

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARRY E. MULLER and U.S. POSTAL SERVICE,
POST OFFICE, Rochester, NY

*Docket No. 02-2050; Submitted on the Record;
Issued December 23, 2002*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of total disability related to his November 8, 1991 accepted injury.

On November 8, 1991 appellant, then a 41-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that while delivering his route he was surprised by a dog, causing him to suddenly turn his head. He then felt a burning pain on the right side of his shoulder and neck.

In a December 3, 1991 report, Dr. Michael Bowers wrote that a magnetic resonance imaging (MRI) revealed a mild degenerative disc bulge with cord compression, acquired stenosis and two intramedullary hypointense foci suggesting a component of myelomalacia.

In an August 31, 1993 decision, the Office of Workers' Compensation Programs accepted appellant's claim for a herniated cervical disc.

On April 4, 2001 appellant filed a notice of recurrence of total disability and claim for compensation.

According to appellant he was treated conservatively after his 1991 injury, receiving physical therapy for six months. He returned to light duty on September 8, 1992 and began full duty on September 30, 1992. Between his return to full duty and September 1, 2000, appellant indicated that he had occasional pain in his neck and a "pins and needle" feeling in his right shoulder, arm and hand. On September 1, 2000 he noticed an increase of pain and tingling and loss of strength in his right arm. According to appellant, the increased pain coincided with an increase in the use of his mail satchel at work.

In support of his claim, appellant submitted an April 26, 2001 report by Dr. Seth Zeidman, a neurologist, who wrote that appellant presented with pain in his posterior neck and occasionally bilaterally in his shoulders, which radiates on the right side, with numbness and

tingling in his right arm posterolaterally and in the third to fifth digits. He diagnosed disc bulges at C4-5, C5-6 and C6-7. He also requested authorization to perform an anterior cervical discectomy and fusion.

In a May 14, 2001 report, Dr. William Contach, a neurological surgeon, wrote “that [appellant] clearly dates his arm pain and numbness to his injury of November 8, 1991. This is historical. I have no reason to question [appellant’s] history of this being caused or medically aggravated by his carrying his mailbag over his shoulder. I causally related this visit to this injury.”

In a May 23, 2001 letter, the Office requested more information from appellant and indicated what information was necessary to establish a recurrence.

No further medical evidence addressing causal relationship was submitted.

On June 4, 2001 appellant had an anterior cervical discectomy and fusion C4-5, C5-6, C6-7 with allograft bone and anterior plating.

In an October 31, 2001 decision, the Office denied the claim.

In a March 14, 2002 letter, appellant requested reconsideration.

In a December 3, 2001 report, Dr. Zeidman reviewed appellant’s medical history and concluded, “It is the opinion of this physician that the condition was caused by his work-related injury.”

In a June 24, 2002 decision, the Office denied modification of its October 31, 2001 decision.

The Board finds that appellant has not established that he sustained a recurrence of total disability causally related to his November 8, 1991 work-related 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

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

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 and, therefore, the Office properly denied his claim for compensation.

Dr. William Contach, in his May 14, 2001 report, and Dr. Zeidman, in his December 3, 2001 report, each indicated they believe appellant's condition was causally related to his November 8, 1991 injury; but neither report explains how or why, medically, appellant's conditions in 2001 would have been caused by the 1991 injury. The physicians of record only relate the current condition to the accepted injury based on appellant's own statements and beliefs, not objective evidence.

The Board notes that appellant was able to return to full duty in 1992. The record also does not substantiate bridging symptoms from 1992 to 2001 indicating that appellant sought medical care for any complaint related to the 1991 injury.

The decisions by the Office of Workers' Compensation Programs dated October 31, 2001 and June 24, 2002 are affirmed.

Dated, Washington, DC
December 23, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).