

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETH L. RANGSY and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Milwaukee, Wis.

*Docket No. 97-584; Submitted on the Record;
Issued December 1, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish a recurrence of disability causally related to her accepted October 24, 1995 employment injury.

On October 30, 1995 appellant, then a 30-year-old clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on October 24, 1995 she strained her back when the chair she went to sit in collapsed. The Office of Workers' Compensation Programs accepted appellant's claim for a back strain.

On January 17, 1996, appellant filed a claim for recurrence of disability alleging that her disability on January 7, 1996 was causally related to her October 25, 1995 employment injury.

By letter dated March 7, 1996, the Office advised appellant as to the definition of a recurrence of disability and the evidence necessary to support a claim for recurrence of disability.

By decision dated May 3, 1996, the Office denied appellant's claim for a recurrence of disability. In the attached memorandum, the Office noted that appellant failed to provide any factual or medical information in support of her claim as requested by the Office.

In an undated attending physician's form, Dr. David Jaroszewski, a Board-certified family practitioner, diagnosed sciatica with disc injury aggravated by employment activity without noting what employment activity. Dr. Jaroszewski noted that appellant had a history of back problems which occurred in March 1994 and October 1995.

In a report dated April 26, 1996, Dr. Dennis J. Maiman, an attending Board-certified neurological surgeon, wrote:

“[Appellant] has come under my care for a lumbar radiculopathy and instability. As you know, she has a work related lumbar degenerative syndrome with disc herniation and facet arthropathy. She has failed nonoperative treatment including physical therapy and steroids following a second fall in January.

“Surgery has been recommended to this individual for decrease of her leg and back pain. This is clearly related to her work-related injury.”

By decision dated August 8, 1996, the Office denied appellant’s request for reconsideration. The Office found the reports of Drs. Maiman and Jaroszewski insufficient to establish a recurrence of disability as neither physician provided any medical reasoning linking appellant’s current condition with her accepted employment injury of October 24, 1995.

The Board has duly reviewed the record and finds that appellant has not met her burden of proof in this case.¹

An employee 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant 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 In support of her notice of recurrence of disability, appellant submitted medical reports diagnosing sciatica with disc injury and lumbar radiculopathy and instability. The medical evidence of record, however, does not include any rationalized medical report which supports, with sound medical reasoning why appellant’s off and on dullness of pain or any period of disability after January 7, 1996 were causally related to the October 27, 1995 employment injury.

Appellant’s treating physician, Dr. Maiman, a Board-certified neurological surgeon, opined in a letter dated April 26, 1996 that appellant had a second fall in January. He also opined that appellant’s disability was work related without providing any supporting medical rationale. In an undated attending physician’s report (Form CA-20), Dr. Jaroszewski diagnosed sciatic with disc injury and checked “yes” that it was aggravated by employment activity. He indicated that appellant had a history of back problems due to injuries in March 1994 and October 1995. Dr. Jaroszewski failed to state what employment activity aggravated appellant’s condition in his report.

¹ Appellant submitted new evidence to the Board. The Board cannot consider new evidence on appeal; however, appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b); *see* 20 C.F.R. § 501.2(c).

² *William S. Right*, 45 ECAB 498 (1994).

The Board has held that 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. The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.³ Dr. Jaroszewski did not explain how appellant's sciatica with disc injury was caused by employment factors or related to her accepted employment injury of October 24, 1995. Dr. Maiman's opinion is similarly insufficient to meet appellant's burden. Dr. Maiman opined that appellant's leg and back pain are "clearly related to her work-related injury" without explaining why appellant's leg and back pain were related to the October 25, 1995 employment injury. Without medical rationale supporting causal relationship, the opinions of Drs. Maiman and Jaroszewski are merely surmise and conjecture.

The medical evidence of record therefore does not support, with rationalized medical evidence, a finding that appellant's current condition was causally related to the accepted employment injury. The Board also concurs with the Office's finding that there is no medical evidence of record that appellant had any recurrence of disability due to the medical conditions accepted as caused by the October 24, 1995 employment injury, after January 7, 1996.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated August 6 and May 3, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 1, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

³ *Thomas D. Petrylak*, 39 ECAB 276 (1987).