

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENRIQUE NIEVES and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 97-2603; Submitted on the Record;
Issued November 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established any disability after June 9, 1993 that was causally related to his accepted June 7, 1993 injury.

This case has previously been on appeal before the Board. By decision and order dated December 16, 1996, the Board reversed the Office of Workers' Compensation Programs' decision dated August 29, 1994 and found that appellant has established that he sustained a scalp contusion and subluxations at the C3 to C5 levels. The case was remanded for a determination of the period of disability, if any, entitlement to continuation of pay and payment of appropriate medical expenses. The facts and circumstances of the case are completely set out in that decision and are hereby incorporated by reference.¹

In a decision dated February 13, 1997, the Office accepted appellant's claim for contusion of the face, scalp and neck. After further development of the evidence, by decision dated May 15, 1997, the Office accepted appellant's claim for continuation of pay through June 9, 1993 and denied his claim for continuation of pay and compensation after that date on the grounds that the medical evidence did not establish that there was a causal relationship between the accepted injury and the claimed disability.

The Board has duly reviewed the entire case record on appeal and finds appellant has not established any disability after June 9, 1993 that was causally related to the June 7, 1993 injury.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.² The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal

¹ Docket No. 95-424 (issued December 16, 1996).

² *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

relationship between the condition and the employment.³ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated his condition is sufficient to establish causal relationship.⁴ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁵ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁶

In the present case, the Office denied appellant's continuation of pay after June 9, 1993 based on the March 24 and April 22, 1997 reports of Dr. Richard E. Stern, a Board-certified orthopedic surgeon and Office referral physician. In his March 24, 1997 report, Dr. Stern noted that appellant was hit by a fluorescent plastic light cover on the head and indicated that there was no history of injury to any other area. He then noted reports and diagnoses from Dr. Allen Romaner, a chiropractor and appellant's treating physician, relevant to appellant's cervical spine. Dr. Stern noted that Dr. Romaner had interpreted x-rays he administered to appellant but that these x-rays had not been read by a radiologist. Dr. Stern stated, "The diagnosis appears to be one of a contusion to the head. I do not have any other specific diagnoses referable to the injuries sustained." He concluded that appellant had completely recovered. In a report dated April 22, 1997, Dr. Stern indicated that based on his evaluation of the medical record and reports, appellant was able to perform the light-duty position described on June 10, 1993.

The only other evidence relevant to appellant's physical condition in June 1993 is contained in the reports by Dr. Romaner and Dr. I. Chow, a physician for the employing establishment. In a report dated June 28, 1993, Dr. Romaner diagnosed vertebral subluxations and noted his treatment of this condition. He indicated that appellant had improved and was able to return to work on June 29, 1993. However, as Dr. Romaner failed to provide any explanation for his conclusion that appellant could not return to work until June 29, 1993, his report is not rationalized and is not sufficient to establish a conflict in the medical opinion evidence with the report by Dr. Stern. Similarly, the form reports by Dr. Romaner in which he estimated that appellant could return to work on June 29, 1993, without further explanation, and his undated report releasing appellant to work on June 29, 1993 are not reasoned medical reports and therefore are not sufficient to establish that appellant was temporarily totally disabled until that date. Appellant also submitted form reports by Dr. Chow who diagnosed injuries to the head and neck and found appellant fit for limited duty until June 14, 1993 with restrictions on lifting, pushing and pulling. Dr. Chow later indicated that appellant would not be fit for duty until June 28, 1993 based on his chiropractor's report. As neither report contains any rationale for the

³ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁴ *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

⁶ *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

conclusions concerning appellant's inability to perform his regular work duties, these reports cannot establish that appellant sustained temporary total disability after June 9, 1993. Consequently, the Office properly determined that the well-reasoned and rationalized report by Dr. Stern constituted the weight of the medical evidence, and appellant has not established any disability after June 9, 1993 that was causally related to his accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated May 15, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member