

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMMA L. PLATE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Charleston, S.C.

*Docket No. 97-1551; Submitted on the Record;
Issued February 9, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she sustained a recurrence of disability, due to her January 20, 1995 employment injury, beginning August 1996.

The Board has duly reviewed the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant did not meet her burden of proof in establishing that she sustained a recurrence of disability, due to her January 20, 1995 employment injury, beginning August 1996.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which she seeks compensation was causally related to her 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

The Office accepted appellant's claim for a right shoulder strain. On October 1, 1996 appellant filed a notice of recurrence of disability, alleging that in August 1996 she sustained a recurrence of the January 20, 1995 employment injury. She stated that she had not regained her original strength in her right shoulder. The record contained medical notes from Dr. Robert H.

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

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

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

Bowles, a Board-certified orthopedic surgeon, dated from June 21, 1995 through January 16, 1996, documenting that appellant had ongoing pain in her right shoulder. On January 16, 1996 Dr. Bowles released appellant to her usual vocational activities and believed that she had recovered with no functional impairment.

By letter dated November 5, 1996, the Office informed appellant that additional information was necessary to establish her claim.

By letter dated November 18, 1996, appellant stated that she did not miss any work or perform light duty because her work did not involve heavy lifting or strenuous activity. Appellant submitted a medical note dated October 2, 1996 from Dr. Bowles who stated that appellant had an exacerbation of right shoulder pain, particularly when she lifted or reached to shoulder level. He diagnosed chronic bicipital tendinitis of the right shoulder.

By decision dated January 9, 1997, the Office denied the claim, stating that the medical evidence was insufficient to establish that appellant's need for continuing medical treatment beginning August 1996 was causally related to appellant's shoulder strain.

By letter dated February 14, 1997, appellant requested reconsideration of the Office's decision and submitted medical evidence including a medical note from Dr. Bowles dated October 30, 1996 and a medical report from him dated January 27, 1997. In his October 30, 1996 medical note, Dr. Bowles described appellant's ongoing shoulder symptoms and stated that there was some confusion as to whether there was a residual injury in the form of a slap lesion versus a possible rotator cuff injury versus possible chronic bicipital tendinitis. He recommended a magnetic resonance imaging (MRI) scan to resolve the confusion.

In his January 27, 1997 report, Dr. Bowles considered appellant's history of injury and summarized his findings since he began treating appellant for her right shoulder problem on February 3, 1995. He stated that by January 1996 she appeared to have had essentially full resolution of her symptoms and had fairly good return to normal vocational activities. Dr. Bowles stated that appellant did well until October 1996 when she gradually developed an exacerbation of right shoulder dysfunction, manifested by pain with actively lifting or reaching to or above shoulder level with the right upper extremity. He diagnosed that at the time he believed she had bicipital tendinitis associated with her January 20, 1995 employment injury. Dr. Bowles stated that in October 1996 he recommended the MRI scan to determine the exact nature of appellant's shoulder condition but it was not performed. He stated that she continued to have pain in her right shoulder, and that it was "not clear exactly what the etiology of [her] lesion [was], but it appear[ed] by cause and effect to be related to the January 20, 1995 employment injury." Dr. Bowles reiterated the need for the MRI scan.

By decision dated March 21, 1997, the Office denied appellant's reconsideration request.

The medical evidence of record does not establish that appellant sustained a recurrence of disability commencing August 1996 and that her ongoing need for treatment of her shoulder is causally related to her January 20, 1995 employment injury. Dr. Bowles progress notes dated October 2 and October 30, 1996 do not address causation and therefore are not probative. Further, his opinion in his January 27, 1997 report that he was uncertain of the etiology of

appellant's lesion but by cause and effect believed it was related to the January 20, 1995 employment injury is vague and speculative and is not sufficiently rationalized to establish that appellant's alleged recurrence of disability is causally related to her employment.⁴

Although the Office provided appellant with the opportunity to submit the requisite evidence, appellant did not respond. She therefore has not met her burden to establish her claim.

The decisions of the Office of Workers' Compensation Programs dated March 21 and January 9, 1997 are hereby affirmed.

Dated, Washington, D.C.
February 9, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *William S. Wright*, 45 ECAB 498, 503-04 (1994); *Robert H. St. Onge*, 44 ECAB 1169, 1174 (1992).