

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNA K. BUTLER HOGEWOOD and HOUSE OF REPRESENTATIVES,
U.S. CAPITOL POLICE, Washington, D.C.

*Docket No. 96-2272; Submitted on the Record;
Issued August 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a recurrence of disability on or after April 12, 1990 causally related to her accepted employment injury of August 25, 1985.

On August 26, 1986 appellant, then a 23-year-old police officer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she strained a back muscle on August 24, 1985 while participating in a practical exercise. The Office of Workers' Compensation Programs accepted appellant's claim for a left scapular muscle strain.

On October 29, 1986 appellant filed a claim for recurrence of disability due to her August 24, 1985 employment injury which the Office accepted.

On April 12, 1990 appellant filed a claim for a second recurrence of disability due to her August 25, 1985 employment injury.

In a report dated April 12, 1990, Dr. Young J. You, an attending Board-certified orthopedic surgeon, diagnosed recurrent cervical strain with possible myofascial pain syndrome. Dr. You noted that appellant stated "the initial problem started in August 1985" and that since then she has "had mild to moderate recurrent cervical strain."

In an attending physician's report (Form CA-20) dated April 18, 1990, Dr. You diagnosed recurrent cervical strain and checked "yes" that it was related to her August 24, 1985 employment injury.

By letter dated August 9, 1990, the Office informed appellant of the definition of a recurrence of disability and requested additional factual and medical information, including a rationalized medical opinion from her attending physician on the causal relationship between her

current condition/disability and the original employment injury. The Office noted the information necessary from her attending physician to support her claim.

By decision dated May 14, 1992, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained a recurrence of disability causally related to the August 25, 1985 employment injury.¹

In a letter dated July 12, 1994, appellant requested reconsideration of the denial of her claim. Appellant alleged that she was never notified regarding the denial of her recurrence of disability claim.

By letter dated August 4, 1995, appellant requested reconsideration of her claim and submitted medical evidence in support of her request. In a report dated July 17, 1995, Dr. You noted that appellant "did have a mild recurrence since I saw her in 1990." Dr. You also opined that "my original diagnosis of recurrent cervical spasm has not changed."

By decision dated September 9, 1995, the Office denied appellant's request for reconsideration without a review on the merits on the basis that her request had not been timely filed and presented no clear evidence of error.

Appellant, through her husband, appealed the denial of her claim in an undated letter received by the Office on December 7, 1995.

By decision dated April 24, 1996, the Office denied appellant's application for review finding that appellant's request for reconsideration on the basis that the evidence fails to demonstrate that the claimed recurrence on or after April 12, 1990 is causally related to the accepted employment injury of August 24, 1985. In an accompanying memorandum, the claims examiner noted that appellant submitted a July 17, 1995 from Dr. You, which was not previously of record. The claims examiner then reviewed Dr. You's report and concluded that it contained no medical opinion supporting a causal relationship between her alleged recurrence of disability on April 12, 1990 and her accepted employment injury of August 24, 1985.

The Board finds that appellant has not established that she sustained a recurrence of disability on or after April 12, 1990 causally related to her accepted August 24, 1985 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

¹ The Board notes that this decision was mailed to 15251 Waterwheel Terrace, Woodbridge, VA 22191. This address is the same as that appellant noted on her recurrence claim.

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

conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In the present case, the Office accepted that appellant sustained a left scapular muscle strain in the performance of duty on August 25, 1985. Appellant filed a claim for recurrence of disability on October 29, 1986, which was accepted by the Office. On April 12, 1990 appellant filed the present claim for a recurrence of disability.

Dr. You completed a form report on April 18, 1992 and diagnosed recurrent cervical strain. Dr. You indicated with a checkmark “yes” that appellant’s condition was due to her employment injury. The Board has held that an opinion on causal relationship, which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s disability was related to the history given is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁵ 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. 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 her 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 her burden of proof.⁶

Dr. You’s July 17, 1995 report is also insufficient to establish appellant’s claim as the report fails to contain any medical rationale explaining how appellant’s condition in April 1990 was causally related to her accepted employment injury of August 24, 1985. 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 her belief that her condition was caused or aggravated by her employment is sufficient to establish causal relationship.⁷ Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability was causally related to the accepted employment injury in 1985 and, therefore, the Office properly denied her claim for compensation.

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

⁴ *Id.*

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁶ *Donald W. Long*, 41 ECAB 142, 146-47 (1989).

⁷ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decisions of the Office of Workers' Compensation Programs dated April 24, 1996 and September 9, 1995 are hereby affirmed.

Dated, Washington, D.C.
August 24, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member