

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD ESPINOZA and DEPARTMENT OF THE NAVY,
MARINE CORPS AIR STATION, Yuma, AZ

*Docket No. 02-470; Submitted on the Record;
Issued June 25, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after April 28, 1996 due to his December 11, 1994 employment injury.

On December 16, 1994 appellant, then a 58-year-old maintenance mechanic, filed a claim alleging that he sustained an injury on December 11, 1994 when he forced his way through a small window opening while responding to an emergency call.¹ Appellant indicated that he bruised the right side of his chest and felt pain in that area.² The Office of Workers' Compensation Programs initially denied appellant's claim, but later accepted, in July 1996, that appellant sustained a chest wall strain, aggravation of coronary artery disease and myocardial infarction. On December 22, 1994 appellant underwent a coronary artery bypass grafting. He returned to his regular work for the employing establishment in February 1995.³ Appellant later claimed that he sustained a recurrence of disability on April 28, 1996 due to his December 11, 1994 employment injury. By decision dated February 11, 2000, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on April 28, 1996 due to his December 11, 1994 employment injury. By decision dated August 6, 2000 and finalized August 7, 2000, an Office hearing representative affirmed the Office's February 11, 2000 decision.

¹ Appellant's job required him to answer emergency calls to perform various repairs and he had to work overtime on occasion. His duties included climbing ladders up to 40 feet tall while lifting and carrying up to 20 pounds of tools and supplies.

² Appellant stopped work on December 11, 1994.

³ Appellant suggested that he returned to limited-duty work, but the evidence of record shows that he actually returned to his regular work.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after April 28, 1996 due to his employment-related cardiac condition.

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.⁴ 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.⁵ Where no such rationale is present, medical evidence is of diminished probative value.⁶

The record contains a June 20, 1996 report in which Dr. Mohammad M. Khan, a Board-certified orthopedic surgeon, to whom the Office referred appellant, indicated that appellant reported experiencing shortness of breath upon lifting more than 20 pounds or climbing ladders and chest pain upon bending under shelves while performing electrical or plumbing work. Dr. Khan noted that appellant's history of coronary artery disease and reported essentially unremarkable findings on examination. He stated:

“The patient attributes the precipitation of his heart attack to a stressful job, which I believe has precipitated underlying coronary artery disease, although he has obviously no apparent risk factors, other than gender and age. Other risk factors include a stressful job and having him on-call most of the time for emergency call and performing overtime at this supervisor's request.”

* * *

“In my opinion, the patient had underlying coronary artery disease for some time, probably related to his stressful condition. As well, the heart attack is related to his stressful condition at work. This was triggered by his emergency call to pass through the window [on December 11, 1994], which caused the heart attack. This is based on the above facts that the patient has no obvious risk factors, *i.e.*, smoking, hypertension, diabetes mellitus, hypercholesterolemia or a familial history of coronary artery disease. The patient has performed his job faithfully and in compliance with his supervisor.”

The submission of Dr. Khan's June 20, 1996 report is not sufficient to establish that appellant sustained a recurrence of disability on or after April 28, 1996 due to his December 11, 1994 employment injury in that Dr. Khan did not provide a clear opinion that appellant sustained

⁴ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁵ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁶ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

such an employment-related recurrence of disability.⁷ While he did provide an opinion that the events of December 11, 1994 caused appellant to sustain a cardiac injury, Dr. Khan did not provide an opinion that appellant sustained a recurrence of disability on or after April 28, 1996 due the December 11, 1994 injury. Although he noted appellant's reported symptoms, Dr. Kahn failed to provide an opinion explaining how appellant's cardiac condition could have worsened due to the December 11, 1994 injury such that he was no longer able to perform his work on after April 28, 1996. Nor did he provide a clear opinion that appellant was disabled at the time of his examination.

In reports dated June 9, 1997 and September 20, 1999, Dr. Patricia E. Gabriel, an attending osteopath, indicated that appellant was unable to work due to his coronary artery disease and other conditions. However, Dr. Gabriel did not provide a clear opinion that appellant sustained an employment-related recurrence of disability on or after April 28, 1996. She did not indicate that appellant's problems after April 28, 1996 were due to his December 11, 1994 employment injury rather than being due to his underlying cardiac disease and other nonwork-related medical problems.

Moreover, the record contains other medical evidence which suggests that appellant did not sustain a recurrence of disability on or after April 28, 1996 due to his December 11, 1994 employment injury. In a report dated May 30, 1996, Dr. Joseph Cardenas, an attending Board-certified cardiologist, noted that appellant underwent an exercise treadmill without chest discomfort and was able to reach his maximum heart rate. Dr. Cardenas noted that other findings of his examination and stated: "He is therefore cleared from the cardiac standpoint."

In a report dated September 20, 1999, Dr. Maurice Eliaser, Jr., a Board-certified cardiologist, to whom the Office referred appellant, indicated that appellant had an excellent response to a stress test on February 19, 1997 with no reference to impaired respiratory function. Dr. Eliaser indicated that appellant's coronary artery disease was progressive but was not currently symptomatic. He concluded that the December 11, 1994 employment injury did not cause any significant disability after April 28, 1996.

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.⁸ 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.

⁷ See *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).

⁸ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The August 7 and February 11, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 25, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member