

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA E. MURRAY and U.S. POSTAL SERVICE,  
POST OFFICE, Newark, NJ

*Docket No. 99-354; Submitted on the Record;  
Issued April 4, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after March 31, 1998 due to her February 13, 1995 employment injury.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after March 31, 1998 due to her February 13, 1995 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.<sup>1</sup> 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.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

On February 13, 1995 appellant, then a 45-year-old maintenance control clerk, sustained an aggravation of her preexisting allergies, rhinitis and asthmatic bronchitis after she was exposed to asbestos at work. Appellant stopped work on February 13, 1995 and returned to full duty on March 20, 1995. Appellant claimed that she sustained a recurrence of disability on March 31, 1998 due to her February 13, 1995 employment injury.<sup>4</sup> By decision dated

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<sup>1</sup> Charles H. Tomaszewski, 39 ECAB 461, 467 (1988); Dominic M. DeScala, 37 ECAB 369, 372 (1986).

<sup>2</sup> Mary S. Brock, 40 ECAB 461, 471-72 (1989); Nicolea Bruso, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> Michael Stockert, 39 ECAB 1186, 1187-88 (1988).

<sup>4</sup> It does not appear that appellant stopped work after her claimed recurrence of disability.

September 24, 1998, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after March 31, 1998 due to her February 13, 1995 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after March 31, 1998 due to her February 13, 1995 employment injury.

In support of her claim, appellant submitted a September 24, 1998 report in which Dr. Jeffrey Nahmias, an attending physician Board-certified in pulmonary medicine, stated:

“[Appellant] developed an acute inhalation reaction of her lower and upper airways on February 13, 1995.... Since then I have been following her on a monthly basis with the last few visits being on February 23, 1998, March 1, 1998, April 23, 1998 and May 13, 1998. Her asthma, which was precipitated by the inhalation injury above, persists with recurrent episodes of wheeze, shortness of breath, cough, tightness of chest and sputum production....

“Her diagnosis remains as bronchial asthma with recurrences as described above. There is a direct causal relationship between the accident at the [employing establishment] and her persistent asthma.... At this time she is disabled from her asthma with restrictions on how much exertion she can perform (which is minimal), ambient conditions (avoid heat, humidity and cold air) and avoidance of dust, chemical fumes and other irritants.”

Dr. Nahmias' report, however, is of limited probative value on the relevant issue of the present case in that it does not contain adequate medical rationale in support of its conclusion on causal relationship.<sup>5</sup> Dr. Nahmias did not explain the medical process through which appellant would have sustained a recurrence of disability more than three years after the initial injury of February 13, 1995. Apart from referring to an earlier report from May 1995, Dr. Nahmias did not describe appellant's employment injury in any detail or otherwise provide a complete and accurate factual and medical history of appellant's condition.<sup>6</sup> He suggested that appellant's bronchial asthma was caused by the February 13, 1995 employment incident, but appellant's claim was accepted for aggravation of a preexisting condition. Dr. Nahmias did not explain why appellant's respiratory condition would not have solely been due to nonwork factors, such as her smoking or overweight status.<sup>7</sup>

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<sup>5</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>6</sup> See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

<sup>7</sup> Appellant submitted other medical evidence regarding her respiratory condition, but it does not contain any opinion on the cause of her condition.

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 aggravated by her employment is sufficient to establish causal relationship.<sup>8</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The decision of the Office of Workers' Compensation Programs dated September 24, 1998 is affirmed.

Dated, Washington, D.C.

April 4, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>8</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).