

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN COMEAUX and U.S. POSTAL SERVICE,
MANAGEMENT SECTION CENTER, Baton Rouge, LA

*Docket No. 03-310; Submitted on the Record;
Issued April 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on or after October 11, 2000 causally related to her August 17, 1999 employment injury.

This case was previously before the Board.¹ By decision and order dated March 27, 2002, the Board affirmed the Office of Workers' Compensation Programs' decision dated November 20, 2000 and finalized November 27, 2000 in which the Office denied appellant's claim for a recurrence of disability on or after October 11, 2000 causally related to her August 17, 1999 employment injury. The Board's prior decision is herein incorporated by reference.

By letter dated May 1, 2002, appellant requested reconsideration and submitted additional evidence.

In a report dated January 3, 2001, Dr. David S. Muldowny, an orthopedic surgeon, stated that he examined appellant on November 1, 1999 for pain that began at work on August 17, 1999. He noted that a magnetic resonance imaging (MRI) scan revealed lumbar spondylosis and a herniated disc at L4-5. Dr. Muldowny stated, "It seems reasonable to me this disc herniation occurred on or about the time her pain began and was the cause of her symptoms."

By decision dated August 20, 2002, the Office denied modification of its denial of appellant's claim for a recurrence of disability.

The Board finds that appellant failed to establish that she sustained a recurrence of disability on or after October 11, 2000 causally related to her August 17, 1999 employment injury.

¹ See Docket No. 01-1826 (issued March 27, 2002).

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.² 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.³

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 her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁴

The Board previously considered the evidence of record in this case in its March 27, 2002 decision. The only evidence submitted by appellant since the Board's March 27, 2002 decision is the January 3, 2001 report from Dr. Muldowny.

In his report dated January 3, 2001, Dr. Muldowny, an orthopedic surgeon, stated that he examined appellant on November 1, 1999 for pain that began at work on August 17, 1999. He noted that an MRI scan revealed lumbar spondylosis and a herniated disc at L4-5. Dr. Muldowny stated: "It seems reasonable to me this disc herniation occurred on or about the time her pain began and was the cause of her symptoms." However, the accepted injury in this case is a low back strain. Dr. Muldowny's opinion that appellant's herniated disc is related to her August 17, 1999 low back strain is couched in speculative terms and lacks sufficient supporting medical rationale. As noted above, neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship. Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability on October 11, 1999 is causally related to the accepted employment injury on August 17, 1999 and, therefore, the Office properly denied her claim for compensation.

² See *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

³ See *Lourdes Davila*, 45 ECAB 139, 142 (1993); *Mary S. Brock*, 40 ECAB 461, 471 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

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

The decision of the Office of Workers' Compensation Programs August 20, 2002 is affirmed.

Dated, Washington, DC
April 3, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member