

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD A. WILKE and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 01-2198; Submitted on the Record;  
Issued June 3, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS  
A. PETER KANJORSKI

The issue is whether appellant sustained recurrences on March 13, 2000 and January 5, 2001.

Appellant, then a 44-year-old custodian and laborer, filed a notice of traumatic injury (Form CA-1) on February 5, 1999. The claim was accepted for a lumbar strain on July 1, 1999. He had a history of back injuries including a nonwork-related L5-S1 herniated disc and a previously accepted lumbar strain in 1993. Following the February 5, 1999 incident appellant was off work for 1 week before returning to a full-time light-duty job with permanent restrictions of no lifting over 35 pounds and a 10-minute break every hour.

On April 20, 2000 the Office of Workers' Compensation Programs received an undated "notice of recurrence" in which appellant stated that on March 13, 2000 he turned and felt a pop in his back in the same place as previously injured.

In support of his recurrence claim, appellant submitted from Dr. Steve Menaldino, an internist, an attending physician's report (Form CA-20) dated April 3, 2000 and a duty status report (Form CA-17) with a diagnosis of "L-S" disc. Dr. Menaldino also checked "yes" in a box indicating that the medical condition was work related. Appellant also submitted a March 14, 2000 report from a Dr. Damian Cornacchia, DO with a diagnosis of "back pain." He missed three days of work before returning to his date-of-injury position.

On January 5, 2001 appellant filed another recurrence claim stating that "I was performing my duties well until my 10 minutes a day sitting for each hour was revoked." A January 5, 2001 medical report from a Dr. Bruce Rudin was submitted stating that appellant has a permanent restriction of no lifting over 35 pounds and he must have a 10-minute break "while standing."

In a March 28, 2001 letter to appellant, the Office indicated that it had received his recurrence claims dated March 13, 2000 and January 5, 2001 but the information in the record

was insufficient and more information was needed. No further information from appellant was submitted.

In a decision dated August 2, 2001, the Office denied both recurrent claims finding the medical evidence insufficient to establish that the claimed medical conditions were related to the approved injury of February 5, 2000.

The Board finds appellant has not met his burden to establish recurrences on March 13, 2000 and January 5, 2001.

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>1</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>2</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>3</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup>

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>5</sup>

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.

None of the medical evidence appellant submitted in support of his recurrences demonstrates sufficient knowledge of appellant's medical history. In particular the evidence does not discuss or differentiate among his previously accepted lumbrosacral strains or his

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

<sup>2</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>3</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>4</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

nonwork-related herniated disc. Demonstrating knowledge of appellant's medical history and a discussion of causal relationship is especially important in light of the fact that appellant's medical history contained both accepted and nonaccepted back injuries. The reports from Drs. Mendalindo, Cornacchia and Rudin, while supporting that appellant had continuing back pain do not establish with rationale that appellant's pain was from the accepted injury, they do not causally link the herniated disc to the accepted condition, nor do they demonstrate knowledge of the events of March 13, 2000 and/or January 5, 2001.

The evidence in the record suggests that prior to the January 5, 2001 recurrence claim appellant's working conditions may have changed in that he was not allowed to sit for 10 minutes every hour. Although there is nothing in the record suggesting the employing establishment contested this allegation, there is still no medical evidence establishing with rationale how this could or did cause his previously accepted medical condition to recur. Without this medical evidence, appellant has not met his burden of proof that he sustained a recurrence.

The decision of the Office of Workers' Compensation Programs dated August 2, 2001 is affirmed.

Dated, Washington, DC  
June 3, 2002

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member