

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CATHERINE E. MESSER and U.S. POSTAL SERVICE,  
POST OFFICE, Spokane, Wash.

*Docket No. 97-2449; Submitted on the Record;  
Issued June 2, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing a recurrence of disability causally related to her October 5, 1987 employment injury.

This is the second appeal before the Board in this case. By decision issued August 16, 1991, the Board found that the Office of Workers' Compensation Programs did not abuse its discretion in denying appellant's request for an authorization to change physicians.<sup>1</sup> The Board also found that the Office properly denied appellant's request for a hearing on the Office's denial of authorization to change physicians. The facts of the case as set forth in the prior decision are incorporated by reference.

Appellant filed a recurrence of disability claim on July 17, 1996. By decision dated May 1, 1997, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence was insufficient to establish that the claimed condition was causally related to her accepted employment injury.

The Board has carefully reviewed the entire case record and finds that appellant has not established a recurrence of disability causally related the to October 5, 1987 employment injury.

Where appellant claims recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>2</sup> This burden included the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded

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<sup>1</sup> Docket No. 91-670. Appellant sustained injury on October 5, 1987 accepted for a lumbar strain.

<sup>2</sup> *Dennis J. Lasanen*, 43 ECAB 549 (1992); *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>3</sup>

In the present case, appellant has not submitted any rationalized medical evidence which relates her claimed recurrence of disability to her original accepted employment injury of lumbar strain. In support of her recurrence claim, appellant submitted duty status reports dated October 20, November 20 and December 21, 1989, January 19, 1990 and October 21, 1993, reports dated November 28, 1989 and January 17, 1990 from Mark Allen,<sup>4</sup> a September 23, 1989 report from Dr. John H. Hurley,<sup>5</sup> a July 20, 1992 report from Dr. Alexander R. MacKay,<sup>6</sup> a July 19, 1996 x-ray interpretation, treatment notes from October 20, 1989 to 1996 and a December 14, 1996 report from Dr. Ted Y. Toribara.<sup>7</sup> The only evidence relevant to appellant's recurrence claim is the December 14, 1996 report from Dr. Toribara as the remaining evidence she submitted is dated prior to her claim for a recurrence of disability on July 19, 1996. In the December 14, 1996 report, Dr. Toribara recounts his treatment of appellant from October 20, 1989 to the present. Dr. Toribara diagnosed low back pain with right radicular pain based upon his physical examination of appellant on July 19, 1996 and the July 19, 1996 x-ray interpretation. Dr. Toribara offered no opinion as to the cause of appellant's current disability. Thus, Dr. Toribara's report is insufficient to discharge appellant's burden of proof as he has not in any way related appellant's claimed condition of low back pain with radicular pain to the accepted employment injury nor has he provided a reasoned opinion relating the diagnosed condition to the accepted employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>8</sup> Causal relationship must be established by rationalized medical opinion evidence. As appellant has not submitted the necessary rationalized medical evidence to substantiate that her low back pain with right radicular pain was causally related to the accepted October 5, 1987 employment injury, appellant has not met her burden of proof on this issue.

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<sup>3</sup> *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>4</sup> A physical therapist.

<sup>5</sup> A Board-certified orthopedic surgeon.

<sup>6</sup> A Board-certified neurological surgeon.

<sup>7</sup> An attending Board-certified family practitioner.

<sup>8</sup> See *Victor J. Woodhams*, 41 ECAB 345 (1989).

The decision of the Office of Workers' Compensation Programs dated May 1, 1997 is affirmed.

Dated, Washington, D.C.  
June 2, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member