

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELFIN Q. HIZO and DEPARTMENT OF THE NAVY,
SHIP REPAIR FACILITY, San Francisco, Calif.

*Docket No. 97-744; Submitted on the Record;
Issued October 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability, due to his August 4, 1980 employment injury, beginning January 25, 1987.

The Board has duly reviewed the case record in the present appeal 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 August 4, 1980 employment injury, beginning January 25, 1987.

On August 5, 1980 appellant, a helper and sheet metal worker, filed an occupational claim (Forms CA-1 & 2) alleging he had a fractured wrist bone in the right arm. By decision dated January 8, 1982, the Office awarded appellant a schedule award for 25 percent loss of use of the right arm. On September 28, 1987 the Office awarded appellant a schedule award of an additional 10 percent for the right upper extremity.

By letter dated May 15, 1993, appellant informed the Office that he was unable to work due to his work-related disability. By letter dated December 15, 1993, the Office informed appellant that it was not clear from his letter whether his total disability was a continuation, a recurrence or a new injury, and if it was a recurrence, "bridging" information was required to explain his condition from January 25, 1987 through the present. By decision dated October 19, 1994, the Office denied the claim stating that the evidence failed to demonstrate that the claimed recurrence of disability on or after January 25, 1987 was causally related to the August 4, 1980 employment injury.¹ In an undated letter received by the Office on November 22, 1994, appellant requested reconsideration of the Office's decision and submitted a note from Dr. Justino S. Agpoon stating that he had treated appellant at the hospital on November 7, 1994 and that appellant had arthritis of the right forearm secondary to the old fracture and injury. By

¹ The record does not indicate whether appellant ever filed the, Form CA-2a, for a recurrence of disability.

decision dated March 8, 1995, the Office denied appellant's reconsideration request. By letter dated February 26, 1996, appellant requested reconsideration of the Office's decision. Appellant submitted a medical report dated January 23, 1996 from Dr. Casto P. Magsaysay, a surgeon specializing in chest diseases. In his report, Dr. Magsaysay considered appellant's history of injury, performed a physical examination and stated that appellant felt pain and tenderness of the fractured bone, had a poor grip in his right arm and also suffered from osteoarthritis of the lumbosacral vertebrae which was incurred with his employment from the employing establishment. He stated that appellant's disability was job related and should be compensated.

By decision dated April 4, 1996, the Office denied appellant's reconsideration request.

By letter dated June 20, 1996 (appellant mistakenly typed June 20, 1995), appellant requested reconsideration of the Office's decision. Appellant did not submit any additional evidence.

By decision dated September 5, 1996, the Office denied appellant's reconsideration request.

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.² 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 reasoning.³ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.⁴

The medical evidence appellant submitted to support his claim consisting of Dr. Agpoon's note received by the Office on November 12, 1994 and Dr. Magsaysay's report dated January 23, 1996 is not sufficiently rationalized to establish that appellant's current disability is causally related to the August 4, 1980 employment injury. Dr. Agpoon's note is not probative because it does not address causation or disability. In his January 23, 1996 report, Dr. Magsaysay found that appellant had pain and tenderness over his fractured bone, poor grip strength in his right arm and suffered from osteoarthritis of the lumbosacral vertebrae resulting from his employment with the employing establishment. He stated that appellant's disability was job related. Osteoarthritis of the lumbosacral vertebrae was not an accepted condition and therefore appellant cannot establish that the osteoarthritis was a recurrence of the August 4, 1980 employment injury. Further, Dr. Magsaysay did not explain how appellant's right arm condition of pain, tenderness and poor grip strength was causally related to the August 4, 1980 employment injury. Although the Office advised appellant of the type of medical evidence

² *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

³ *See Nicolea Brusco*, 33 ECAB 1138 (1982).

⁴ *See William S. Wright*, 45 ECAB 498, 503 (1994).

needed to establish his claim for a recurrence of disability, appellant did not submit medical evidence responsive to the request. Consequently, appellant has not established that he sustained a recurrence of disability beginning January 25, 1987.

The decisions of the Office of Workers' Compensation Programs dated September 5 and April 4, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 13, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member