

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT ALEXANDER, JR. and U.S. POSTAL SERVICE,  
OAK FOREST POST OFFICE, Houston, Tex.

*Docket No. 96-1719; Submitted on the Record;  
Issued July 6, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on March 2, 1995 causally related to his October 17, 1994 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on March 2, 1995 causally related to his October 17, 1994 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.<sup>1</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 causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

On October 17, 1994 appellant, then a 45-year-old letter carrier, sustained a lumbar strain in the performance of duty when his vehicle was struck by another vehicle. He was released to return to regular duty on October 26, 1994 and lost no time from work.

On March 28, 1995 appellant filed a claim for a recurrence of disability on March 2, 1995 which he attributed to his October 17, 1994 employment injury.

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<sup>1</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>2</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

By decision dated June 22, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an employment-related recurrence of disability on March 2, 1995.

By letter dated July 21, 1995, appellant requested an oral hearing before an Office hearing representative.

On November 29, 1995 a hearing was held before an Office hearing representative at which time appellant testified. Included in his testimony was the statement that he experienced no significant problems with his back prior to his October 1994 motor vehicle accident but that following the accident he experienced continuous back problems.

By decision dated March 20, 1996, the Office hearing representative affirmed the Office's June 22, 1995 employment injury.

Appellant submitted medical evidence to the Office in support of his claim.

In a report dated January 18, 1995, Dr. Marsha S. Hughart, a Board-certified internist, related a history of appellant's condition, noting that appellant had experienced back problems for several years. She provided findings on examination and diagnosed "recurrent low back strain." Dr. Hughart related that appellant's back problems from the October 1994 motor vehicle accident had resolved after treatment. However, the history given by appellant to Dr. Hughart differs from his testimony at the hearing when he testified that he had no back problems prior to the accident and that the back problems had not resolved. Additionally, Dr. Hughart did not opine that appellant's back problems at the time of his 1995 visit to her were causally related to the October 1994 employment injury. Therefore, this report does not support appellant's claim of a work-related recurrence of disability on March 2, 1995.

In notes dated March 2, 1995, Dr. Maria Gutierrez, a physician whose specialty is not indicated in the record, provided a history of appellant's condition and findings on examination and diagnosed mechanical back pain. She related that appellant had been complaining of low back pain and bilateral leg pain for eight to nine months. However, appellant did not mention the October 1994 motor vehicle accident in the history given to Dr. Gutierrez and Dr. Gutierrez did not provide any rationalized medical opinion linking appellant's back problems in March 1995 to the 1994 employment injury. Therefore, this report does not discharge appellant's burden of proof.

In notes dated March 9, 1995, Dr. Richard Lock, a Board-certified internist, related appellant's complaint of chronic lower back pain with radiation to the lower extremities and his statement that this condition began approximately one month previously when he was involved in a motor vehicle accident.<sup>4</sup> As Dr. Lock did not attribute appellant's back condition to the October 1994 employment injury, this report does not support appellant's claim of a work-related recurrence of disability.

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<sup>4</sup> Appellant denied at the oral hearing in this case that he had been involved in a motor vehicle accident in February 1995.

In notes dated March 15, 1995, Dr. Mark Laurents, a chiropractor, related that appellant complained of bilateral lumbosacral pain and pain in the lower extremities and indicated that the condition had been present for the last two months and had an “insidious onset.” He provided findings on examination and noted that x-rays showed severe degenerative disc changes at L5-S1 and L4-5.

Under section 8101(2) of the Federal Employees’ Compensation Act, chiropractors are only considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.<sup>5</sup> However, Dr. Laurents did not diagnosis subluxations in his report. Therefore, his report has no probative value on the issue of whether appellant sustained an employment-related recurrence of disability.

In a form report dated April 18, 1995, Dr. William McGarey, a Board-certified orthopedic surgeon, diagnosed spondylolisthesis at L5-S1 with L5 radiculopathy and checked the block marked “yes” indicating his opinion that the condition was causally related to his employment injury. The Board has held that an opinion on causal relationship which consists only of checking “yes” to a form report question on whether the claimant’s disability was related to the history given is of little probative value.<sup>6</sup> Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.<sup>7</sup>

In a report dated April 24, 1995, Dr. Michael G. Kaldis, a Board-certified orthopedic surgeon, related that appellant sustained an employment-related motor vehicle accident injury on October 17, 1994. He related that appellant was complaining of lower back pain and right leg pain. Dr. Kaldis noted that tests revealed degenerative narrowing of the L5-S1 disc space with spondylolisthesis. However, Dr. Kaldis did not provide a rationalized medical opinion explaining how appellant’s back problems were causally related to the 1994 employment injury and therefore this report does not support appellant’s claim of a recurrence of disability.

In a report dated September 22, 1995, Dr. Edward W. Akeyson, a neurosurgeon, related that appellant had undergone surgery to correct the affects of lumbar spondylolysis with spondylolisthesis which had caused significant back and leg pain. He noted that this was usually a congenital or degenerative process but that appellant apparently had no symptoms until he was involved in the employment-related motor vehicle accident. However, this report is not based upon a complete and accurate factual background as Dr. Akeyson did not indicate that he knew the date of the employment injury and did not seem to be aware of the history given in Dr. Hughart’s report that appellant had been experiencing back problems for several years which conflicts with the history given by appellant to Dr. Akeyson that he had no back symptoms until the employment injury. Furthermore, Dr. Akeyson did not provide sufficient medical rationale explaining how appellant’s back problems in 1995 were causally related to the 1994 employment injury. Due to these deficiencies, this report is not sufficient to establish that appellant sustained

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<sup>5</sup> 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

<sup>6</sup> *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

<sup>7</sup> *Id.*

a recurrence of disability in March 1995 causally related to the October 1994 employment injury.

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.<sup>8</sup> Appellant failed to submit sufficient rationalized medical evidence establishing that his claimed recurrence of disability was causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

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<sup>8</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decisions of the Office of Workers' Compensation Programs dated March 20, 1996 and June 22, 1995 are affirmed.

Dated, Washington, D.C.  
July 6, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member