

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES COLLINS and U.S. POSTAL SERVICE,
POST OFFICE, Salem, Mass.

*Docket No. 95-1612; Submitted on the Record;
Issued September 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability due to his March 23, 1987 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability due to his March 23, 1987 employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain and a central disc rupture at L4-5 on March 23, 1987.¹ On January 28, 1993 appellant filed a claim for a recurrence of disability due to his March 23, 1987 employment injury. In a decision dated April 14, 1993, the Office denied appellant's claim. Appellant requested reconsideration and submitted additional medical evidence in support of his claim. By decision dated December 5, 1994, the Office denied modification of the April 14, 1993 decision.

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

¹ After his injury, appellant returned to light duty for four hours a day on June 3, 1987. He returned to full-time light-duty on July 13, 1987, and resumed his regular duties in December 1987.

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

conclusion with sound medical rationale.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

Appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability due to his March 23, 1987 employment injury. He submitted a February 18, 1993 letter from his treating physician, Dr. Jeffrey A. Polansky, a Board-certified orthopedic surgeon, who stated that appellant was under his care for treatment of a back injury which “was originally sustained in a work-related accident in 1987,” and added “I believe his present condition is a reaggravation of his original injury.” Appellant also submitted treatment notes from Dr. Polansky dating from December 2, 1992 through February 26, 1993, in which the physician documented his treatment of appellant for elbow pain when, on February 8, 1993, appellant reported a return of his severe back pain symptoms. In follow-up treatment notes dated February 17 and February 26, 1993, Dr. Polansky noted that, despite the fact that the computerized tomography scan taken in 1987 after appellant’s original injury revealed a herniated disc at L4-5, current magnetic resonance imaging (MRI) showed no evidence of herniation. The MRI report itself specifically reported no evidence of disc herniation, central canal stenosis, neural foraminal narrowing, facet joint disease or abnormality of the conus, but instead revealed only “minimal or mild degenerative disc bulging.” In a letter dated March 22, 1993, Dr. Polansky summarized his treatment of appellant, noting that after appellant’s 1987 injury he returned to work and did quite well until 1993 when he returned with severe back and leg pain. He again noted that the MRI did not show a disc herniation or nerve root impingement. Dr. Polansky concluded that appellant’s current condition, in his opinion was “certainly a recurrence related to his original injury in 1987 and is in keeping with a known course of this type of disease.” Dr. Polansky’s reports, however, are of limited probative value in that they do not contain sufficient medical rationale in support of his conclusion on causal relationship.⁵ Appellant’s claim was accepted for a low back strain and a herniated disc rupture at L4-5. Dr. Polansky did not adequately explain the medical mechanics of how appellant’s March 23, 1987 injury would cause or contribute to a degenerative process or otherwise result in a recurring back condition or disability commencing in 1993. Nor did he explain why appellant’s condition would not be due to the degenerative disease process or to appellant’s duties as a part-time bar tender. Such medical rationale is especially necessary, in the present case, in that appellant appeared to have recovered from his 1987 employment-related injury, and had been working full time at his regular duties until 1993. The most recent MRI showed no evidence of any disc herniation.

In support of his request for reconsideration, appellant submitted additional evidence in the form of a treatment note dated April 14, 1993 from Dr. Polansky, copies of physical therapy records, and a letter from Dr. Raymond A. Smith, a Board-certified anesthesiologist and treating physician. In his treatment note, Dr. Polansky simply stated that appellant had responded very

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

well to epidural injections and would be cleared to return to his full duties in a week's time. In a letter dated March 10, 1994, Dr. Smith stated that he had treated appellant on March 3 and March 26, 1993 to evaluate his low back pain caused by radiculopathy on the right side involving L3 and L4 roots, and that he had performed epidural injections to which appellant had responded well. The newly submitted reports of Drs. Polansky and Smith are of limited probative value on causal relationship, however, in that neither Dr. Polansky nor Dr. Smith provided an opinion that appellant's back condition was due to employment factors.⁶ The records submitted by appellant's physical therapist have no probative value as a physical therapist is not a physician under the Act and therefore is not competent to render a medical opinion.⁷

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 his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁸ Appellant failed to submit rationalized medical evidence establishing that his claimed recurring condition or disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The decision of the Office of Workers' Compensation Programs dated December 5, 1994 is affirmed.

Dated, Washington, D.C.
September 25, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

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 5 U.S.C. § 8101(2); *Jerre R. Rinehart*, 45 ECAB 518 (1994).

⁸ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).