

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. MICHEL and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Norristown, PA

*Docket No. 02-68; Submitted on the Record;
Issued June 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on March 21, 2001 causally related to his February 4, 2000 employment injury.

The Board has duly reviewed the case record in this appeal and finds that appellant did not sustain a recurrence of disability on March 21, 2001 causally related to his February 4, 2000 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 February 4, 2000 appellant, then a 37-year-old distribution clerk, sustained a lumbar strain in the performance of duty. He returned to light-duty work on February 23, 2000 and regular duty on October 4, 2000.

On March 21, 2001 appellant filed a claim for a recurrence of disability.

¹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

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

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

By decision dated August 21, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained a recurrence of disability on March 21, 2001 causally related to his February 4, 2000 employment injury.

A magnetic resonance imaging (MRI) scan report dated May 22, 2000 noted that appellant's lumbar spine was essentially normal with the exception of degenerative disc disease at L5-S1 without significant disc space narrowing. There was an annular bulge at L5-S1 without significant canal stenosis.

In notes dated October 4, 2000, Dr. James N. Nutt, III, appellant's attending orthopedic surgeon, stated that his lumbar strain was essentially resolved and he was performing his normal job.

In notes dated May 2, 2001, Dr. Nutt diagnosed left sciatica with lumbar disc degeneration and lumbar strain. He indicated that two weeks earlier appellant felt soreness in his back that sometimes radiated down his left leg.

In notes dated May 30, 2001, Dr. Nutt diagnosed a lumbar strain with chronic left sciatica. He indicated that appellant was performing light duty but experienced back soreness and left leg pain if he lifted too much. Dr. Nutt stated that the pain had persisted over the past year.

An MRI report dated June 8, 2001 indicated that appellant had a new large disc herniation at L5- S1.

In notes dated July 27, 2001, Dr. Evan S. Kovalsky, an associate of Dr. Nutt, stated that appellant began experiencing pain again a couple of months previously when he was lifting boxes. He diagnosed a herniated disc at L5-S1 with resolving sciatica.

In a report dated August 9, 2001, Dr. Nutt stated that appellant had lower back pain and left sciatica from lumbar disc degeneration. He stated that appellant was lifting heavy parcels at work on February 4, 2000 and felt sudden pain in his lower back and "his symptoms have stemmed from that injury."

The medical reports from Drs. Nutt and Kovalsky are not sufficient to establish that appellant sustained a recurrence of disability on March 21, 2001 causally related to his February 4, 2000 employment-related lumbar strain. In notes dated October 4, 2000, Dr. Nutt stated that appellant's lumbar strain was essentially resolved and he was performing his regular job. In notes dated May 2 and 30, 2001, Dr. Nutt indicated that appellant had a lumbar strain, lumbar disc degeneration and left sciatica. In notes dated July 27, 2001, Dr. Kovalsky diagnosed a herniated disc. In notes dated August 9, 2001, Dr. Nutt indicated that appellant had lower back pain and left sciatica caused by lumbar disc degeneration and his symptoms had persisted since his February 4, 2000 employment injury. However, Drs. Nutt and Kovalsky did not provide medical rationale explaining how these conditions were causally related to appellant's February 4, 2000 employment injury. Such rationale is particularly important in light of the fact that Dr. Nutt found that appellant's work-related lumbar strain had essentially resolved in October 2000, there are no medical reports of record between October 2000 and May 2001

indicating a continuing back problem or treatment, and a June 8, 2001 MRI revealed a new disc herniation which did not appear in a May 22, 2000 MRI.

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.

The decision of the Office of Workers' Compensation Programs dated August 21, 2001 is affirmed.

Dated, Washington, DC
June 26, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1979).