

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME L. NOLLAN and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, TX

*Docket No. 98-300; Submitted on the Record;
Issued September 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after November 22, 1996 due to his employment injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after November 22, 1996 due to his 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 probative evidence that the disability, for which compensation is claimed is causally related to the accepted injury.¹ 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.² Where no such rationale is present, medical evidence is of diminished probative value.³

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained severe allergic rhinoconjunctivitis aggravation due to exposure to dust and chemicals while working as a custodian at the employing establishment. Appellant stopped work on April 13, 1996 and returned to his regular work approximately four months later. He stopped work on November 22, 1996 and claimed that he sustained a recurrence of disability due to his employment injury. By decision dated July 28, 1997, the Office denied appellant's claim

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

on the grounds that he did not submit sufficient medical evidence to establish that he sustained employment-related disability on or after November 22, 1996.

Appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after November 22, 1996 due to his employment injury. Appellant submitted a February 11, 1997 report, in which Dr. Joseph D. Diaz, an attending Board-certified allergist, diagnosed severe allergic rhinoconjunctivitis and reactive airways disease. Although Dr. Diaz indicated that appellant should avoid dust and dust mites, he did not provide any clear opinion that appellant was disabled on or after November 22, 1996 due to the accepted employment injury.⁴ Appellant did not submit any rationalized medical evidence showing that he had employment-related disability on or after November 22, 1996.⁵ Moreover, the record contains a November 22, 1996 note, in which Dr. Jacqueline Carter, an attending Board-certified allergist, indicated that appellant could return to work on November 23, 1996.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁷ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

⁴ See *Charles H. Tomaszewski*, *supra* note 1 (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁵ Appellant submitted additional evidence after the Office's July 28, 1997 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

⁶ Dr. Carter indicated that appellant had asthma, a nonwork-related condition, and noted that he should stop work if his "peak flows are less than 200."

⁷ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decision of the Office of Workers' Compensation Programs dated July 28, 1997 is affirmed.

Dated, Washington, D.C.
September 10, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member