

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENJAMIN LITTLEJOHN, JR. and LIBRARY OF CONGRESS,
JAMES MADISON BUILDING, Washington, DC

*Docket No. 00-2020; Submitted on the Record;
Issued August 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on or after September 27, 1999 causally related to his November 7, 1995 employment injury.

On November 29, 1995 appellant, then a 44-year-old library technician, filed a traumatic injury claim following an automobile accident on November 7, 1995. The Office of Workers' Compensation Programs accepted the claim for cervical, thoracic and lumbosacral sprains. Appellant returned to light-duty work on December 18, 1995 and full duty on January 22, 1996.

Appellant subsequently filed a claim for a recurrence of disability beginning June 10, 1996 due to his November 7, 1995 employment injury, which the Office accepted. He returned to limited-duty work, which included a lifting restriction on February 20, 1997.

Appellant filed a second recurrence of disability claim beginning September 27, 1999.

Evidence submitted in support of the claim included a disability certificate dated October 7, 1999 from Laura Messenger, an attending nurse family practitioner, an October 7, 1999 duty status report by Ms. Messenger and an October 13, 1999 report from Dr. Benjamin S. Shaffer, an attending Board-certified orthopedic surgeon. Ms. Messenger stated that appellant was totally disabled from September 28 through October 8, 1999 due to severe back and neck pain. She indicated that appellant returned to light-duty work on October 11, 1999. In the October 13, 1999 report, Dr. Shaffer noted that appellant suffered from neck, back and shoulder pain and recommended that appellant take leave for a month or until November 13, 1999.

By letter dated December 3, 1999, the Office advised appellant of the problems in his claim and what was needed to support his claim.

By decision dated January 10, 2000, the Office rejected appellant's claim, finding that the evidence of record failed to establish a causal relationship between the accepted November 7, 1995 injury and appellant's claimed recurrence of disability.

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after September 27, 1999 causally related to his November 7, 1995 employment injury.

The employee has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the original injury.¹ Such proof must include medical evidence that the claimed recurrence of disability is causally related to the accepted employment injury.² As part of this burden, appellant must furnish 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 employment factors and supports that conclusion with sound medical reasoning.³ Whether a particular employment incident causes disability is a medical issue, which must be resolved by competent rationalized medical opinion evidence.⁴ An award of compensation may not be made on the basis of surmise, conjecture or speculation, or on appellant's unsupported belief of causal relation.⁵

In this case, appellant has not submitted any medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, has concluded that he has any condition or disability causally related to his November 7, 1995 employment injury, which is the issue in this case. Furthermore, there is no medical evidence supporting temporary total disability for the period claimed on the recurrence claim form.

Appellant submitted a disability certificate from Ms. Messenger, a nurse family practitioner. However, a nurse practitioner is not a "physician" as defined in the Federal Employees' Compensation Act.⁶ Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion.⁷ In addition, Dr. Shaffer's October 13, 1999 report is also insufficient to meet appellant's burden because the physician failed to discuss whether or how the diagnosed condition was caused by appellant's November 7, 1995 employment-related injury.⁸

¹ *Bernard Snowden*, 49 ECAB 144 (1977); *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

² *Id.*

³ *Id.*

⁴ *See Buddy L. Spaulding*, 40 ECAB 1002, 1007 (1989).

⁵ *Alfredo Rodriguez*, *supra* note 1.

⁶ *See Bertha L. Arnold*, 38 ECAB 282 (1986). As defined by the Act in 5 U.S.C. § 8101(2), "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.

⁷ *See Arnold A. Alley*, 44 ECAB 912 (1992); *Sheila Arbour*, 43 ECAB 779 (1992); *Barbara J. Williams*, 40 ECAB 649 (1989).

⁸ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

Appellant was advised of the deficiencies in the claim and failed to provide the requested information. This included a request that appellant submit rationalized medical evidence addressing how his current condition would be related to his November 7, 1995 work injury. It is not enough for appellant to allege a causal relationship between his work and his stated condition. Evidence of the nature of any disabling condition and its relationship to a particular employee's work can be given only by a physician fully acquainted with the relevant facts and circumstances of the employment injury and the medical findings. Thus, as a lay person, appellant's opinion that his current back condition is causally related to his employment has no probative value on the medical issue.⁹

The decision of the Office of Workers' Compensation Programs dated January 10, 2000 is hereby affirmed.¹⁰

Dated, Washington, DC
August 7, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ *Birger Areskog*, 30 ECAB 571 (1979); *see also James A. Long*, 40 ECAB 538 (1989).

¹⁰ Subsequent to the Office's January 10, 2000 decision appellant submitted new evidence. The Board may not consider this evidence as the Office did not consider it in its decision.