

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELORIS J. McBEE and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, Tenn.

*Docket No. 96-1934; Submitted on the Record;
Issued May 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability after December 10, 1993 due to her March 3, 1993 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability after December 10, 1993 due to her March 3, 1993 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.¹ 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.² Where no such rationale is present, medical evidence is of diminished probative value.³

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a left ankle sprain and metatarsalgia due to a fall at work on March 3, 1993. Appellant stopped work for a brief period after the March 3, 1993 injury, returned to work in late March 1993 in a limited-duty position and later returned to full duty. In November 1994 appellant filed a claim alleging that she sustained a recurrence of disability after December 10, 1993 due to her March 3, 1993 employment injury.⁴ By decision dated April 19, 1995, the

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

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ Appellant was terminated from the employing establishment on November 14, 1993 for reasons unrelated to her

Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence in support of her claim and, by decision dated and finalized April 14, 1996, an Office hearing representative affirmed the Office's April 19, 1995 decision.

The Board notes that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after December 10, 1993 due to her March 3, 1993 employment injury. Appellant submitted a February 7, 1995 report in which Dr. Thomas W. Brown, an attending Board-certified orthopedic surgeon, indicated that he began to treat her in March 1993 and that she had a left ankle sprain and metatarsalgia due to her March 3, 1993 employment injury. He noted that he had not seen appellant since December 1993 and assumed that she was doing well.⁵ Because Dr. Brown did not provide an opinion regarding the cause of appellant's left ankle condition after December 10, 1993, his report is of limited probative value on the relevant issue of the present case.⁶ Appellant also submitted a February 8, 1996 report in which Dr. Augustus H. Frye, Jr., an attending Board-certified orthopedic surgeon, indicated that appellant had no left ankle problem but noted that she had acute tendinitis and possible early bursitis of the calcaneal bursa of her left foot and possible synovial hypertrophy behind her left ankle. Dr. Frye did not provide any opinion that appellant's left lower extremity problems were related to her March 3, 1993 employment injury and, therefore, his report is of limited probative value on the relevant issue of the present case.

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.⁷ 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.

employment injury.

⁵ The record indicates that appellant last visited Dr. Brown on December 10, 1993.

⁶ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁷ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decision of the Office of Workers' Compensation Programs dated and finalized April 14, 1996 is affirmed.

Dated, Washington, D.C.
May 8, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member