

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CRUZ CEDENO and U.S. POSTAL SERVICE,  
COOPER STATION, New York, N.Y.

*Docket No. 96-836; Submitted on the Record;  
Issued March 4, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability on May 11, 1994 causally related to her January 3, 1992 employment injury.

On January 3, 1992 appellant, then a 41-year-old letter carrier, sustained a lumbosacral strain in the performance of duty. Appellant was discharged from treatment and released to return to full duty as of April 14, 1992.

In a claim form dated May 13, 1994, appellant alleged that she sustained a recurrence of total disability on May 11, 1994 which she attributed to her January 3, 1992 employment injury.

In a written statement, appellant indicated that on May 11, 1994, she was taking a shower and was scrubbing her back with a brush when she felt a pulling sensation and a feeling as if she was being stabbed on the right side. She stated that she could not move and had to be assisted out of the shower. Appellant stated that she did not go to work that day and did not return to work until May 13, 1994.

In a disability certificate dated May 11, 1994, Dr. Joseph I. Kramer, a physician whose specialty is not indicated in the record, indicated that appellant had a low back syndrome and a muscle spasm on May 11, 1994 but could return to work on May 13, 1994 with no limitations.

In a disability certificate dated, May 13, 1994, Dr. Jeffrey M. Spivak, an orthopedic surgeon, diagnosed an acute backache with degenerative disc disease at L4-5 and indicated that appellant was totally disabled but might be able to return to work in four weeks.

In a note dated June 30, 1994, Dr. Spivak indicated that appellant was able to return to work with no bending, no lifting, no reaching and no climbing stairs.

By decision dated August 11, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish causal

relationship between her claimed recurrence of disability and her January 3, 1992 employment injury.

By letter dated August 16, 1994, appellant requested an oral hearing before an Office hearing representative and submitted additional evidence.

In a report dated September 14, 1994, Dr. Spivak provided a history of appellant's condition and findings on examination and diagnosed degenerative disc disease at L4-5 with lumbar strain. He stated that he first saw appellant on May 17, 1994 for a complaint of low back pain on the right side and related that she reported an identical episode of pain occurring two years previously at work. Dr. Spivak stated:

“Although [appellant] had a diagnosis of degenerative disc disease at L4-5, her pain temporally is related to a work-related injury beginning two years ago. The current exacerbation of her backache is truly part of this ongoing problem and directly related to that work-related injury.”

On March 1, 1995 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated October 6, 1995, the Office hearing representative affirmed the Office's August 10, 1994 decision on the grounds that the evidence of record failed to establish that appellant's claimed disability commencing on May 11, 1994 was causally related to her January 3, 1992 employment injury.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on May 11, 1994 causally related to her January 3, 1992 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>

In this case, appellant sustained a lumbosacral strain on January 3, 1992 in the performance of duty. She subsequently alleged that she sustained a recurrence of disability on

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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 Brusco*, 33 ECAB 1138, 1140 (1982).

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

May 11, 1994 which she attributed to her 1992 employment injury and she submitted medical evidence in support of her claim.

In a disability certificate dated May 11, 1994, Dr. Kramer indicated that appellant had a low back syndrome and a muscle spasm on May 11, 1994 but could return to work on May 13, 1994 with no limitations. However, Dr. Kramer did not indicate the cause of appellant's disability on May 11, 1994 and therefore this disability certificate is not sufficient to support appellant's claim of an employment-related recurrence of disability on May 11, 1994.

In a disability certificate dated, May 13, 1994, Dr. Spivak, an orthopedic surgeon, diagnosed an acute backache with degenerative disc disease at L4-5 and indicated that appellant was totally disabled but might be able to return to work in four weeks. As Dr. Spivak did not opine as to the cause of appellant's disability, this disability certificate is not sufficient to discharge appellant's burden of proof.

In a report dated September 14, 1994, Dr. Spivak provided a history of appellant's condition and findings on examination and diagnosed degenerative disc disease at L4-5 with lumbar strain. He stated that he first saw appellant on May 17, 1994 for a complaint of low back pain on the right side and related that she reported an identical episode of pain occurring two years previously at work. Dr. Spivak stated:

“Although [appellant] had a diagnosis of degenerative disc disease at L4-5, her pain temporally is related to a work-related injury beginning two years ago. The current exacerbation of her backache is truly part of this ongoing problem and directly related to that work-related injury.”

However, Dr. Spivak provided insufficient medical rationale to explain how appellant's problems in May 1994 were caused or aggravated by her employment-related back strain which occurred two and one-half years earlier in January 1992. He did not sufficiently explain why he attributed appellant's back problems to the 1992 employment injury rather than to her diagnosed degenerative disc disease. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of disability on May 11, 1994 causally related to her January 3, 1992 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 her belief that his condition was aggravated by her employment is sufficient to establish causal relationship.<sup>4</sup> Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The October 6, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

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<sup>4</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

Dated, Washington, D.C.  
March 4, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Michael E. Groom  
Alternate Member