TOOELE ARMY DEPOT, Tooele, UT

*Docket No. 97-1365; Submitted on the Record;
Issued August 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability causally related to his July 10, 1986 work-related injury.

On November 6, 1996 appellant, then a retired federal employee, filed a claim for compensation alleging that he had remained symptomatic with pain since July 10, 1986, the date of his original injury. In support of his claim, appellant submitted the results of a right shoulder arthrogram performed on October 28, 1996 by Dr. Michael H. Bourne, appellant's treating physician and Board-certified in orthopedic surgery, who stated that the results of an October 28, 1996 arthrogram were positive for rotator cuff tear. Dr. Bourne also submitted a second report dated that day essentially repeating his diagnosis of rotator cuff tear and offering to review appellant's past medical record to "assess the correlation between the original injury and [appellant's] current status."

On December 19, 1996 the Office of Workers' Compensation Programs advised appellant that it appeared it had accepted appellant's July 1986 claim for right shoulder contusion and possible strain, but that the employing establishment and appellant were required to submit copies of their records pertaining to that claim. The Office further notified appellant that he would need to submit medical records dealing with his claim from the date of the injury to the present date.

In an attending physician's report dated September 3, 1986 and received by the Office on January 30, 1997, appellant's physician stated that he had treated appellant for his employment-related injury of July 10, 1986 and released him to return to regular duty effective that day.

In a decision dated February 26, 1997 the Office denied appellant's claim on the basis that the medical evidence of record failed to establish that appellant had sustained a recurrence of disability based on his July 10, 1986 work-related injury.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability causally related to the accepted July 10, 1986 work-related 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. This burden includes the necessity of furnishing medical evidence from a qualified 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 conclusion with sound medical reasoning.¹

In this case, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability and the accepted July 10, 1986 employment-related injury or other employment factors. The medical evidence of record, however, consists essentially of Dr. Bourne's October 28, 1997 medical report, in which he finds that appellant had rotator cuff tear as demonstrated by arthrogram and degenerative joint disease involving the acromioclavicular and, to a lesser degree, the glenohumeral joint. However, this report is not sufficient to meet appellant's burden of proof as Dr. Bourne did not offer an opinion as to whether appellant's current condition and disability were causally related to his accepted employment injury. In fact, Dr. Bourne stated that he would be willing to review appellant's medical records to assess whether a causal relationship exists between his original injury and his current medical condition. 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 her condition and her employment.²

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 conditions and present medical rationale in support of his opinion. Appellant failed to submit such evidence and, therefore, failed to discharge his burden of proof.³

¹ *Louise G. Malloy*, 45 ECAB 613 (1994); *Lourdes Davila*, 45 ECAB 139 (1989); *Robert H. St. Onge*, 43 ECAB 169 (1992).

² *William S. Wright*, 45 ECAB 498 (1994).

³ *Donald W. Long*, 41 ECAB 142, 146-47 (1989).

The February 26, 1997 decision of the Office of Workers' Compensation Programs is affirmed.⁴

Dated, Washington, D.C.
August 3, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁴ The Board notes that subsequent to the Office's February 26, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).