# United States Department of Labor
# Employees' Compensation Appeals Board

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| **M.C., Appellant** | ) | |
| **and** | ) | **Docket No. 08-1131** |
| | ) | **Issued: October 24, 2008** |
| **U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On March 10, 2008 appellant filed a timely appeal of the October 9, 2007 decision of the Office of Workers' Compensation Programs denying her claim for a recurrence of disability. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUE***

The issue is whether appellant sustained a recurrence of disability on November 7, 2006 causally related to her accepted injury of August 23, 2003.

### ***FACTUAL HISTORY***

On August 28, 2003 appellant, then a 45-year-old mail handler, broke out into hives as a result of exposure to wax used on the workroom floor. On April 26, 2004 the Office accepted appellant's claim for a temporary aggravation of idiopathic urticaria. Appropriate medical and compensation benefits were paid. Appellant returned to full-time work duties.

In an attending physician's report dated October 14, 2006, Dr. Michael P. Curriston, a Board-certified emergency room physician, indicated that appellant had edema of the right lower

lip which he diagnosed as an acute allergic reaction "possibly" related to her work. He noted no period of disability. In a duty status report of the same date, Dr. Curriston noted that appellant was able to perform her regular duty with the only limitation that she avoid exposure to industrial strength floor wax and fumes.

On July 9, 2007 appellant filed a claim alleging a recurrence of disability due to the August 20, 2003 injury as of November 7, 2006. In an accompanying statement, she noted that she was off work from November 7 to 21, 2006 as she was having problems with her feet. Appellant noted that she smelled wax on the workroom floor following which she experienced swelling in her lip, hands and feet. In an attending physician's report dated November 16, 2006, a nurse practitioner indicated that appellant's current condition of urticaria was not related to work and that she had been off work for about one month when the symptoms occurred.

In a November 17, 2006 report, Dr. Theodore Slater, a Board-certified emergency room physician, diagnosed urticaria -- idiopathic. He noted that appellant indicated that she had an onset of hives at home and had prior similar reactions when exposed to wax at the employing establishment. The patient history noted that appellant was currently off work and had not worked for approximately a month due to the death of a parent and a foot condition.

In a "Certification by the Employee's Health Care Provider," it was noted that appellant had a permanent allergy to wax on the floor. It noted that appellant reacts to the wax with hives, a rash, swelling of both feet and swelling of both hands, throat swells and she has difficulty breathing. This document is not signed nor dated and it appears that it is missing pages.

In a disability slip dated November 22, 2006, Dorothy Jones, L.C., indicated that appellant was under her care from November 7 to 22, 2006 and was able to return to work on November 24, 2006. Appellant also submitted information sheets from The Cardinal Orthopedic Institute about posterior tibial tendon dysfunction and plantar fasciitis.

By letter dated July 24, 2007, the Office asked appellant to submit further information in support of her claim. In a medical report dated June 11, 2007, Dr. Jonathan B. Feibel, an orthopedic surgeon, indicated that appellant had plantar fasciitis and left posterior tibial tendinitis. She also submitted a copy of the floor waxing schedule at work. Appellant submitted a statement regarding treatment she sought on November 7, 2006 for a heel spur. She noted that her job required her to stand for 8 to 12 hours a day during her light-duty assignment.

By decision dated October 9, 2007, the Office denied appellant's recurrence of disability claim, finding that the medical evidence was not sufficient to establish that her current condition was due to the accepted work injury.

## ***LEGAL PRECEDENT***

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[1] A person who claims a recurrence of disability due to an accepted

[1] *R. S.*, 58 ECAB ___ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5 (x).

employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 reasoning.[2] Where no such rationale is present, medical evidence is of diminished probative value.[3]

## ***ANALYSIS***

The Office accepted appellant's claim for temporary aggravation of idiopathic urticaria. Appellant returned to full-time work duties. She alleged a recurrence of disability on November 7, 2006. However, appellant has not provided sufficient medical evidence to support a recurrence.

The Board notes that appellant submitted an attending physician's report signed by a nurse practitioner, an unsigned Certification of Employee's Health Care Provider form and a disability slip signed by Dorothy Jones, LC. These documents were not signed by a physician and do not constitute competent medical evidence. The Board notes that a nurse or a physician's assistant is not a physician as defined under the Act.[4]

Dr. Curriston saw appellant on October 14, 2006, three weeks prior to the alleged recurrence of November 7, 2006. Therefore, this report is not relevant to the period of claimed disability. Dr. Curriston noted only that appellant's condition was "possibly" related to her work and did not find any period of disability. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[5] Dr. Slater treated appellant in the emergency room on November 17, 2006 and diagnosed idiopathic urticaria. However he obtained a history of an onset of hives at home. The patient history advised that appellant had not worked for a month prior to onset. This opinion is not sufficient to establish that appellant's condition on or after November 7, 2006 was related to her accepted injury. Dr. Feibel noted that appellant had plantar fasciitis and left posterior tibial tendinitis on June 11, 2007. This report is not relevant to any recurrence on November 7, 2006 due to the accepted skin condition. Furthermore, Dr. Feibel does not relate this condition to appellant's accepted injury. Similarly, the information sheets from the Cardinal Orthopedic Institute regarding posterior tibial tendon dysfunction and plantar fasciitis are of no probative value to the relevant issue in this claim.

[2] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008)*; Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[3] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[4] 5 U.S.C. § 8102(2).

[5] *See Kathy A. Kelley*, 55 ECAB 2006 (2004) (where the Board found a physician's statement that appellant's work duties may be aggravating his knee condition to be speculative and of diminished probative value); *Jennifer Beville*, 33 ECAB 1970 (1982) (where the Board found a physician's statement that appellant's complaints could have been related to an employment incident to be speculative and of limited probative value).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[6] Causal relationship must be established by rationalized medical opinion evidence and appellant has failed to submit such evidence. The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Accordingly, the Office properly denied appellant's recurrence claim.

## ***CONCLUSION***

The Board finds that appellant failed to establish a recurrence of disability as of November 7, 2006 causally related to her accepted injury of August 23, 2003.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 9, 2007 is affirmed.

Issued: October 24, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

[6] *See Anna C. Leanza*, 48 ECAB 115 (1996).