

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE C. KNEBEL and DEPARTMENT OF THE AIR FORCE,  
MILITARY AIRLIFT COMMAND, Charleston, S.C.

*Docket No. 97-1620; Submitted on the Record;  
Issued March 9, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on or after June 22, 1995 causally related to his June 2, 1993 employment injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability on or after June 22, 1995 causally related to his June 2, 1993 employment injury.

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 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.<sup>1</sup>

In the instant case, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain due to his June 2, 1993 employment injury. On July 26, 1993 appellant's treating physician released him to return to regular duty without restrictions. On September 19, 1995 appellant alleged that he sustained a recurrence of disability causally related to his June 2, 1993 employment injury noting that "slowly in the last [six] to [seven] months the stiffness worsens." On October 17, 1995 appellant filed a claim for compensation. On the reverse side of the form, the employing establishment stated that appellant's injury occurred on July 26, 1995 but that he did not stop work at that time. By letter dated November 15, 1995, the Office advised appellant that the evidence submitted was insufficient to establish that he sustained a recurrence of disability. The Office advised appellant to submit a well-reasoned

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<sup>1</sup> *Lourdes Davila*, 45 ECAB 139 (1993).

medical report from his treating physician addressing whether he experienced a recurrence of disability due to his employment injury, a statement describing the medical treatment he received from the date of the recurrence, medical reports and treatment notes from any other physician who treated appellant for the alleged condition, and an explanation of why he believed that his present condition was related to his original injury in support of his claim for recurrence of disability. On February 26, 1996 appellant filed a claim for wage-loss covering intermittent periods from June 22, 1995 to January 26, 1996. By letter dated March 20, 1996, the Office advised appellant that he needed to submit additional information regarding his claim for recurrence of disability, including a detailed narrative medical report explaining how his right -- sided sciatica was causally related to his employment injury. By decision dated April 24, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that the evidence did not establish a causal relationship between his accepted June 2, 1993 injury and the claimed condition or disability. On January 23, 1997 appellant requested reconsideration. On March 13, 1997 the Office denied appellant's request for modification of its April 24, 1996 decision.

In support of his claim for a recurrence of disability, appellant submitted a September 26, 1995 treatment note from Dr. James K. Aymond, appellant's treating physician and an orthopedic surgeon, who stated that he had last seen appellant on July 26, 1993, but that he noted a recent history of lower back pain as well as dysesthesias in the right posterior thigh. He noted upon examination that appellant had a recurrent right-sided sciatica. Appellant was placed on light duty and referred to a physical therapy program. As Dr. Aymond's report contains no explanation or rationale which would support a finding of causation between appellant's condition and his employment injury, it is insufficient to establish that appellant sustained a recurrence of disability.<sup>2</sup> In an attending physician's report dated October 11, 1995, Dr. Aymond opined that appellant's current condition was caused or aggravated by his employment by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.<sup>3</sup> In a treatment note dated January 26, 1996, Dr. Aymond stated that appellant's recent magnetic resonance imaging (MRI) scan revealed a large right paracentral disc herniation at the L5-S1 level. However, this report does not contain a rationalized medical opinion establishing a causal relationship between appellant's employment injury and his current condition and thereof is insufficient to meet appellant's burden of proof.<sup>4</sup> In a June 18, 1996 treatment note, Dr. Aymond who stated that he had treated appellant since his employment injury and noted persistent symptoms as well as right posterior thigh radiating pain. He noted further that appellant had not been seen until September 1995 when appellant complained of persistent ongoing lower back pain as well as right posterior thigh dysesthesias and pain. Dr. Aymond stated that an MRI revealed a large paracentral disc herniation at the L5-S1 level. He opined that, absent an intervening injury, appellant's current

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<sup>2</sup> See *Arlonia B. Taylor*, 44 ECAB 591 (1993).

<sup>3</sup> *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).

<sup>4</sup> *Supra* note 2.

condition was, “within a reasonable degree of medical certainty,” related to his employment injury. However, this opinion is speculative and inconclusive in nature, and thus of diminished probative value.<sup>5</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, neither can such an opinion be speculative or equivocal. The opinion should be one of reasonable medical certainty.<sup>6</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.<sup>7</sup> To establish causal relationship, appellant must submit a physician’s report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant’s diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The decisions of the Office of Workers’ Compensation Programs dated March 13, 1997 and April 26, 1996 are hereby affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Connie Johns*, 44 ECAB 560 (1993).

<sup>6</sup> *Norman E. Underwood*, 43 ECAB 719 (1992).

<sup>7</sup> *Donald W. Long*, 41 ECAB 142 (1989).