

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN E. MASTIN and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 98-2067; Submitted on the Record;
Issued January 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability on or after April 1, 1996 causally related to his February 5, 1996 hip contusion.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained a recurrence of disability on or after April 1, 1996 causally related to his February 5, 1996 hip contusion.

Appellant, a casual carrier, filed a claim on February 5, 1996 alleging on that date he slipped and fell in the performance of duty injuring his left lower back. The Office of Workers' Compensation Programs accepted appellant's claim for left hip contusion on May 23, 1996. Appellant filed a notice of recurrence of disability on November 17, 1997 alleging that he sustained a recurrence of disability on April 1, 1996 causally related to his February 5, 1996 employment injury. The Office denied this claim by decision dated January 16, 1998.¹

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his alleged recurrence of disability commencing April 1, 1996 and his February 5, 1996 employment 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 employment factors and supports that conclusion with sound medical reasoning.³

¹ Following the Office's January 16, 1998 decision, appellant submitted additional new evidence to the Office and an appeal to the Board. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

In support of his claim for recurrence of disability, appellant alleged that he sustained an additional condition at the time of his injury on February 5, 1996. Appellant stated that he experienced tingling and pulling in his left leg following his fall and that this condition should have been diagnosed and accepted as sciatica.

Appellant resubmitted medical reports from his attending physician, Dr. Michelle Andrews, a Board-certified orthopedic surgeon, noting appellant's complaints of tingling and pulling. In a report dated April 10, 1996, Dr. Andrews noted that appellant continued to experience some tingling once a week, diagnosed left hip contusion and discharged appellant from treatment.

This report does not support appellant's claim for an additional condition of sciatica as causally related to his employment injury. Further, Dr. Andrews indicates that appellant required no further treatment due to his accepted employment injury.⁴

In a report dated November 7, 1997, Dr. Joseph J. Aromola, a chiropractor, diagnosed intermittent sciatic pain "due to his related injuries." Section 8101(2) of the Federal Employees' Compensation Act⁵ provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. As Dr. Aromola did not diagnose a subluxation of the spine and did not indicate that he had x-rays which demonstrated this condition, he is not a physician for the purposes of the Act. As Dr. Aromola is not a physician for the purposes of the Act, his report does not constitute medical evidence and is insufficient to establish appellant's claim.

As appellant has submitted no medical evidence in support of his claim for recurrence of disability, he has failed to meet his burden of proof and the Office properly denied his claim.

⁴ The Board notes that Dr. Andrews released appellant to return to full duty on March 25, 1996.

⁵ 5 U.S.C. §§ 8101-8193, 8101(2).

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

Dated, Washington, D.C.
January 11, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member