

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDWARD R. PITTS and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 99-1321; Submitted on the Record;
Issued July 17, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability, due to his December 30, 1993 employment injury, beginning April 30, 1995.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the October 22, 1998 decision of the Office of Workers' Compensation Programs' hearing representative, finalized on October 22, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹

By letter dated December 28, 1998, appellant requested reconsideration of the Office's decision and submitted a medical report from appellant's treating physician, Dr. Milton E. Corsey, an osteopath, dated September 23, 1998. In his report, Dr. Corsey considered appellant's history of injury, stating that when appellant first sought treatment from him on January 3, 1994 he complained of back pain resulting from a falling incident as he was carrying a cart up a ladder, which occurred at work. He reviewed x-rays dated January 6, 1994, which showed degenerative joint disease in the lumbar spine with joint space narrowing at L4-5. Dr. Corsey also reviewed a magnetic resonance imaging (MRI) scan performed in 1996, which revealed moderately severe spinal stenosis at the L4-5 level, diffuse disc bulging, mild spondylolisthesis and "more than likely related ligamentous loosening, due to the accident at his workplace and degenerative arthropathy." He opined that "ligamentous stretching and loosening

¹ The report of appellant's treating physician, Dr. Milton E. Corsey, an osteopath, dated June 11, 1997 was insufficient to establish that appellant sustained a recurrence of disability on April 30, 1995 as alleged. His report did not contain a rationalized medical opinion explaining how the specific incident of the recurrence of disability was work related and his statement that appellant's condition was "more than likely" related to ligamentous loosening at work is speculative. See *Nicolea Bruso*, 33 ECAB 1138 (1982); *William S. Wright*, 45 ECAB 498, 503 (1994).

resulted from the accident at work aggravating the preexisting condition, which resulted in his disability.”

By decision dated January 4, 1999, the Office denied modification of its prior decision.

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 When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty.³ As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.⁴ 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 reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant’s unsupported belief of causal relation.⁶

In the present case, Dr. Corsey’s September 23, 1998 report is not complete or well rationalized as he did not specifically address the alleged April 30, 1995 recurrence of disability and provide a clear and well-reasoned explanation as to how it is work related. His statement that appellant “more than likely” had related ligamentous loosening due to the accident at work is speculative and is, therefore, of diminished probative value.⁷ Due to its speculative nature, the statement does not support Dr. Corsey’s conclusion that the ligamentous stretch and loosening resulted from the accident at work and aggravated appellant’s preexisting condition. Dr. Corsey’s opinion is, therefore, insufficient to meet appellant’s burden that he sustained a recurrence of disability on April 30, 1995 due to the December 30, 1993 employment injury, as alleged.

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

³ *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁴ *Id.*

⁵ See *Nicolea Brusio*, *supra* note 1.

⁶ See *William S. Wright*, *supra* note 1 at 503.

⁷ See *Jacquelyn L. Oliver*, 48 ECAB 232, 237 (1996); *William S. Wright*, *supra* note 1 at 503.

The decisions of the Office of Workers' Compensation Programs dated January 4, 1999 and October 22, 1998 are hereby affirmed.

Dated, Washington, D.C.
July 17, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member