

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL P. NOBLE and U.S. POSTAL SERVICE,
DISTRIBUTION CENTER, Seattle, WA

*Docket No. 97-865; Submitted on the Record;
Issued September 7, 1999*

DECISION and ORDER

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

The issue is whether appellant established that his recurrence of disability was causally related to the accepted work injury.

The Board has carefully reviewed the record evidence and finds that appellant has failed to meet his burden of proof in establishing that his disability for work in March 1996 was caused by the accepted bilateral epicondylitis.¹

Under the Federal Employees Compensation Act,² 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.³ As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition,⁴ and supports that conclusion with sound medical reasoning.⁵

Section 10.121(b) provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a medical report covering the dates of examination and treatment, the history given by the employee, the clinical

¹ Epicondylitis is inflammation of the epicondyle or of the tissues adjoining the condyle (the articular prominence of a bone). *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

² 5 U.S.C. §§ 8101-8193 (1974).

³ *Dennis J. Lasanen*, 43 ECAB 549-50 (1992).

⁴ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁵ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

findings, the results of x-ray and laboratory tests, the diagnosis, the course of treatment, the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis.⁶

Thus, the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.⁷ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.⁸ Further, neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship.⁹

In this case, appellant's notice of occupational disease, filed on September 18, 1995, was accepted for bilateral epicondylitis, based on the reports of Dr. William B. Kirshner, Board-certified in family practice. Appellant returned to full duty on October 28, 1995. On May 16, 1996 he filed a notice of recurrence of disability, claiming that he experienced pain in both elbows from the pulling and heavy lifting required in his job as a mailhandler. Appellant sought wage-loss compensation from April 24 through May 14, 1996.

On June 24, 1996 the Office of Workers' Compensation Programs informed appellant that he needed to submit a narrative medical report from this physician explaining the relationship between his current condition and work activities prior to October 30, 1995. By decision dated August 5, 1996, the Office denied the claim on the grounds that the July 17, 1996 report from Dr. Kirshner was insufficient to establish that appellant sustained a recurrence of his epicondylitis.

Appellant requested reconsideration, stating that within six months of returning to full duty, his epicondylitis had flared up and he had pain in both elbows while working. By decision dated November 26, 1996, the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant review of its prior decision.

The Board finds that the medical evidence is insufficient to establish that appellant's recurrence of disability is causally related to the accepted work injury. The Office informed appellant on May 6, 1996 that in filing a claim for a recurrence of disability, he needed to submit a narrative report from his "PHYSICIAN" that included the information listed on the instruction sheet attached to the recurrence form.

The Office stated that it was "very important" that the physician explained why appellant's current condition was related solely to past work activities when the condition

⁶ 20 C.F.R. § 10.121(b).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁸ *Leslie S. Pope*, 37 ECAB 798, 802 (1986); cf. *Richard McBride*, 37 ECAB 748, 753 (1986).

⁹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

apparently had resolved by October 30, 1995. The Office added that the physician should document objective and significant clinical findings that would support a worsening of appellant's condition. On June 24, 1996 the Office repeated this information.

A July 17, 1996 report from Dr. Kirshner stated that appellant was medically advised to take time off from work because his symptoms flared and failed to respond to conservative treatment. He added that appellant had physical therapy, his symptoms completely resolved and he returned to work on June 3, 1996. This report offers no opinion on the relationship of appellant's 1996 flareup to the accepted condition occurring in September 1995. Nor does Dr. Kirshner explain how work factors, such as heavy lifting, caused the flareup or even when it occurred. Therefore, Dr. Kirshner's report has little probative value.¹⁰

Also submitted were a letter and a form report dated April 30, 1996, from Ms. Valerie Thibert, Dr. Kirshner's assistant, as well as progress notes dated March 22, April 9 and 23 and May 14, 1996 signed by Ms. Thibert. These documents have no probative value because Ms. Thibert is not a physician as defined by the Act.¹¹ Finally, appellant's belief that his elbow pain was caused by work factors is insufficient, absent a rationalized medical opinion, to establish a causal relationship between his claimed recurrence of disability and the 1995 injury.¹²

Inasmuch as the Office properly informed appellant of the information needed to substantiate his entitlement to disability compensation and as appellant has failed to submit the necessary evidence establishing that he sustained a recurrence of disability causally related to the accepted work injury, the Board finds that the Office properly denied his claim.¹³

¹⁰ See *Donald W. Long*, 41 ECAB 142, 146 (1989) (finding that a physician's opinion that appellant's epicondylitis was related to his work had little probative value without any medical rationale).

¹¹ Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. *Jane A. White*, 34 ECAB 515, 518 (1983).

¹² See *Velta H. Mikelsons*, 39 ECAB 1278, 1292 (1988) (finding that appellant's belief that her carpal tunnel syndrome was caused by her employment is insufficient to establish the requisite causal relationship).

¹³ See *Jose Hernandez*, 47 ECAB 288, 294 (1996) (finding that despite a request from the Office, appellant failed to submit a rationalized medical opinion showing that the claimed recurrence was related to his employment injury).

The November 26 and August 5, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.¹⁴

Dated, Washington, D.C.
September 7, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁴ Appellant had requested oral argument before the Board, which was scheduled for July 8, 1999, but later canceled his request.