

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ISMAEL VALENTIN and DEPARTMENT OF VETERANS AFFAIRS,
BROCKTON VETERANS ADMINISTRATION HOSPITAL, Brockton, MA

*Docket No. 98-2027; Submitted on the Record;
Issued January 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on January 6, 1998 causally related to his February 1, 1996 accepted injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or about January 6, 1998 causally related to his February 1, 1996 accepted injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing on or about January 6, 1998 and his February 1, 1996 accepted injury.¹ 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.²

In this case, the Office of Workers' Compensation Programs accepted that appellant sustained a right shoulder dislocation on February 1, 1996. Appellant stopped work on February 1, 1996 and on April 19, 1996, underwent arthroscopic reconstructive surgery, authorized by the Office. Appellant was released to full-time light duty on July 12, 1996 and returned to work on July 31, 1996. On September 5, 1996 appellant underwent a right shoulder closed manipulation for treatment of adhesive capsulitis, which was authorized by the Office. After a short recovery period, on September 12, 1996 appellant was released to full duty, without restrictions, by his treating physician. Appellant continued to work full unrestricted duty until January 6, 1998 when he stopped work and filed a claim for recurrence of disability alleging that

¹ *Mark A. Cacchione*, 46 ECAB 148 (1994).

² *Id.*

he lost the strength in his right hand and felt a strong pain in his right shoulder. By decision dated May 12, 1998, the Office denied appellant's claim finding that he had failed to establish a causal relationship between his accepted injury and the claimed condition or disability.

In support of his claim for recurrence of disability, appellant submitted copies of medical treatment notes from his treating physician, Dr. Robert S. Schull, a Board-certified orthopedic surgeon. The vast majority of these treatment notes date from 1996 and pertain to the diagnosis and treatment of appellant's original accepted injury, and thus are not relevant to appellant's claimed January 6, 1998 recurrence of disability. Appellant did submit two more recent notes, however. In a January 20, 1998 medical report, Dr. Schull noted that he last saw appellant in December 1996, at which time he was doing fine. He stated:

“On examination today [appellant] has a full range of stable shoulder motion, painfree. He has no evidence of any anterior instability. He has almost a normal range of cervical spine motion. He has some spasm on the right side of his neck.

“I would advise him that the injury comes from his cervical spine and he should check with his primary care physician so that he can see someone who does treat neck problems.”

In an accompanying attending physician's report, Form Ca-20a, completed by Dr. Schull on January 21, 1998, the physician diagnosed cervical radiculopathy and indicated that appellant had been referred to his primary care physician. The physician did not indicate whether the diagnosed condition was related to appellant's employment.

These reports are not sufficient to meet appellant's burden of proof as Dr. Schull did not opine that there is a causal relationship between appellant's current condition and his employment-related injury. 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 his condition and his 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 his 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 or her opinion. By letter dated February 3, 1998, the Office informed appellant of the type of medical evidence needed to establish his claim. Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.³

³ *Corlisa L. Sims (Smith)*, 46 ECAB 172 (1994).

The May 12, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
January 12, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member