

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN L. SCOTT and DEPARTMENT OF THE TREASURY,
CUSTOMS, SERVICE TRAINING & EMPLOYEE RELATIONS,
Miami, Fla.

*Docket No. 96-1434; Submitted on the Record;
Issued March 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on August 27, 1993 causally related to her April 27, 1989 employment injury.

The Board has duly considered this case on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on August 27, 1993.

Appellant filed a claim on May 26, 1989 alleging that on April 27, 1989 she sustained an emotional condition in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for acute anxiety reaction on April 27, 1989. Appellant filed a notice of recurrence of disability on May 4, 1994 alleging that on August 27, 1993 she sustained a recurrence of disability as she was reassigned to work for the supervisor who had caused her initial emotional condition. By decision dated March 3, 1995, the Office rescinded its acceptance of appellant's claim for an emotional condition. Appellant, through her attorney, requested reconsideration. By decision dated February 28, 1996, the Office vacated the March 3, 1995 rescission decision and denied appellant's claim for a recurrence of disability finding that appellant alleged an additional employment incident and that therefore the claim should be addressed as a new injury.¹

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrence of disability commencing

¹ Appellant filed a notice of occupational disease on June 15, 1994 based on the exposure to her supervisor. By decision dated November 2, 1994, the Office denied appellant's claim finding that she failed to establish a factor of employment. As the Office issued this decision more than one year prior to appellant's appeal to the Board on April 9, 1996, the Board lacks jurisdiction to review this decision; *see* 20 C.F.R. § 501.3(d)(2).

August 27, 1993 and her April 27, 1989 employment injury.² A recurrence of disability is defined as a spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness.³

In this case, appellant alleged that she sustained a recurrence of disability because she was transferred back to the airport and placed under the supervision of the same supervisor who caused her original injury. The employing establishment confirmed that appellant was assigned to the same supervisor on April 21, 1993. Appellant has alleged a new employment factor which caused her disability commencing August 27, 1993, her exposure to the same supervisor involved in her 1989 injury. As appellant alleged a new employment factor, any condition resulting from this alleged factor of employment would constitute a new injury rather than a recurrence of disability.⁴ For this reason, the Office properly denied appellant's claim.

The decision of the Office of Workers' Compensation Programs dated February 28, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 26, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(1)(a) (January 1995).

⁴ The Office provides in its procedure manual that when the diagnosis remains the same but the disability increases, the claimant in the emotional stress case should file a new claim. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(2)(e) (January 1995).