

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENID N. BAILEY and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS AFFAIRS MEDICAL CENTER, Bronx, N.Y.

*Docket No. 96-1601; Submitted on the Record;
Issued May 6, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a recurrence of disability on August 18, 1994 causally related to her August 31, 1993 employment injury.

On August 31, 1993 appellant, then a 59-year-old food service worker, filed a claim for a traumatic injury to her right elbow, alleging that she experienced pain while opening cans for salad. The Office of Workers' Compensation Programs accepted appellant's claim for right medial epicondylitis. Appellant stopped work on August 31, 1993 and returned to light-duty employment as a cashier on October 26, 1993.

On August 23, 1994 appellant filed a notice of recurrence of disability alleging that on August 18, 1994 she sustained a recurrence of disability causally related to her August 31, 1993 employment injury. She attributed her recurrence of disability to her employment injury because she had nothing wrong with her hand before opening containers the prior year while making salad. On the reverse side of the claim form, appellant's supervisor stated that following appellant's original employment injury she worked limited duty as a cashier rather than preparing the salad bar.

By decision dated December 5, 1994, the Office denied appellant's claim on the grounds that the evidence did not establish that she had a condition or disability causally related to her August 31, 1993 employment injury. By decision dated January 30, 1996, the Office denied modification of the prior decision.

The Board has duly reviewed the case record and finds that appellant has not established that she sustained a recurrence of disability on August 18, 1994 causally related to her August 31, 1993 employment injury.

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence

establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

In the present case, appellant sustained medial epicondylitis of the right elbow due to an injury on August 31, 1993, following which she returned to work in a limited-duty capacity. There is no evidence in the record establishing any change in the nature and extent of appellant's light-duty position as a cause of her claimed disability after August 18, 1994.²

Appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability on August 18, 1994 causally related to her August 31, 1993 employment injury.

In a duty status report (Form CA-17) dated August 19, 1994, Dr. William Buschmann, a Board-certified orthopedic surgeon and appellant's attending physician, diagnosed medial epicondylitis and ulnar neuritis and checked "yes" that the condition was due to the history of injury given, adding "if this is a repetitive activity." The history of injury provided on the supervisor's portion of the form indicates that appellant strained her right arm using a manual can opener. Dr. Buschmann found that appellant could work with listed restrictions.³ The Board has held that the opinion of a physician on causal relation which consists only of checking "yes" to the form's question regarding whether appellant's condition was related to the history of injury, without any explanation or rationale, has little probative value and is insufficient to establish causal relation.⁴

In a duty status report dated October 13, 1994, Dr. Buschmann diagnosed medial epicondylitis and mild carpal tunnel syndrome and checked "yes" that the injury was due to the history of injury given. Dr. Buschmann found that appellant "should avoid repetitive stress of [the right] arm" and was partially disabled from August 30, 1993 to the present. As discussed above, a physician's checkmark indicating causation, without further explanation, is insufficient to meet appellant's burden of proof.⁵

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² Appellant alleges that upon her return to work following her original employment injury her supervisor did not assign her light-duty employment but rather continued to assign her to making salad and cleaning condiment stands in addition to working the cash register. The employing establishment contradicts appellant's statement, relating that she worked only on the cash register. Appellant worked in her light-duty assignment for 10 months prior to filing her claim for a recurrence of disability, and has not contended that her light-duty assignment changed but instead that it was never satisfactory.

³ In an accompanying treatment note, Dr. Buschmann stated that appellant should avoid repetitive activities with her left arm.

⁴ *Robert J. Krstyen*, 44 ECAB 227 (1992).

⁵ *Id.*

In a form report dated December 8, 1994, Dr. Buschmann stated that appellant related that she injured her elbow at work. He diagnosed carpal tunnel syndrome and chronic medial epicondylitis with ulnar neuritis. In response to the question of whether he believed that the condition was caused or aggravated by employment, Dr. Buschmann noted “[Appellant] states it happened at work.” He found that appellant could perform restricted duties. As Dr. Buschmann did not specifically relate appellant’s diagnosed condition to her employment, other than to note appellant’s own belief that the problem occurred at work, his opinion is insufficient to meet her burden of proof.

In a treatment note dated January 19, 1995, Dr. Buschmann related that appellant had chronic medial epicondylitis and should work limited duty, avoiding repetitive activity. In a report dated May 3, 1995, Dr. Buschmann opined that appellant’s elbow condition was “aggravated by repetitive use of the upper extremities.” In these reports, however, Dr. Buschmann did not attribute appellant’s condition to factors of her federal employment or to her August 31, 1993 employment injury.

In a report dated May 13, 1994, Dr. John Krassen, an osteopath, noted that appellant should avoid repetitive activity that causes the right arm to pronate, but did not discuss the cause of her limitations.

In a report dated July 14, 1995, Dr. Martin A. Posner, a Board-certified orthopedic surgeon, diagnosed neuropathy of the right ulnar nerve of the elbow and recommended surgery. The record indicates that appellant underwent a neurolysis and submuscular transposition of the ulnar nerve of her right elbow on August 31, 1995. Dr. Posner did not relate appellant’s condition or surgery to her August 31, 1993 employment injury, and thus his opinion is of little probative value.

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 her condition was aggravated by her employment is sufficient to establish causal relationship.⁶ 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.

⁶ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decision of the Office of Worker's Compensation Programs dated January 30, 1996 is hereby affirmed.

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

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member