

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHANIE SPENCER and DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION,
Dallas, TX

*Docket No. 03-937; Submitted on the Record;
Issued August 11, 2003*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on August 14, 2002 causally related to her January 11, 2001 employment injury.

This case was previously before the Board.¹ By decision and order dated July 17, 2002, the Board set aside Office of Workers' Compensation Programs decisions dated September 27 and April 4, 2001, in which the Office denied appellant's claim for an occupational disease. The Board's July 17, 2002 decision is incorporated herein by reference.²

On August 7, 2002 the Office accepted appellant's claim for cervical strain and bilateral wrist strain sustained on January 11, 2001.

On August 14, 2002 appellant filed a claim for a recurrence of disability as of August 14, 2002 causally related to her January 11, 2001 employment injury.

By decision dated December 30, 2002, the Office denied appellant's claim for a recurrence of disability.³

¹ Docket No. 02-380 (issued July 17, 2002).

² On February 6, 2001 appellant, then a 37-year-old management and program assistant, filed an occupational disease claim alleging that she sustained an injury to her wrists, left elbow, shoulder and neck due to typing and writing performed in her job.

³ The record contains additional evidence submitted subsequent to the Office decision of December 30, 2002. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2.(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of disability on August 14, 2002 causally related to her January 11, 2001 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.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

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.⁷

In a report dated September 13, 2002, Dr. J. Scott Ellis, appellant's attending Board-certified orthopedic surgeon, stated that he examined her on that date for left upper extremity, neck and left shoulder pain and numbness and paresthesias in the upper extremities. He provided findings on examination and diagnosed possible cervical spondylosis, possible bilateral carpal tunnel syndrome and possible impingement or internal derangement of the left shoulder. In a report dated October 25, 2002, Dr. Ellis noted that a cervical magnetic resonance imaging (MRI) scan revealed central disc protrusions at C3-4 and C4-5. However, the diagnoses of Dr. Ellis were tentative and he did not provide any medical rationale explaining how these "possible" conditions were causally related to appellant's January 11, 2001 accepted conditions, cervical spine and bilateral wrist strains. Therefore, his reports are insufficient to establish that appellant sustained a recurrence of disability on August 14, 2002 causally related to her January 11, 2001 employment injury.

In a report dated November 14, 2002, Dr. Charles E. Willis II, a Board-certified anesthesiologist, provided findings on examination and diagnosed cervical disc displacement, cervical radiculopathy and possible carpal tunnel syndrome. However, he did not provide any rationalized explanation as to how these conditions were causally related to appellant's January 11, 2001 employment injury. Therefore, his report is insufficient to discharge appellant's burden of proof in establishing that she sustained an employment-related recurrence of disability on August 14, 2002.

⁴ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

⁵ See *Lourdes Davila*, 45 ECAB 139 (1993); *Mary S. Brock*, 40 ECAB 461 (1989); *Nicolea Brusco*, 33 ECAB 1138 (1982).

⁶ See *Michael Stockert*, 39 ECAB 1186 (1988).

⁷ See *Walter D. Morehead*, 31 ECAB 188 (1979).

The December 30, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 11, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member