

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY L. LAMBRIGHT and SMITHSONIAN INSITUTION,
ARTS & INDUSTRIES MUSEUM, Washington, DC

*Docket No. 01-563; Submitted on the Record;
Issued November 27, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability due to his accepted September 19, 1994 employment injury.

On September 19, 1994 appellant, then a 42-year-old forklift operator, filed a traumatic injury claim alleging that he hurt his back while adjusting a forklift blade. The Office of Workers' Compensation Programs accepted the claim for low back strain.

Appellant filed a claim for a recurrence of disability beginning June 6, 2000.

In an attending physician's report dated June 26, 2000, Dr. Rafik D. Muawwad, Board-certified orthopedic surgeon, diagnosed lumbar disc syndrome and checked "yes" that it was caused or aggravated by employment activity. He also noted that appellant had a recurrence of total disability and it was undetermined when he could return to his usual employment duties. Dr. Muawwad indicated that appellant had "pain and a feeling of numbness in the lower extremities, restricted motion and feeling of tightness in the lower back area."

By letter dated August 8, 2000, the Office requested further information, including a physician's opinion supporting causal relation with his September 19, 1994 injuries.

In a report dated August 21, 2000, Dr. Muawwad noted that appellant's radicular symptoms down the lower extremities were "most likely a recurrence of his symptoms following" his September 1994 employment injury.

By decision dated September 11, 2000, the Office denied appellant's recurrence of disability claim, finding that he failed to submit rationalized medical evidence sufficient to establish a causal relationship.

Appellant's counsel requested reconsideration and submitted Dr. Muawwad's October 16 and September 25, 2000 reports and physical therapy progress notes from August 18 through September 22, 2000 in support of his request.

In a September 25, 2000 report, Dr. Muawwad recommended an L5-S1 discogram be done as well as an evaluation of appellant's dorsal and cervical spines.

Dr. Muawwad indicated in his October 16, 2000 report that appellant's 1994 magnetic resonance imaging test revealed a L5-S1 disc herniation and injury and that his current "symptoms are a flare-up from the accident that occurred on September 19, 1994." The physician opined that there was "no other medical evidence to substantiate this claim, but this is the only evidence and that evidence should be enough to support" appellant's recurrence claim.

By decision dated November 30, 2000, the Office denied modification of the September 11, 2000 decision, finding that none of the medical evidence submitted contained a rationalized medical opinion relating appellant's condition on June 6, 2000 to his September 14, 1994 injuries.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability causally related to his accepted September 19, 1994 low back strain injury.

Under the Federal Employees' Compensation Act,¹ an employee 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 recurrence of the disabling condition for which compensation is sought is causally related to the accepted employment injury.² As part of this burden the employee must submit rationalized medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the current disabling condition is causally related to the accepted employment-related condition³ or to work factors,⁴ and supports that conclusion with sound medical reasoning.⁵

The medical evidence submitted to support appellant's recurrence claim does not establish a causal relationship between his alleged recurrence of disability and his September 19, 1994 accepted employment injury. The physical therapy notes submitted in support of the claim have no probative value because physical therapists are not considered physicians under the Act.⁶

The June 26, 2000 form report from Dr. Muawwad is not sufficient to meet appellant's burden of proof because the Board has held that a check mark on the form, without explanation

¹ 5 U.S.C. §§ 8101-8193.

² *Dennis J. Lasanen*, 43 ECAB 549-50 (1992).

³ *Kevin J. McGrath*, 42 ECAB 109, 116 (1990).

⁴ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁵ *Lourdes Davila*, 45 ECAB 139, 142 (1993).

⁶ 5 U.S.C. § 8101 *et seq.*; *Thomas R. Horsfall*, 48 ECAB 180 (1996).

or rationale, is insufficient to establish causal relationship.⁷ The August 21, 2000 report stated that appellant's radicular symptoms down the lower extremities were "most likely a recurrence of his symptoms following" his September 1994 employment injury. The Board has held that a physician's report which is couched in equivocal and speculative terms is of diminished probative value. Therefore, the August 21, 2000 report is insufficient to meet appellant's burden.⁸

Dr. Muawwad's remaining reports consist of the physician merely declaring appellant's symptoms were a recurrence, without any pathophysiologic explanation or medical rationale as to how and why his current symptoms were related to appellant's 1994 low back strain. Therefore, the medical reports from Dr. Muawwad do not meet appellant's burden of establishing by reliable and probative evidence that his subsequent disability is causally related to the accepted 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.⁹ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability was causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The November 30, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 27, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ *Robert Lombardo*, 40 ECAB 1038 (1989).

⁸ *Alberta S. Williamson*, 47 ECAB 569 (1996); *William S. Wright*, 45 ECAB 498 (1994).

⁹ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).