

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON BYRD and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 00-298; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after January 27, 1999 due to her June 12, 1998 employment injury.

On June 12, 1998 appellant, then a 44-year-old mail processor sustained lumbar strain and right shoulder strain while performing her duties at work. Appellant stopped work on June 13, 1998 and returned to full duty on August 10, 1998.

Appellant alleged that she sustained a recurrence of disability on January 27, 1999 due to her June 12, 1998 employment injury. She alleged that her repetitive duties of sweeping, pulling and lifting at a high rate of speed caused her to feel a great deal of pressure in her back and right side of her body. Appellant stopped work that day and resumed limited duty on January 28, 1999.

In support of appellant's claim, the Office of Workers' Compensation Programs received numerous medical reports from her physician, Dr. Lance Sherely, an osteopath. In reports dated January 27 and February 3, 1999, Dr. Sherely diagnosed lumbar strain, possible rotator cuff injury and lateral epicondylitis of the right upper extremity. In a February 22, 1999 report, Dr. Sherely reported that appellant's conditions of lateral epicondylitis and lumbar strain had resolved. In a March 9, 1999 report, Dr. Sherely stated, "... this is probably a rotator cuff injury." "[Appellant] does n[o]t have any history of specific injuries, *i.e.*, falls or heavy lifting but I feel that it is probably related to repetitive motion of her job." In an April 13, 1999 report, Dr. Sherley diagnosed right arm pain and tennis elbow.

The Office also received a medical report from Dr. Steve Salyers, a Board-certified orthopedic surgeon, who treated appellant for right tennis elbow on June 3, 1999 and indicated that he did not know whether her ongoing complaints were related to the employment injury.

The Office further received an undated duty evaluation report from Dr. Daniel McHugh, a Board-certified specialist in physical medicine and rehabilitation, who examined appellant by request of the employing establishment. Dr. McHugh found that appellant's history of pain in the lower back and right upper limb had resolved. He stated, "[appellant's] most recent complaint's of pain in the lower back and right upper limb beginning January of 1999 are unrelated to her previous[ly] reported injury of June 12, 1998, but instead represent a new injury."

By decision dated July 26, 1999, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after January 27, 1999 due to her June 12, 1998 employment injury.¹

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after January 27, 1999 due to her June 12, 1998 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.² 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.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In the instant case, no rationalized medical evidence was submitted to support the January 28, 1999 claim alleging a causal relationship between appellant's alleged recurrence of disability commencing January 27, 1999 and her June 12, 1998 employment injury. The only report submitted which discusses causal relationship is Dr. Sherey's March 9, 1999 report in which he stated, "... this is probably a rotator cuff injury." "[Appellant] does n[o]t have any history of specific injuries, *i.e.*, falls or heavy lifting but I feel that it is probably related to repetitive motion of her job." This report, however, does not constitute rationalized medical evidence as it fails to describe appellant's employment injury in any detail or otherwise provide a complete and accurate factual and medical history of appellant's condition.⁵

¹ Subsequent to the Office's July 26, 1999 decision, the Office received medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1).

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

Further reports of record are unresponsive of the claim that appellant's claimed condition on January 27, 1999 was causally related to the June 12, 1998 employment injury and seem to support a new occupational disease claim. Dr. Salyers, in his June 3, 1999 report, indicated that he was treating appellant for right tennis elbow and that he did not know whether her ongoing complaints were related to the employment injury. Dr. McHugh, in an undated duty evaluation report, stated that appellant's complaint's of pain in the lower back and right upper limb beginning January 1999 were unrelated to her previously reported injury of June 12, 1998, but instead represented a new injury.⁶

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that she sustained a recurrence of disability commencing on January 27, 1999 due to her June 12, 1998 employment injury, she has failed to satisfy her burden of proof.

The decision of the Office of Workers' Compensation Programs dated July 26, 1999 is hereby affirmed.

Dated, Washington, DC
December 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁶ The Board notes that to the extent that Drs. Sheryly, Salyers and McHugh are relating appellant's condition to a new onset of disease, this would be relevant to a new occupational disease claim, which is not currently before the Board; *see* Federal (FECA) Procedure Manual, Part 2 -- *Claims, Recurrences*, Chapter 2.1500.3 (January 1995). The Board also notes that the Office advised appellant to file a new CA-2 notice of occupational disease claim in its July 26, 1999 decision.