

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN T. ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 99-2229; Submitted on the Record;
Issued March 24, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established a recurrence of disability commencing in May 1995 causally related to an August 10, 1993 employment injury.

In the present case, appellant filed a claim alleging that she sustained injuries to her lower back and arms when she slipped on stairs while in the performance of duty on August 10, 1993. The Office of Workers' Compensation Programs accepted the claim for multiple contusions, cervical and lumbar sprains, and left knee sprain. Appellant returned to work on August 19, 1993.

Appellant filed a notice of recurrence of disability commencing in May 1995. By decision dated July 15, 1997, the Office found that appellant had not established a recurrence of disability causally related to her employment injuries. In a decision dated August 27, 1998, an Office hearing representative affirmed the denial of the recurrence of disability claim. By decision dated June 3, 1999, the Office denied modification of the prior decisions.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing in May 1995.

A person 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 she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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.¹

¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

As noted above, the accepted injuries in this case were multiple contusions, with lumbar, cervical and left knee sprains. With respect to her condition in May 1995, the record contains a report dated May 22, 1995 from Dr. Richard M. Goodman, an internist. He diagnosed acute bronchitis, underlying pleurisy and probable lung contusion. In a report dated August 14, 1995, Dr. Jose Font, a surgeon, indicated that appellant underwent a right thoracotomy and pulmonary decortication. In a report dated January 18, 1996, Dr. Font noted that appellant had severe fibrinous hemoraghic pleuritis, with marked pleural fibrosis, and reported that appellant continued to have significant post-thoractomy incisional pain. Dr. Font further stated, "In regard to the etiology of this pathological condition, there is a possibility that this could be related to her previous trauma to this area, as stated in the pathological report as well as the surgical findings are compatible with post-traumatic injury." Dr. Font concluded that a direct relation "cannot be totally ruled out." The Board finds that such statements are of little probative value. Although a medical opinion need not be one of absolute medical certainty, it cannot be speculative or equivocal.²

In this regard, the Board also notes that Dr. Font's telephonic deposition testimony dated July 22, 1998 is of limited probative value due to its speculative nature. Dr. Font was asked to assume that appellant slipped and fell down seven steps, each time striking her back and buttocks as she went down, and asked for an opinion if it was more likely than not that the August 1993 trauma contributed to a pulmonary condition. Dr. Font stated:

"[T]here is definitely probably some correlation... If they injure their ribs, even if there is not a fracture, sometimes there could be some bleeding, intrathoractic bleeding.... And when blood goes into what we call the pleural cavity, sometimes the body reacts by forming scar tissue. Many times the body eliminates totally the blood, but in some other occasions there is scar formation. And that could have happened in her case."

When asked if it was his opinion that it is more likely than not that the accident contributed to the operative lung findings, Dr. Font stated, "to some of the changes, yes. To some others, as I stated before, probably are more recent onset. But some of the changes are chronic enough that it could have been related to the initial trauma, yes."

The Board finds that Dr. Font's statements are of diminished probative value in that they remain speculative and without sufficient medial reasoning. Statements on causal relationship such as "could have been related" are of diminished value on the issue of causal relationship.³ Dr. Font refers to the possibility of a rib injury, although he does not attempt to explain the nature and extent of such an injury based on the specific employment incident and the apparent lack of contemporaneous medical evidence of a rib injury. Moreover, Dr. Font does not clearly explain what changes in the lungs he might attribute to the employment injury. He noted "other changes outside of the lung in the pleura itself" that were more chronic as opposed to recent changes, but it is not clear what specific changes he might attribute to the employment injury.

² *Norman E. Underwood*, 43 ECAB 719 (1992); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990).

³ *See William S. Wright*, 45 ECAB 498 (1994).

For example, Dr. Font indicated that scar formation could have occurred from a rib trauma, but he does not clearly explain how such scar formation contributed to a diagnosed pulmonary condition or disability commencing in May 1995.

The Board finds that the record does not contain a reasoned medical opinion, based on a complete background, that establishes a disabling pulmonary condition as of May 1995 causally related to the August 10, 1993 employment injury. Accordingly, the Board finds that the Office properly denied the recurrence of disability claim in this case.

The decisions of the Office of Workers' Compensation Programs dated June 3, 1999 and August 27, 1998 are affirmed.

Dated, Washington, D.C.
March 24, 2000

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member