

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD T. BILLINGS and DEPARTMENT OF THE ARMY,
PINE BLUFF ARSENAL, AR

*Docket No. 99-802; Submitted on the Record;
Issued May 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his January 4, 1996 employment injury.

On January 9, 1996 appellant, then a 46-year-old maintenance mechanic, filed a claim alleging that he sustained a traumatic injury on January 4, 1996 when he jumped from a slipping ladder onto a concrete floor. The Office of Workers' Compensation Programs accepted the claim for lumbar strain. Appellant returned to his regular full-time employment on January 23, 1996.

On October 28, 1996 appellant filed a notice of recurrence of disability causally related to his January 4, 1996 employment injury. In a statement accompanying his claim, appellant related that he was experiencing problems with his right shoulder, which he attributed to his January 4, 1996 employment injury. He stated that he had complained to his physician about pain in his right shoulder at the time of his initial treatment for his employment injury but that his physician "seemed more concerned with my back."

By decision dated January 21, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a recurrence of disability on October 28, 1996 causally related to his accepted employment injury.

In a letter dated February 20, 1997, appellant requested a hearing before an Office hearing representative. By decision dated April 30, 1997, the Office denied appellant's request for a hearing as untimely. Appellant requested reconsideration on January 9, 1998, which the Office denied in a merit decision dated April 13, 1998. Appellant again requested reconsideration in a letter dated July 16, 1998. By decision dated September 14, 1998, the Office found that the evidence submitted was insufficient to warrant modification of its prior decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not met his burden of proof to establish that he had a recurrence of disability causally related to his January 4, 1996 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

In support of his claim, appellant submitted an October 24, 1996 clinic note from Dr. Timothy G. Moser, an employing establishment physician, who described appellant's complaints of pain and loss of motion in his right shoulder for the last several months. Dr. Moser noted that appellant stated that he "cannot remember a specific shoulder injury in the past." He diagnosed a possible rotator cuff tear. As Dr. Moser indicated that appellant did not attribute his shoulder condition to any specific injury, his report does not support appellant's claim for a recurrence of disability causally related to his prior employment injury.

In a clinic note dated November 18, 1996, Dr. Moser noted appellant's continuing shoulder problems and, in a clinic note dated December 2, 1996, diagnosed a partial right rotator cuff tear by magnetic resonance imaging (MRI) study. However, Dr. Moser's clinic notes are not sufficient to meet appellant's burden of proof as he did not address the issue of whether appellant's shoulder condition was causally related to his January 4, 1996 employment injury.

In a report dated May 15, 1998, Dr. Moser stated:

"[Appellant] was injured on the job while employed at the [employing establishment] on January 4, 1996. When I reevaluated [appellant] in the [employing establishment's] clinic, lower back pain was the most prominent symptom. However, I feel his mechanism of injury on January 4, 1996 also account[s] for his torn rotator cuff in his right shoulder."

Dr. Moser did not provide a well-reasoned discussion explaining how appellant's January 4, 1996 employment injury caused his right rotator cuff tear, which is of particular importance in the instant case in view of appellant's failure to seek medical treatment for his shoulder condition until around 10 months after his employment injury. Without such supportive medical rationale, Dr. Moser's opinion is of diminished probative value.³

¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

² *Id.*

³ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996) (Medical conclusions unsupported by rationale are of diminished probative value.)

In an office visit note dated November 21, 1996, Dr. Kenneth A. Martin, a Board-certified orthopedic surgeon, indicated that appellant related an injury to his right shoulder in January 4, 1996 when he “fell off a ladder from a height of approximately four feet.” He described appellant’s complaints of pain, loss of motion and loss of strength following the injury. Dr. Martin diagnosed a possible rotator cuff tear. His report, however, is not sufficient to meet appellant’s burden of proof as Dr. Martin did not specifically relate appellant’s current condition and disability to his accepted employment injury.

In an office visit note dated November 26, 1996, Dr. Martin noted that an MRI revealed a “partial thickness rotator cuff tear of the right shoulder.” He recommended physical therapy. In an office visit note dated January 2, 1997, Dr. Martin discussed his treatment of appellant for a right shoulder rotator cuff tear. He listed findings on physical examination and recommended against current surgical intervention. As Dr. Martin did not address the cause of appellant’s torn rotator cuff, his reports do not constitute probative evidence regarding the relevant issue of whether appellant sustained a recurrence of disability due to his January 4, 1996 employment injury.

An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant’s own belief that there is causal relationship between his claimed condition and his employment.⁴ To establish causal relationship, appellant must submit a physician’s report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant’s diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

⁴ *Donald W. Long*, 41 ECAB 142 (1989).

The decisions of the Office of Workers' Compensation Programs dated September 14 and April 13, 1998 are hereby affirmed.

Dated, Washington, D.C.
May 4, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member