

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE G. JAURE and U.S. POSTAL SERVICE,
POST OFFICE, Denver, Colo.

*Docket No. 97-521; Submitted on the Record;
Issued October 20, 1998*

DECISION and ORDER

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

The issues are: (1) whether appellant has established that he sustained a recurrence of disability on or after April 3, 1996 causally related to his March 7, 1978 employment injury; and (2) whether appellant has established that he sustained a recurrence of disability on or after March 3, 1996 causally related to his December 12, 1981 employment injury.

On March 7, 1978 appellant filed a claim for a traumatic injury occurring on that date when he slipped on wet grass and injured his ankle. The Office of Workers' Compensation Programs assigned the claim Office File Number A12-24347 and accepted the claim for a fracture of the left distal fibula and post-traumatic arthritis of the left ankle.¹

On April 3, 1996 appellant filed a notice of recurrence of disability due to his ankle injury. Appellant requested authorization to see his physician for an examination and noted that his physician had indicated that he would have recurrences of his ankle problem in the future due to his arthritis.

By decision dated June 10, 1996, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a recurrence of disability on or after April 3, 1996 causally related to his March 7, 1978 employment injury. By decision dated September 10, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that he sustained a recurrence of disability on or after April 3, 1996 causally related to his March 7, 1978 employment injury.

¹ On November 23, 1979 the Office issued appellant a schedule award for a 10 percent permanent loss of use of his left leg. The Office increased appellant's award for a permanent impairment of the left leg by 5 percent in a decision dated February 7, 1986, and by an additional 9 percent in a decision dated November 10, 1987.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

In the present case, appellant sustained a fracture of the left fibula and post-traumatic arthritis of the left ankle due to an injury on March 7, 1978, following which he resumed his regular employment. On April 3, 1996 appellant filed a claim for a recurrence of disability causally related to the March 7, 1978 employment injury.

In support of his claim, appellant submitted an x-ray of his ankle obtained on February 2, 1996 which revealed diffuse osteopenia and mild degenerative changes. The x-ray report is not sufficient to meet appellant's burden of proof as it does not relate any current condition or disability to the accepted employment injury.

Appellant further submitted reports dated 1979 and 1981 from Dr. Leonard E. Berk, a Board-certified orthopedic surgeon. However, the reports from Dr. Berk are of no probative value regarding the relevant issue in the present case, which is whether appellant had any disability on or after April 3, 1996 due to his employment-related ankle condition. Appellant has not submitted any rationalized medical evidence discussing his current condition and its relation, if any, to his March 7, 1978 employment injury. Thus, appellant has failed to establish his claim.

The Board further finds that appellant has not established that he had a recurrence of disability on or after March 3, 1996 causally related to his December 12, 1981 employment injury

On December 16, 1981 appellant filed a traumatic injury claim alleging that he sustained an injury to his lower back on December 12, 1981 in the performance of duty. The Office accepted appellant's claim for low back strain.

On April 3, 1996 appellant filed a notice of recurrence of disability causally related to his December 12, 1981 employment injury. Appellant noted that following his original injury, he returned to his regular employment. On the reverse side of the claim form, appellant's supervisor indicated that the date of the recurrence of disability was March 3, 1996.

By letter dated April 29, 1996, the Office informed appellant of the evidence required to establish his claim and provided him 30 days within which to submit additional evidence. Appellant did not respond within the time allotted.

² *Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ *Id.*

By decision dated May 28, 1996, the Office denied appellant's claim on the grounds that the evidence failed to establish that he had any condition or disability causally related to his December 12, 1981 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.⁴ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁵

In the present case, appellant did not submit any factual or medical evidence in support of his claim. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.⁶ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ *Id.*

⁶ *Donald W. Long*, 41 ECAB 142 (1989).

The decisions of the Office of Workers' Compensation Programs dated September 10, June 10 and May 28, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 20, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member