

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANITA R. PIGMAN and U.S. POSTAL SERVICE,
POST OFFICE, Charleston, W.Va.

*Docket No. 97-708; Submitted on the Record;
Issued December 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant established a recurrence of disability based on her January 21, 1992 employment injury.

On January 22, 1992 appellant, then a 61-year-old postmaster, filed a claim for compensation alleging that on January 21, 1992 she injured her right foot while in the performance of duty.

On March 31, 1992 the Office of Workers' Compensation Programs accepted appellant's claim for right foot contusion.

On July 26, 1993 the Office notified appellant that her treating physician, Dr. Diane E. Shafer, an orthopedic surgeon, had had her license suspended and that the Office would henceforth not authorize further treatment or payments to the doctor.¹

On January 21, 1995 appellant notified the Office that she had retired from the employing establishment and that she wished to have her claim reopened because she was "experiencing problems and need[ed] medical attention." In a letter dated March 14, 1995, appellant notified the Office that Dr. Shafer was "no longer in operation," her new treating physician was Dr. James W. Coleman.

On March 4, 1995 the Office advised appellant that she should file a claim for recurrence of disability if her medical problems related to her accepted right foot injury.

¹ On May 26, 1993 a Kentucky circuit judge sentenced Dr. Shafer to a five-year term in the state's prison for bribery. On June 29, 1993 Kentucky's chief judge upheld the state's suspension of her medical license and, on November 8, 1993, the West Virginia Board of Medicine suspended her license to practice in that state.

On March 24, 1995 appellant filed a claim for a recurrence of disability alleging that the work-related injury continued to cause pain and swelling, that the pain caused her to fall and break her arm and that she needed additional therapy. She listed Dr. Coleman as her treating physician.

By letter dated April 13, 1995, the Office advised appellant that she needed to submit additional information regarding her claimed recurrence of disability including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between her January 21, 1992 work-related injury and her present condition.

In a medical report dated May 9, 1995, Dr. Shafer noted that she treated appellant on that date and stated that her “right foot continues to ache and hurt. It never stopped hurting since January 22, 1992, but the pain recently worsened and she has disabling residuals from the work injury of January 22, 1992.”² She noted that appellant needed to resume hydrofluidtherapy.

On June 12, 1995 the Office, in a decision, denied appellant’s claim on the grounds that the evidence of record failed to demonstrate that the claimed recurrence of disability was causally related to the work-related injury.

On June 13, 1995 Dr. Shafer stated that, in response to the Office’s denial of a medical bill submitted in appellant’s claim, appellant’s claim had been inactive for over 180 days because her practice had been closed until April 24, 1995. Dr. Shafer stated that appellant’s right foot was symptomatic with pain and that appellant “may need surgery and an orthosis.”

On September 27, 1995 appellant filed a request for reconsideration alleging that the reason she did not seek medical care for over 180 days was because Dr. Shafer had temporarily closed her office and that there was no other orthopedic surgeon in the area.

In a letter dated September 21, 1995 and received by the Office on November 17, 1995, Dr. Shafer stated that she resumed medical practice on April 21, 1995.

On December 19, 1995 the Office, in a decision, denied appellant’s request for reconsideration on the grounds that the evidence of record failed to demonstrate appellant’s continuing need for treatment associated with her work-related injury and that appellant had not responded to the Office’s request for information regarding the circumstances surrounding the alleged recurrence of disability. The Office also noted appellant’s inconsistent statements wherein she asserted that she had changed doctors but that she was unable to secure alternative medical care.

The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ As appellant filed her appeal with the Board on December 4, 1996, the only decision properly

² The Board notes that the date of the injury was January 21, 1992.

³ *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

before the Board is the December 19, 1995 Office decision denying appellant's application for review.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her alleged recurrence of disability commencing January 26, 1992 and her accepted employment condition.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 employment factors and supports that conclusion with sound medical reasoning.⁵

In support of her request for reconsideration, appellant submitted a report, in which Dr. Shafer stated that appellant's right foot was symptomatic with pain and that appellant "may need surgery and an orthosis." This report provided no rationale and, therefore, failed to establish a causal relationship between appellant's current medical condition and her work-related injury.⁶

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.⁷ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the work-related injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.

As noted above, it is appellant's burden to establish her claim. In the absence of a rationalized opinion establishing a recurrence of the January 21, 1992 work-related injury, appellant did not meet her burden and the Office properly denied her claim.

⁴ 5 U.S.C. §§ 8101-8193; *Louise G. Malloy*, 45 ECAB 613 (1994).

⁵ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁶ *Arlonia B. Taylor*, 44 ECAB 591 (1993) (medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof).

⁷ *Donald W. Long*, 41 ECAB 142 (1989).

The decision of the Office of Workers' Compensation Programs dated December 19, 1995 is affirmed.⁸

Dated, Washington, D.C.
December 10, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ The Board notes that the record contains additional evidence that was submitted by appellant after the December 19, 1995 Office decision on appeal in this case. The jurisdiction of the Board is limited to evidence that was before the Office at the time of the decision on appeal. The Board cannot review any of the evidence submitted after December 19, 1995 on this appeal; *see* 20 C.F.R. § 501.2.