

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JODY L. WILLIAMSON and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, Del.

*Docket No. 97-989; Submitted on the Record;
Issued November 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability, due to his January 2, 1996 employment injury, beginning September 19, 1996.

The Board has duly reviewed the case record in the present appeals and finds that the Office of Workers' Compensation Programs properly determined that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability, due to his January 2, 1996 employment injury, beginning September 19, 1996.

On January 18, 1996 appellant, a letter carrier, filed a claim for an occupational disease alleging that he sustained pain in his neck and shoulders. He missed work from January 2 to January 6, 1996. The Office accepted appellant's claim for tendinitis of the left shoulder and aggravation of cervical strain.

On October 31, 1996 appellant filed a claim for a traumatic injury, Form CA-7, alleging that he became disabled on January 18, 1996. He also submitted a disability note dated October 30, 1996 and an attending physician's report, Form CA-20, dated October 24, 1996 from his treating physician, Dr. Harry M. Freedman, an orthopedic surgeon, stating that he underwent an automated percutaneous discectomy at L4-5, that his 1993 condition was aggravated by his employment on June 25, 1996 and that he was disabled as of October 24, 1996. By letter dated November 12, 1996, the employing establishment controverted the claim. By letter dated November 20, 1996, the Office requested additional information from appellant and advised him of the type of medical evidence needed to establish his claim.

By decision dated December 31, 1996, the Office denied appellant's claim, stating that the evidence of record failed to demonstrate that appellant's recurrence of disability was related to the January 2, 1996 employment injury or that the claim should be expanded to include a lumbar condition.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment 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 employment factors and supports that conclusion with sound medical reasoning.² An award of compensation may not be made on the basis of surmise, conjecture or speculation or on an appellant's unsupported belief of causal relation.³

In the present case, appellant has not submitted the requisite medical evidence establishing that his recurrence of disability beginning September 19, 1996 is causally related to the January 2, 1996 employment injury. To establish his recurrence of disability, appellant submitted medical evidence which included reports from Dr. Freedman dated June 25 and December 5, 1996. While these reports document that appellant received treatment for low back pain and underwent a percutaneous diskectomy at L4-5, they do not address whether appellant's back condition is causally related to factors of his federal employment and, therefore, are not probative. Dr. Freedman's October 24, 1996 attending physician's report, in which Dr. Freedman checked the "yes" box indicating that appellant's herniated disc was caused or aggravated by his employment and stated that the 1993 condition was aggravated on June 25, 1996 is also not probative because it contains no medical rationale addressing causation.⁴ Although the Office provided appellant with the opportunity to provide evidence to establish his claim, appellant did not submit evidence responsive to that request. Consequently, appellant has not established that he sustained a recurrence of disability beginning September 19, 1996.

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

² *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

³ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁴ *See Ruth S. Johnson*, 46 ECAB 237, 242-43 (1994).

The decision of the Office of Workers' Compensation Programs dated December 31, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member