

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA GERBER and U.S. POSTAL SERVICE, MANKATO  
AREA MAIL PROCESSING FACILITY, Mankato, MN

*Docket No. 02-2007; Submitted on the Record;  
Issued December 9, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after January 28, 2002 due to her January 1, 1995 employment injury.

On March 15, 1995 appellant, then a 43-year-old mark up clerk, filed a notice of occupational disease alleging that she experienced bilateral hand and arm pain as a result of the repetitive activities of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral epicondylitis and bilateral extensor tenosynovitis on August 3, 1995. Appellant continued to work. On March 27, 1998 appellant accepted a light-duty job offer with no lifting over 30 pounds with either or both hands.

On January 28, 2002 appellant filed a claim for recurrence, alleging that she sustained a recurrence of disability on or after January 28, 2002, causally related to the January 1, 1995 accepted employment injury.<sup>1</sup> Appellant stated that she was doing the same repetitive work she did at the time of her original injury and continued to have the same problems, which never completely disappeared. In a personal statement dated February 11, 2002, appellant stated:

"I have never stopped working. My schedule was changed slightly by not having to key on mech letter machines an hour at a time, however, I still do the same amount of keying as others.

"Keying time has increased to [six] hours per day compared to [four] hours per day prior to 1997. This was due to a change in the system. New flat terminals came so there were not as many 'other' duties besides keying. Working on these machines involves removing mail from tubs to the right of you, placing mail in

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<sup>1</sup> Appellant also filed a claim for recurrence on June 2, 1997 alleging that she sustained a recurrence of disability on or after June 1, 1997. Since the Office did not address this claim in the April 23, 2002 final decision, of which the Board has jurisdiction, the Board will only address the recurrence on January 28, 2002; *see* 20 C.F.R. § 501.2(c).

front of you, keying, using left hand and arm to place mail piece over the mechanized 'arm,' bringing up the label and then placing the mail piece in appropriate tub to the left of station. (I also use right hand and arm). Schedule to key flats [three] hours per day.

"... This work is the same as when I first submitted a [Form] CA-2 in 1995. I have always had some discomfort or pain in my fingers, hands, wrists, arms, shoulders, neck, elbows, back muscles since this time, especially when keying. This is chronic overuse.

"Lately, I have experienced more discomfort in right thumb and wrist. At times I have had slight weakness and discomfort in my right wrist when brushing teeth, once when scraping car windows. Have slight pain in underneath side of wrist plus some pain in thumb area going up into wrist and forearm. If I don't wear splint to be my fingers will be tingly. Noticed slight discomfort at times in writing or driving."

In support of her January 28, 2002 claim for recurrence, appellant submitted a February 12, 2002 medical report from Dr. Ralph E. Gay, Board-certified in physical medicine and rehabilitation. Dr. Gay diagnosed chronic bilateral upper extremity pain syndrome, multifactorial, history of chronic overuse and median nerve irritability and he stated:

"[Appellant] was evaluated in 1997 for bilateral upper extremity pain. She was felt to have some mild tendinitis, some median nerve irritability and general muscular overuse type syndrome of the upper extremities. She was treated with night splinting and ergonomic considerations. She did not return to us for evaluation after November 1997. She returns today primarily for splints for the upper extremities. Her splint on the right side has been lost and the left is starting to wear out. These were splints that we made here previously. She notes that she has had some mild increased pain in the right radial and volar wrist recently but she relates no specific activity or time of aggravation and in fact, believes that things are about the same as they have been for a number of years. She continues to wear splints intermittently at work as well as at night. She will occasionally wake with numbness and tingling in her hands, particularly in she does not sleep with splints at night. She has notices any recently. Swelling."

Dr. Gay added:

"[Appellant] has given an injury date of January 28, 2002, on paperwork that she brings with her today, but historically she clearly does not indicate any change in her symptoms but states that she simply wanted to get new splints for her chronic ongoing problems, which have in the past been considered work related."<sup>2</sup>

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<sup>2</sup> Appellant submitted other medical reports but they do not address the January 28, 2002 recurrence of disability or the original January 1, 1995 accepted employment injury. Other medical reports of record relate to the previous June 1, 1997 claimed recurrence of disability.

By decision dated April 23, 2002, the Office denied appellant's claim for recurrence, finding that there was insufficient medical evidence to establish causal relationship between appellant's current medical condition and her work injury on January 1, 1995.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after January 28, 2002, due to her January 1, 1995 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.<sup>3</sup> 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.<sup>4</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>5</sup>

In this case, the submission of Dr. Gay's February 12, 2002 report is not sufficient to establish that appellant sustained a recurrence of disability on or after January 28, 2002, due to her January 1, 1995 employment injury, in that Dr. Gay did not provide a clear opinion that appellant sustained such an employment-related recurrence of disability.<sup>6</sup> While Dr. Gay did mention January 28, 2002 as "the date of injury" as given by appellant, he did not discuss the accepted employment injury in 1995 or opine that appellant's current condition was related to that injury. Since Dr. Gay does not provide a medical opinion supported by rationale on appellant's alleged recurrence, it is of diminished probative value.<sup>7</sup> Other medical reports of record generally discuss appellant's bilateral tendinitis of the wrists in 1995, but these reports do not mention the alleged January 28, 2002 recurrence of disability. Dr. Gay also noted that appellant simply wanted to get new splints for her chronic ongoing problems. Appellant stated that her main purpose was to get a new splint for her left arm. She explained that her splint was in very poor condition, as it was duck-taped together in several places because it was cracked and disintegrating. The Board finds that since appellant has not submitted a rationalized medical opinion report relating her current condition to the accepted employment injury on January 1, 1995 she has not met her burden of proof in this case.

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 her belief that her condition was aggravated by her employment is sufficient to

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<sup>3</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>4</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

<sup>5</sup> *Michael Stockert*, 39 ECAB 1186-88 (1988).

<sup>6</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>7</sup> *Supra* note 5.

establish causal relationship. Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

The April 23, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
December 9, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member