

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. DERC and U.S. POSTAL SERVICE,
POST OFFICE, St. Joseph, Mo.

*Docket No. 97-694; Submitted on the Record;
Issued May 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained a recurrence of disability on January 17, 1995 causally related to his February 22, 1993 employment injury.

On February 22, 1993 appellant, then a 55-year-old letter carrier, sustained a cervical and lumbar strain and a herniated nucleus pulposus in the performance of duty when he fell.

In a notice of recurrence of disability dated July 15, 1996, appellant filed a claim for a recurrence of disability on January 17, 1995 when he slipped in mud while entering his private motor vehicle at his residence. He attributed his claimed recurrence of disability to his February 22, 1993 employment injury.¹

In clinical notes dated January 17, 1995, Dr. Bharata A. Lankachandra, a Board-certified internist, related that appellant was complaining of right shoulder pain after falling the previous day. He diagnosed a right shoulder strain, "most probably a tendon strain or tear or rotator cuff injury."

In a letter dated July 30, 1996, the employing establishment controverted appellant's claim on the grounds that the claimed injury to his right shoulder occurred in his driveway at home when he slipped and fell while entering his truck. The employing establishment stated that the incident was not causally related to his accepted back injury which occurred on February 22, 1993.

By decision dated September 3, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he

¹ On December 15, 1995 prior to his July 15, 1996 claim, appellant filed a claim for a new injury occurring on January 17, 1995. This claim was denied by the Office of Workers' Compensation Programs in a decision dated January 22, 1996.

sustained a recurrence of disability on January 17, 1995 causally related to his February 22, 1993 employment injury.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on January 17, 1995 causally related to his February 22, 1993 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.² 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 conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

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.⁵

In this case, appellant sustained a back injury in the performance of duty on February 22, 1993. On July 15, 1995 he filed a claim for a recurrence of disability on January 17, 1995 which he attributed to his employment injury. Appellant stated that he injured his right shoulder when he slipped in mud while getting into his private motor vehicle at his residence.

In support of his recurrence of disability claim appellant submitted medical notes dated January 17, 1995 in which Dr. Lankachandra, a Board-certified internist, related that appellant fell the previous day and he diagnosed a right shoulder sprain. However, Dr. Lankachandra did not provide his opinion as to the cause of appellant's condition. Moreover, he did not mention the February 22, 1993 employment injury in his notes. Additionally, the Board notes that the injury in 1995 was a right shoulder injury but appellant's employment-related injury in 1993 was to a different part of the body, his back. As Dr. Lankachandra did not provide a rationalized medical opinion showing that appellant's condition on January 17, 1995 was causally related to the February 22, 1993 employment injury, appellant has not met his burden of proof to establish an employment-related recurrence of disability.

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decision of the Office of Workers' Compensation Programs dated September 3, 1996 is affirmed.

Dated, Washington, D.C.
May 7, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member