

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT REID and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 02-1319; Submitted on the Record;
Issued November 1, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability on or after December 2, 1999, due to his accepted April 2, 1998 employment injury.

On April 7, 1998 appellant, then a 52-year-old custodian, filed a traumatic injury claim alleging that he injured his back on April 2, 1998 while lifting bags filled with water.

On December 2, 1999 appellant filed a claim for a recurrence of disability due to his April 2, 1998 employment injury.

By decision dated March 23, 2001, the Office of Workers' Compensation Programs denied appellant's claim that he sustained an injury on April 2, 1998. As the claim for injury was denied, appellant's claim for recurrence of that injury was not addressed by the Office.

Appellant requested a hearing. By decision dated February 7, 2002, the hearing representative reversed the decision denying fact of injury and instructed the Office to accept the claim for a lumbar sprain. However, the hearing representative found that the evidence did not establish a recurrence of disability beginning on December 2, 1999 or thereafter and, insofar as the Office had denied the recurrence, affirmed the Office's decision.

In a September 24, 1999 report, Dr. Irving P. Ratner, a Board-certified orthopedic surgeon, noted that appellant had "been experiencing aching low back pain since early in 1998, allegedly related to a fall." He noted a "very good probability that [appellant]'s problem is related to his body habitus and his age and the development of degenerative changes in the facet joint on the right side, at L5-S1."

In a report dated May 16, 2001, Dr. David Weiss, an osteopath, evaluated appellant and diagnosed chronic post-traumatic lumbosacral sprain and strain, aggravation of preexisting

multi-level discogenic lumbar spine disease and right lumbar radiculitis.¹ He stated that “[t]he work-related injuries of April 2, 1998 and ... duties of employment were the competent producing factors for the claimant’s subjective and objective findings of today.”

Dr. Ratner, in an August 13, 2001 report, noted that he first saw appellant on September 24, 1999 and appellant related falling in 1998. Having reviewed the record which indicated a lifting incident, he opined that such a lifting injury, with probability, is related to appellant’s symptoms. In concluding, Dr. Ratner stated that “If it can be shown that appellant was not symptomatic before April 2, 1998, and he was so after the lifting injury, one can safely make the connection of causal relationship within reasonable medical probability.”

The Board finds that appellant failed to establish that he sustained a recurrence of disability on or after December 2, 1999, due to his accepted April 2, 1998 employment injury.

An employee 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 reasoning.²

In this case, the medical evidence fails to establish that appellant sustained a recurrence of disability on or about December 2, 1999 based on his April 2, 1998 work-related injuries. Dr. Ratner’s September 24, 1999 report reveals that appellant had suffered from low back pain since 1998 but that his problem was related to his “body habitus and his age and the development of degenerative changes in the facet joint on the right side.” In his August 13, 2001 report, Dr. Ratner, nevertheless, using conclusory language, found that there was a causal connection between the injury and the recurrence of disability. He failed, however, to provide sufficient medical rationale to establish a causal relationship between this condition, low back pain and the accepted injuries.

In a May 16, 2001 report, Dr. Weiss diagnosed chronic post-traumatic lumbosacral sprain and strain, aggravation of preexisting multi-level discogenic lumbar spine disease and right lumbar radiculitis, which he attributed to appellant’s April 2, 1998 employment injury and employment duties. Dr. Weiss failed to explain with any medical rationale how appellant’s April 2, 1998 employment injury caused this condition.

Neither Drs. Ratner nor Weiss provided a rationalized medical opinion explaining how appellant’s disability beginning on December 2, 1999 was causally related to his accepted

¹ The physician also provided an impairment rating pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.). However, the Office has not issued a final decision regarding a claim for a schedule award. The Board’s jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c); 501.3(d)(2). Therefore, the issue of a schedule award is not within the Board’s jurisdiction on appeal.

² *Ronald A. Eldridge*, 53 ECAB ____ (Docket No. 01-67, issued November 14, 2001).

April 2, 1998 employment injury. The Board has held that medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.³

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.⁴ To establish causal relationship, appellant must submit a medical report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to meet his burden of proof.

The February 7, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 1, 2002

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Albert C. Brown*, 52 ECAB ____ (Docket No. 98-2320, issued November 29, 2000).

⁴ *Donald W. Long*, 41 ECAB 142 (1989).