

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIRT FORREST and DEPARTMENT OF AGRICULTURE,
U.S. FOREST SERVICE, Nevada City, CA

*Docket No. 02-2173; Submitted on the Record;
Issued January 23, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on March 29, 2002 causally related to his September 29, 2000 employment injury.

On September 29, 2000 appellant, then a 49-year-old recreation assistant, filed a notice of traumatic injury, alleging that on that date his office chair malfunctioned and he fell to the floor injuring his back and neck. He submitted an October 16, 2000 treatment note and attending physician's report from Dr. Arthur R. Kallmann diagnosing contusion/strain right back and cervical radiculopathy. The Office of Workers' Compensation Programs accepted appellant's claim for cervical radiculopathy.

On April 16, 2002 appellant filed a notice of recurrence alleging that on March 29, 2002 he suffered on again and off again neck, shoulder and back pain. By letter dated June 10, 2002, the Office notified appellant that additional information was necessary to process his claim. He submitted a July 29, 2002 chiropractic report; however, it is not considered medical evidence under the Federal Employees' Compensation Act and has no probative value in this case. 5 U.S.C. § 8101(2) notes that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹ No x-ray report was submitted demonstrating any spinal subluxation in this case.

By decision dated August 5, 2002, the Office denied appellant's claim for recurrence of disability.²

¹ See also 20 C.F.R. § 10.311(a).

² Appellant submitted evidence after the Office's August 5, 2002 final decision. Under 20 C.F.R. § 501.2(c), the Board's review of a case shall be limited to the evidence in the case record, which was before the Office at the time of its final decision. The Board may not consider this evidence.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability due to the September 29, 2000 accepted 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.³ 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.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

In this case, appellant has not submitted rationalized medical evidence establishing that his condition on or after March 29, 2002 was caused by the September 29, 2000 accepted employment injury. The only medical evidence of record is the October 16, 2000 treatment note and attending physician's report from Dr. Kallmann. This report is not relevant to appellant's recurrence of disability claim as it predates the period of disability claimed as of March 29, 2002. The only other evidence of record is the chiropractic report, which the Board finds is not considered probative medical evidence under the Act.

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 his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁶ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁶ *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The August 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 23, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member