

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN M. ROSS and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MA

*Docket No. 98-1476; Submitted on the Record;
Issued November 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability beginning December 6, 1997 that was causally related to his accepted February 3, 1995 employment injury of a herniated disc.

On June 4, 1987 appellant, then a 24-year-old part-time flexible clerk, filed a notice of traumatic injury claim, alleging that he sustained an injury to his low back while lifting sacks of mail. The Office of Workers' Compensation Programs accepted appellant's claim for lumbosacral sprain. Appellant returned to work June 15, 1987 on limited duty. On January 27, 1993 appellant filed another notice of traumatic injury and claim, alleging that he injured the right side of his back. The Office accepted appellant's claim for lumbar strain. On February 5, 1995 appellant filed a notice of traumatic injury and claim alleging that on February 3, 1995 he injured his lower back while in the performance of duty. He did not stop work. The Office accepted appellant's claim for a herniated disc at the L4 to L5 level and authorized surgery. On August 6, 1996 appellant claimed a recurrence of disability that was related to his February 3, 1995 injury.¹ On August 22, 1996 he underwent a lumbar discectomy. On February 11, 1997 appellant filed a second claim for recurrence of disability beginning December 6, 1997, alleging a recurrence of his February 3, 1995 employment injury. In a decision dated March 16, 1998, the Office denied appellant's claim on the grounds that the evidence did not establish that his claimed recurrence was causally related to the February 3, 1995 employment injury.

¹ Appellant stopped work on August 2, 1996. On November 19, 1996 the Office reopened appellant's claim pursuant to section 8128 of the Federal Employees' Compensation Act on the grounds that the evidence indicated he may have injured himself playing softball. In a memorandum to the file dated May 29, 1997, the Office determined that this case was not appropriate for rescission of the earlier decision as appellant's physician related his condition to his earlier employment injury.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that he sustained a recurrence of disability beginning December 6, 1997 that was causally related to his February 3, 1995 employment injury.

Where appellant claims recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³

In the present case, appellant did not submit any evidence which related his claimed recurrence of disability to his February 3, 1995 employment injury. In a letter dated January 27, 1998, the Office requested additional information from appellant, including a factual statement of his history of injury since the date of the original injury and a comprehensive medical report which addressed the history of injury, objective findings, diagnosis of the condition and how this condition related to his accepted February 3, 1995 employment injury. Although appellant submitted office notes and disability statements by Dr. Augusto G. Asinas, his treating physician and a neurosurgeon, these notes and disability statements do not relate the claimed recurrence to appellant's February 3, 1995 employment injury. The only note that alludes to a recurrence is dated December 9, 1997 wherein Dr. Asinas diagnosed recurrent radiculopathy. However, as he did not indicate that this condition was caused or related to appellant's accepted lumbar strain or herniated disc, this note is insufficient to establish causal relationship. Appellant also submitted form reports in which Dr. Asinas indicated that the diagnosed condition was causally related to the February 3, 1995 employment injury without further explanation. This is analogous to a checked box on a form report. Such reports are not sufficient to discharge appellant's burden of proof as these reports are not rationalized. Dr. Asinas did not provide any explanation or rationale for his opinion that the diagnosed medical condition was causally related to the February 3, 1995 employment injury. Therefore, these reports are insufficient to meet appellant's burden of proof.⁴ Appellant has not established that he sustained a recurrence of disability on December 6, 1997 that was causally related to his accepted February 3, 1995 employment injury.

² *John E. Blount*, 30 ECAB 1374 (1979).

³ *Frances B. Evans*, 32 ECAB 60 (1980).

⁴ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

The decision of the Office of Workers' Compensation Programs dated March 16, 1998 is hereby affirmed.

Dated, Washington, D.C.
November 19, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member