

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID R. HARMON and DEPARTMENT OF THE NAVY,
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH

*Docket No. 99-829; Submitted on the Record;
Issued November 9, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on September 18, 1997 causally related to his August 10, 1979 employment injury.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability on September 18, 1997 causally related to his August 10, 1979 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.¹ 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.² Where no such rationale is present, medical evidence is of diminished probative value.³

On August 10, 1979 appellant, then a 30-year-old equipment cleaner, sustained a laceration of the left leg in the performance of duty. He returned to work on August 27, 1979. On September 5, 1997 appellant filed a claim for a recurrence of disability which he attributed to his August 10, 1979 employment injury. By decision dated March 26, 1998, the Office denied appellant's claim. By letter dated May 12, 1998, appellant requested reconsideration and

¹ *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

² *Mary S. Brock*, 40 ECAB 461 (1989); *Nicolea Brusco*, 33 ECAB 1138 (1982).

³ *Michael Stockert*, 39 ECAB 1186 (1988).

submitted additional evidence. By decision dated October 21, 1998, the Office denied modification of its March 26, 1998 decision.

In a narrative report dated September 18, 1997, Dr. Frank A. Graf, appellant's attending orthopedic surgeon, provided a history of appellant's condition and findings on examination and noted that in 1979 he sustained a penetrating wound to his left leg. He stated that appellant had continuing residuals of the left leg injury and that his ongoing symptoms were most likely related to his original injury. Dr. Graf indicated that appellant did not require any work restrictions. As Dr. Graf did not opine that appellant was disabled and provided insufficient medical rationale explaining how appellant's condition in 1997 was related to the 1979 employment injury, this report does not establish that appellant sustained a recurrence of disability on September 18, 1997 causally related to his August 10, 1979 employment injury.

In notes dated January 7, 1998, Dr. Graf related that appellant described weakness in his left ankle but was performing his regular job with no restrictions. He provided findings on examination and diagnosed persistent residuals of injury and laceration to appellant's left leg and chronic anterior compartment syndrome secondary to fibrosis within the anterior compartment muscles. However, Dr. Graf provided insufficient medical rationale explaining how appellant's problems were causally related to his employment injury sustained on August 10, 1979. Therefore these notes are not sufficient to discharge appellant's burden of proof.

In support of his claim, appellant also submitted medical reports for dates in 1979 through 1981. This medical evidence does not address the issue of whether appellant sustained a recurrence of disability on September 18, 1997 and is not sufficient to discharge appellant's burden of proof.

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.⁴ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury on August 10, 1979. Therefore, the Office properly denied his claim for compensation.

⁴ See *Walter D. Morehead*, 31 ECAB 188 (1986).

The decisions of the Office of Workers' Compensation Programs dated October 21 and March 26, 1998 are hereby affirmed.

Dated, Washington, DC
November 9, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member