

**United States Department of Labor
Employees' Compensation Appeals Board**

HELEN M. TALLIE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 04-1970
Issued: January 21, 2005**

Appearances:
Helen M. Tallie, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 4, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated July 9, 2004 denying modification of a September 30, 2003 decision which denied her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability on May 12, 2003 causally related to her January 30, 2003 employment injury.

FACTUAL HISTORY

This case was previously before the Board.¹ By decision and order dated May 21, 2004, the Board affirmed an Office decision dated September 30, 2003 denying her claim for a recurrence of disability on May 12, 2003 causally related to her January 30, 2003 employment injury. On January 30, 2003 appellant, then a 33-year-old letter carrier, sustained cervical and

¹ Docket No. 04-699 (issued May 21, 2004).

lumbar strains as a result of a motor vehicle accident. She was released to full-time work as of April 21, 2003. The Board's prior decision is incorporated herein by reference.

Following the Board's May 21, 2004 decision, appellant submitted a reconsideration request to the Office, together with additional evidence in support of her recurrence of disability claim. She had previously submitted additional evidence subsequent to the Office's September 30, 2003 decision.

In an electromyography report dated July 23, 2003, Dr. Laurence J. Kinsella, a Board-certified internist and neurologist, diagnosed bilateral carpal tunnel syndrome. He did not indicate the cause of this condition or mention appellant's claimed recurrence of disability on May 12, 2003.

In form reports dated September 11, 2003 and January 23, 2004, Dr. Albert D. Brooks, an internist, diagnosed cervical strain and myofascial syndrome. He did not mention the date of the alleged recurrence of disability, May 12, 2003, nor did he explain the cause of the diagnosed conditions.

Appellant also submitted a portion of an October 28, 2003 medical report from Dr. Kinsella containing physical findings on examination.²

By decision dated July 9, 2004, the Office denied modification of its September 30, 2003 decision denying appellant's claim for a recurrence of disability.³

LEGAL PRECEDENT

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.⁴ 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.⁵

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

² The first page of this October 28, 2003 report is missing.

³ The record contains evidence submitted subsequent to the Office decision of July 9, 2004. The jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). Therefore, the Board has no jurisdiction to consider this evidence for the first time on appeal.

⁴ *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁵ *Lourdes Davila*, 45 ECAB 139 (1993).

employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁶

ANALYSIS

The evidence submitted by appellant since the Board's review of May 21, 2004 is the July 23, 2003 electromyography report from Dr. Kinsella, the September 11, 2003 and January 23, 2004 form reports from Dr. Brooks and the incomplete October 28, 2003 report from Dr. Kinsella. These medical reports do not contain any rationalized medical opinion relating appellant's May 12, 2003 recurrence of disability to her January 30, 2003 employment injury. Therefore, appellant did not meet her burden of proof to establish that she sustained a work-related recurrence of disability on May 12, 2003.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of disability on May 12, 2003 causally related to her January 30, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 9, 2004 is affirmed.

Issued: January 21, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

⁶ *Walter D. Morehead*, 31 ECAB 188 (1979).