

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHYLLIS J. ROBERTSON and TENNESSEE VALLEY AUTHORITY,  
SHAWNEE POWER PLANT, West Paducah, KY

*Docket No. 97-2777; Submitted on the Record;  
Issued October 26, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on February 20, 1997 causally related to her February 29, 1996 employment injury.

On February 29, 1996 appellant, then a 42-year-old steamfitter, sustained a left shoulder strain in the performance of duty.

On February 20, 1997 appellant filed a notice of recurrence of disability alleging that her February 29, 1996 employment injury had never resolved.

In a report dated April 28, 1997, Dr. Robert P. Meriwether, a Board-certified neurosurgeon, related that appellant had been seen for complaints of neck and arm pain. He stated, "Inasmuch as [appellant] does have a documented cervical disc herniation, which clearly has been attributed to her work injury, I feel that the periodic medications are in fact related to her work injury and anticipate that these would be needed from time to time."

By decision dated June 6, 1997, the Office of Workers' Compensation Programs denied appellant's claim for a recurrence of disability on the grounds that the evidence of record failed to establish that her claimed recurrence of disability was causally related to her February 29, 1996 employment injury.<sup>1</sup>

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of disability on February 20, 1997 causally related to her February 29, 1996 employment injury.

An individual 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

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<sup>1</sup> Appellant submitted new evidence with her appeal to the Board. As this evidence was not before the Office at the time it issued its June 6, 1997 decision, the Board has no jurisdiction to consider this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing 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 rationale.<sup>3</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>4</sup>

In this case, appellant sustained a left shoulder strain in the performance of duty on February 29, 1996. Subsequently she alleged that she sustained a recurrence of disability on February 20, 1997 which she attributed to her 1996 employment injury.

In a report dated April 28, 1997, Dr. Meriwether, a Board-certified neurosurgeon, related that appellant had been seen for complaints of neck and arm pain. He stated, "Inasmuch as [appellant] does have a documented cervical disc herniation, which clearly has been attributed to her work injury, I feel that the periodic medications are in fact related to her work injury and anticipate that these would be needed from time to time." However, the accepted condition in this case, is a left shoulder strain, not a herniated disc. Dr. Meriwether did not provide any medical rationale explaining how the disc herniation he diagnosed in 1997 was causally related to the February 29, 1996 left shoulder strain. Furthermore, he did not indicate that appellant was disabled. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of disability on February 20, 1997 causally related to her 1996 employment injury.

The June 6, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
October 26, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>3</sup> *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).