

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES GREY and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS OUTREACH CENTER, Grand Rapids, MI

*Docket No. 00-113; Submitted on the Record;  
Issued November 14, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained a recurrence of total disability beginning March 13, 1998 causally related to his May 23, 1997 employment injury.

The Office of Workers' Compensation Programs accepted that appellant, then a program assistant, sustained an acute lumbar strain in the performance of his duties on May 23, 1997, when he carried a box of files and hurt his lower back. Appellant stopped work May 27, 1997 and returned to regular duty May 29, 1997.<sup>1</sup>

On March 26, 1998 appellant filed a recurrence of disability claim alleging that his original injury of May 23, 1997 caused him additional disability on March 12, 1998. Appellant also submitted a CA-7 claim for compensation on March 26, 1998 beginning March 13, 1998 for total disability on account of his injury. Appellant alleged that on March 12, 1998 he bent over to pick up a pencil from the floor and could not straighten to a standing position. Appellant stopped work on March 13, 1998 and did not return.

The medical record contains a report from Dr. Frank Belsito, an osteopath, who indicated that appellant was seen on March 12, 1998 for acute lumbar pain and spasm that developed after he lifted a television. In a letter dated April 6, 1998, the Office requested that appellant explain the injury reported by Dr. Belsito in the March 12, 1998 medical report and whether or not it occurred while in the course of employment duties. Appellant did not respond to the April 6, 1998 Office request.

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<sup>1</sup> Appellant subsequently filed a recurrence of disability claim on November 5, 1997 alleging that his original injury caused him additional disability on October 15, 1997. Appellant alleged that he dropped his pencil while working and when he bent over to pick it up, he experienced sharp pain and could not move. The Office accepted the claim for limited medical care for back problems associated with the October 15, 1997 event, which the Office found constituted a new traumatic injury and combined it with the previously accepted injury of May 23, 1997. Appellant returned to work on October 21, 1997.

In a letter dated May 13, 1998, the Office again requested information from appellant, including a description of his work duties and physical condition since he returned to work following the original injury, along with medical evidence supportive of his claim. In response, appellant submitted a narrative statement dated May 25, 1998 and additional evidence. Appellant stated that he was responsible for unloading and stocking donations received from Washington, D.C., which included televisions; however, he did not attribute his claimed recurrence of disability to such an event only to lifting a pencil from the floor on May 12, 1998. Appellant also stated that his back condition had been ongoing since May 1997, that he had never had back problems prior to May 23, 1997 and that he believed his condition at that time was related to the original work injury.

Appellant also submitted physical therapy notes and an attending physician's report (Form CA-20) dated May 21, 1998 from Dr. Belsito, in which he reported that appellant had somatic changes and pain from lifting, and diagnosed somatic dysfunction and lumbar strain. He indicated that appellant's condition was caused or aggravated by an employment activity by placing a checkmark in the box marked "yes" and stated, "patient does a lot of sitting, bending/lifting." Dr. Belsito further indicated that the period of appellant's total disability began March 13, 1998 and continued as of the date of his report.

By decision dated June 16, 1998, the Office denied appellant's recurrence of disability beginning March 13, 1998 and continuing, on the grounds that appellant failed to establish that the claim for recurrence was causally related to the work injury of May 23, 1997.

By letter dated July 13, 1998, appellant, through counsel, requested an oral hearing before an Office hearing representative and submitted additional evidence.

Among previously submitted evidence, appellant submitted a medical report from Dr. Vicente C. Gracias, a Board-certified neurologist, dated May 4, 1998. Dr. Gracias noted that appellant was seen for low back pain, which he related had existed since May 1997 after a lifting incident at work, however, upon examination, Dr. Gracias reported no significant findings.

A hearing was held on June 8, 1999 at which appellant testified. By decision dated August 12, 1999, the Office hearing representative affirmed the June 16, 1998 decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability beginning March 13, 1998 causally related to his May 23, 1997 employment injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing on March 13, 1998 and his May 23, 1997 accepted injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

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<sup>2</sup> *Dominic M. DeScala*, 37 ECAB 795 (1986).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>3</sup>

In this case, appellant asserted that he sustained a recurrence of disability beginning March 13, 1998 causally related to his May 23, 1997 employment-related back injury. He stated that the claimed disability resulted after bending over to pick up a pencil on March 12, 1998 when he injured his back. In an office report dated March 12, 1998, Dr. Belsito diagnosed appellant with acute lumbar strain and related his condition to lifting a television; however, appellant did not allege that lifting a television at work caused him additional disability on March 12, 1998. Dr. Belsito's March 12, 1998 report does not support appellant's recurrence of disability claim and suggests that his actions of lifting a television might have actually caused or contributed to his disability.

Appellant also submitted a CA-20 form report dated May 21, 1998 from Dr. Belsito who diagnosed somatic dysfunction and lumbar strain and indicated that appellant was totally disabled as of March 13, 1998. He indicated by checking the block marked "yes" that the condition was causally related to appellant's May 23, 1997 employment injury and further stated, "patient does a lot of sitting, bending/lifting." However, the Board has held that an opinion on causal relationship, which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.<sup>4</sup> Dr. Belsito noted appellant's work duties of sitting, bending and lifting; however, he did not explain that these duties were the employment factors which caused appellant's disabling condition. Without any explanation or rationale, such a report is insufficient to establish causal relationship.<sup>5</sup> Therefore, Dr. Belsito's report is not sufficient to establish that appellant sustained a recurrence of disability beginning March 13, 1998 causally related to his May 23, 1997 employment injury.

Appellant also submitted a report from Dr. Gracias dated May 4, 1998, in which he stated that appellant was seen for low back pain and related that the pain existed since May 1997, after a lifting incident at work. He, however, did not indicate that appellant was disabled from work beginning March 13, 1998 due to a condition causally related to the May 23, 1997 employment injury. As such, Dr. Gracias' report is further deficient to establish that appellant sustained a recurrence of total disability beginning March 13, 1998 causally related to his May 23, 1997 employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>6</sup> Appellant failed to submit rationalized medical evidence

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<sup>3</sup> *Nicolea Brusco*, 33 ECAB 1138 (1982).

<sup>4</sup> *Donald W. Long*, 41 ECAB 142, 146 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The decision of the Office of Workers' Compensation Programs dated August 12, 1999 is hereby affirmed.

Dated, Washington, DC  
November 14, 2000

Michael J. Walsh  
Chairman

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member