

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRA L. LEWIS and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Austin, TX

*Docket No. 99-1984; Submitted on the Record;  
Issued June 12, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether appellant sustained a recurrence of disability on November 13, 1996 causally related to his October 7, 1993 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to establish that he sustained a recurrence of disability on November 13, 1996 causally related to his October 7, 1993 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.<sup>1</sup> 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.<sup>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>4</sup> Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.<sup>5</sup> As part of this

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<sup>1</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>2</sup> *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>5</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>6</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>7</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>8</sup>

On October 7, 1993 appellant, then a 42-year-old custodian, sustained a right elbow contusion and right shoulder tendinitis in the performance of duty. He did not stop work. The Office of Workers' Compensation Programs subsequently accepted that he also sustained bilateral carpal tunnel syndrome in the performance of duty.<sup>9</sup> On December 6, 1998 appellant filed a claim for compensation benefits commencing on November 13, 1996. By decision dated May 19, 1999, the Office denied appellant's claim on the grounds that the evidence of record did not establish any disability after November 13, 1996 causally related to his October 7, 1993 employment injury.<sup>10</sup>

In a report dated October 12, 1993, Dr. Ronald M. Manzanero, a family practitioner, diagnosed a right elbow contusion and indicated that appellant was able to return to full duty.

On February 16, 1996 appellant requested a light-duty assignment and submitted a list of work restrictions from a physician whose signature is illegible. However, the physician did not provide any findings on examination or diagnosis, nor did he explain how the need for limited duty was causally related to appellant's October 7, 1993 employment injury. Therefore, this report is not sufficient to discharge appellant's burden of proof to establish that he sustained an employment-related recurrence of disability.

In notes dated May 20, 1997, Dr. Hans P. Haydon, an internist, related appellant's statement that he "took himself off work" in September 1996 "due to a suspicion of the [employing establishment] rehabilitation efforts and his suspicion of a cover-up." He provided findings on examination and diagnosed a "possible reflex sympathetic dystrophy." Dr. Haydon indicated that appellant could work 20 hours a week on limited duty. However, he did not opine that appellant was disabled on November 16, 1996, as alleged by appellant, and he did not provide a definite diagnosis of appellant's condition or explain how his condition was causally related to his October 7, 1993 employment injury. Furthermore, he noted that appellant, not a physician, made the decision that he stop work in 1996. For these reasons, these notes are not

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<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>7</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>8</sup> *Joseph T. Gulla*, *supra* note 6.

<sup>9</sup> Appellant's claim for a recurrence of disability on May 18, 1994 was denied by the Office in a decision dated September 29, 1994.

<sup>10</sup> The record contains additional evidence which was not before the Office at the time it issued its May 19, 1999 decision, and therefore the Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

sufficient to establish that appellant sustained an employment-related recurrence of disability on November 13, 1996.

In notes dated June 23, 1997, Dr. Haydon related that appellant continued to have right arm pain and he provided findings on examination. He diagnosed “[c]hronic right arm pain of unknown etiology stemming from an on-the-job injury years ago.” However, Dr. Haydon did not provide sufficient medical rationale explaining how appellant’s undiagnosed condition was causally related to his October 7, 1993 employment injury and therefore these notes are not sufficient to discharge appellant’s burden of proof.

In a memorandum dated July 5, 1997, titled “[r]emoval for [a]bandonment of [p]osition,” a supervisor related that when appellant was asked why he did not report for work in light of the fact that he had no medical reports from his physicians recommending that he stop work, he replied, “I was fed up with the runaround from the [Office] and decided to stay away from work.”

In a narrative report dated July 25, 1997, Dr. Vivek Mahendru, an anesthesiologist, related that appellant was complaining of pain in his right arm, elbow and shoulder. He diagnosed chronic right shoulder, elbow and arm pain due to a traumatic right arm injury and right ulnar neuropathy but no evidence of carpal tunnel dysfunction. However, Dr. Mahendru did not opine that appellant was disabled and therefore this report is not sufficient to establish that appellant sustained a recurrence of disability on November 13, 1996 causally related to his October 7, 1993 employment injury.

In notes dated August 10, 1998, Dr. Haydon related that appellant was complaining of persistent pain in the right lower arm and attributed this pain to his 1993 employment injury. He stated that appellant had persistent sensory symptoms and slight objective weakness of the right upper extremity following trauma to the elbow area in 1993 and this was clinically consistent with an ulnar neuropathy but it was “electrodiagnostically less clear” and that bureaucratic or litigation issues could be complicating the matter. Dr. Haydon stated that he had “nothing further to offer” appellant and was referring him to another physician. As Dr. Haydon did not opine that appellant was disabled and related only appellant’s belief that his condition was causally related to the October 7, 1993 employment injury, not his own opinion, these notes are not sufficient to establish that appellant sustained a recurrence of disability on November 13, 1996 causally related to his October 7, 1993 employment injury.

In a narrative report dated April 1, 1999, Dr. Lewis C. Jones, an orthopedic surgeon, provided a history of appellant’s condition and findings on examination and diagnosed right ulnar nerve neuropathy and rotator cuff tendinitis. However, he provided no opinion regarding appellant’s allegation of disability on November 13, 1996, nor did he explain how the conditions of ulnar nerve neuropathy and rotator cuff tendinitis were causally related to appellant’s October 7, 1993 employment injury. Therefore, this report is not sufficient to establish that appellant sustained an employment-related recurrence of disability on November 13, 1996.

The May 19, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
June 12, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member