

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSETTA FORD and U.S. POSTAL SERVICE,  
VILLAGE STATION POST OFFICE, New York, N.Y.

*Docket No. 97-554; Submitted on the Record;  
Issued August 21, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained recurrences of disability on December 21, 1995 and March 6, 1996 causally related to her accepted employment injuries.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing recurrences of disability.

Appellant filed a claim alleging that on February 10, 1995 a locker fell on the right side of her body injuring her right foot. The Office of Workers' Compensation Programs accepted appellant's claim for contusion of the left foot on February 15, 1996.<sup>1</sup> Appellant filed notices of recurrence of disability on December 21, 1995 and March 6, 1996. Appellant requested wage-loss compensation from January 18 to February 25, 1996. By decision dated July 12, 1996, the Office denied appellant's claims finding that she had not submitted sufficient medical evidence to meet her burden of proof.<sup>2</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her recurrences of disability commencing December 21, 1995 and March 6, 1996 and her February 10, 1995 employment injury.<sup>3</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

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<sup>1</sup> The Board notes that a careful review of the medical evidence and appellant's statements indicates that the Office improperly accepted appellant's injury as occurring to her left rather than her right foot.

<sup>2</sup> Appellant submitted additional notices of recurrence of disability on April 3 and 13, 1995 and June 7, 1996. As the Office did not issue final decisions on these claims, the Board may not address them for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>3</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>4</sup>

In support of her claimed recurrences of disability, appellant has submitted a series of reports from Dr. Malik Akhtar, an orthopedic surgeon. Dr. Akhtar diagnosed ankle and hip sprain on February 22, 1996. On March 25, 1996 he diagnosed right hip bursitis and on April 29, 1996 he diagnosed right side pain. In a narrative report dated May 23, 1996, Dr. Akhtar stated that appellant injured her right side when a locker fell on her right side on February 10, 1995. He found that appellant sustained an injury to her right hip and foot. Dr. Akhtar stated that appellant's original injury in February 1995 was completely asymptomatic. He stated that appellant returned to work in October 1995 which required standing and resulted in a great deal of pain in her right hip, knee and foot. Dr. Akhtar stated that physical examination revealed swelling in appellant's right hip and foot and diagnosed sprain right hip and right foot.

This report is not sufficient to meet appellant's burden of proof as Dr. Akhtar did not provide medical evidence that appellant sustained a recurrence of disability. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.<sup>5</sup> In this case, Dr. Akhtar attributed appellant's current disability to the work factor of prolonged standing. Therefore, Dr. Akhtar's report supports a new occupational disease rather than a recurrence of disability. Furthermore, Dr. Akhtar did not provide the necessary medical rationale to establish a causal relationship between appellant's accepted condition of right foot contusion and her diagnosed conditions of right foot and hip sprains.<sup>6</sup>

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<sup>4</sup> See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1) (January 1995).

<sup>6</sup> The Board notes that, following the Office's July 12, 1996 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated July 12, 1996 is hereby affirmed.

Dated, Washington, D.C.  
August 21, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member