

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT BROWN, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland Heights, Ohio

*Docket No. 97-939; Submitted on the Record;
Issued January 15, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether is whether appellant established that he sustained a recurrence of disability on July 19, 1995 causally related to his January 14, 1992 injury.

The Board has duly reviewed the case record and concludes that appellant has not met his burden of proof to establish that he sustained a recurrence of disability.

The Office accepted that on January 14, 1992 appellant, a letter carrier, sustained multiple contusions, left side, and thoracic neck sprain while in the performance of duty. On July 25, 1995 appellant filed a notice of recurrence of disability alleging that he sustained a recurrence of disability on July 19, 1995 causally related to the January 14, 1992 employment injury. By letter dated August 9, 1995, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claimed recurrence of disability including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between his work-related injury and his present condition. On September 27, 1995 the Office denied appellant's claim, finding appellant did not submit sufficient evidence to establish a recurrence of disability.

Appellant filed a request for reconsideration on October 10, 1995. The Office in a decision dated January 9, 1996, denied modification of its prior decision.

In an undated letter received by the Office on May 13, 1996 appellant filed a request for reconsideration. On May 21, 1996 the Office denied modification of its prior decisions. Appellant again requested reconsideration in a letter received by the Office on July 3, 1996. The Office denied modification of its prior decisions on September 16, 1996. In an undated letter received by the Office on December 2, 1996, appellant requested reconsideration of his recurrence of disability claim. The Office, in a nonmerit decision dated December 6, 1996, denied appellant's request for reconsideration.

An employee 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 he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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.¹

In support of his notice of recurrence of disability, appellant submitted a number of medical reports which indicate that appellant was treated for chronic back pain. In an August 25, 1995 medical report, Dr. James P. Bressi, appellant's treating osteopath, stated that appellant had an exacerbation of pain sometime after January 1995, "probably from exerting himself at work." However, this report does not contain rationale on causal relation and thus is entitled to little probative value and is insufficient to establish causal relationship.² In an October 31, 1995 medical report, Dr. Bressi stated that appellant initially injured his "cervical and thoracic spine as well as the low back" as a result of the January 14, 1992 fall. The Board notes that the Office did not accept a low back condition and thus this report is entitled to little probative value. The Board has long held that medical opinions which are based on an incomplete or inaccurate factual background are entitled to little probative value in establishing a claim for compensation.³ In a medical report dated April 24, 1996, Dr. Bressi stated that appellant sustained cervicalgia and lumbar radiculopathy which "stem from a work-related injury which occurred on January 14, 1992." Dr. Bressi noted that because appellant did not have these symptoms prior to the injury, that "it is quite appropriate that this (injury was) the inciting event and this continues to be the event responsible for the symptomology." However, although the doctor stated that chronic pain "can, at times, be exacerbated for no apparent reason," he failed to explain what mechanism caused appellant's pain and how this mechanism was related to the work-related injury. This report is speculative in that it contains no rationalized medical opinion establishing a causal relationship between appellant's condition and his accepted injury and thus is of limited probative value.⁴ In a June 14, 1996 medical report, Dr. Bressi stated that the fact that appellant's lower back pain was not accepted initially by the Office was not medically conclusive that the back pain did not begin with that injury. The doctor noted that chronic pain "may evolve ... in a delayed fashion" and can result from "compensatory problems if somebody injures an extremity as such in the hip, or neck, and their posturing becomes different." He then stated that these factors "make this plausible that this pain in the low back did evolve, in fact, from the (work-related) injury." Dr. Bressi noted that absent a prior injury, it is "very clear in my eyes that (the work-related injury) was the causative event." This report is also speculative in that it contains an opinion by Dr. Bressi without a supportive rationalized medical opinion associating appellant's pain with an objective medical finding caused by the January 14, 1992 work-related injury and thus it is of limited probative value.⁵

¹ *Lourdes Davila*, 45 ECAB 139 (1993).

² *Arlonia B. Taylor*, 44 ECAB 591(1993).

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

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

⁵ *Id.*

In an October 24, 1996 medical report, Dr. Bressi stated that appellant's initial treating physician's diagnoses of cervicalgia and lumbar radiculopathy as result of a January 1992 accident remain in effect. The doctor noted that an individual can have severe pain as a result of trauma even if x-rays, an magnetic resonance imaging scan or other tests are normal. The Board has long held that a physician's opinion regarding causal relationship may not be solely premised on findings that appellant's symptoms appeared after an employment incident.⁶ Dr. Bressi has not explained why medically appellant's injuries in January 1992 would have caused disability after July 17, 1995, given that appellant returned to regular work by March 1992.⁷ As such, Dr. Bressi's reports are not well rationalized, are speculative and are of limited probative value.

As appellant has not submitted any rationalized medical evidence which substantiate that his medical condition after July 19, 1995 is causally related to the accepted injuries, appellant has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs dated December 6, September 16 and May 21, 1996 are affirmed.⁸

Dated, Washington, D.C.
January 15, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Rebel L. Cantrell*, 44 ECAB 660 (1993).

⁷ In a November 16, 1992 narrative, appellant stated that he returned to regular work on March 10, 1992.

⁸ The Board notes that appellant submitted additional evidence subsequent to the Office's December 6, 1996 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).