

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK T. GIGLIO and U.S. POSTAL SERVICE,
POST OFFICE, Albany, NY

*Docket No. 02-366; Submitted on the Record;
Issued July 1, 2002*

DECISION and ORDER

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

The issue is whether appellant established that he sustained a recurrence of disability causally related to his accepted employment injury of February 9, 2000.

On February 9, 2000 appellant, then a 25-year-old mail carrier, filed a notice of traumatic injury alleging that he hurt his right elbow when he slipped and fell on icy stairs while in the performance of duty. He sought medical care at the local emergency room where an x-ray revealed no fractures or evidence of a soft tissue injury. Appellant then came under the care of Dr. Joseph LaRosa, a Board-certified orthopedic surgeon, who placed him on limited duty. The Office of Workers' Compensation Programs accepted the claim for a right elbow strain. Appellant worked limited duty with his left arm only until he was approved for regular duty by Dr. LaRosa, effective April 1, 2000.¹

On October 13, 2000 appellant filed a claim for recurrence of disability. He stated that he experienced constant tingling and intermittent numbness in his right ring and pinky fingers and pain in the right elbow when he used or lifted his right arm.

On the reverse side of appellant's CA-2a claim form, his supervisor noted that appellant began working limited duty on September 18, 2000 and reduced his workday to four hours effective October 5, 2000.

Although appellant filed several CA-7 claims for compensation for wage loss he did not submit any medical evidence in support of his claim.

In a November 3, 2000 letter, the Office advised appellant of the factual and medical evidence required to establish his claim for compensation.

¹ In an April 10, 2000 report, Dr. LaRosa noted that appellant's examination of the right elbow was completely normal and that he had no pain and no real complaints.

In a decision dated December 21, 2000, the Office denied compensation on the grounds that there was insufficient evidence to establish that appellant sustained a recurrence of disability causally related to his February 9, 2000 work injury.

On January 9, 2001 appellant requested reconsideration and submitted additional evidence.

In a December 18, 2000 report, Dr. Peter Fragatos, a neurologist, noted that appellant had complaints of pain in the right elbow due to continual motion of his arm in a flexion/extension elbow maneuver while at work. He stated that appellant's examination was consistent with cubital tunnel syndrome and that an electromyogram nerve conduction velocity did suggest ulnar nerve entrapment on the right side.

In a report dated December 29, 2000, Dr. Fragatos noted that in February 2000 appellant fell down some stairs while delivering the mail and hit his right elbow. Physical findings were recorded and he indicated that appellant was scheduled for "an ulnar nerve decompression and possible transposition."

In a March 12, 2001 decision, the Office denied modification of the December 21, 2000 decision.

The Board finds that appellant failed to establish that he sustained a recurrence of disability causally related to his accepted employment injury of February 9, 2000.

The term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.² 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.³ 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 reasoning.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 relationship.⁵

² *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Eldon H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Federal Employees' Compensation Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987); Cf. 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

³ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁴ *Jose Hernandez*, 47 ECAB 288 (1996).

⁵ *Ausberto Guzman*, 25 ECAB 362 (1974).

In this case, the Office accepted that appellant sustained a right arm strain on February 9, 2000 when he slipped and fell on icy stairs in the performance of duty. He returned to full unrestricted duty effective April 10, 2000 and was noted by his treating physician to have no residuals due to his work injury. Although appellant filed a claim for a recurrence of disability commencing on or about October 13, 2000 and has reduced his work hours to one hour per day, he has not provided a reasoned medical opinion addressing the causal relationship between his work injury and his medical condition on or after that date. Dr. Fragatos opined that appellant suffers from cubital tunnel syndrome; however, he has not submitted sufficient medical rationale explaining how appellant's diagnosed condition relates to the accepted work injury. He noted that appellant's cubital tunnel syndrome was due to repetitive motion in performing his work duties. Dr. Fragatos subsequently noted appellant's history of the February 9, 2000 fall. However, he did not offer a reasoned medical opinion⁶ to establish that appellant sustained a recurrence of disability causally related to his accepted work injury. The Board finds that appellant has failed to carry his burden of proof and that the Office properly denied compensation.

The decision of the Office of Workers' Compensation Programs dated March 12, 2001 is hereby affirmed.

Dated, Washington, DC
July 1, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

⁶ A medical opinion must be based on a complete and accurate factual and medical history. *See Joseph M. Popp*, 48 ECAB 624 (1997). Medical conclusions unsupported by rationale are of diminished probative value. *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).