

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA R. WESTFALL and U.S. POSTAL SERVICE,
POST OFFICE, Portland, OR

*Docket No. 03-1520; Submitted on the Record;
Issued August 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an employment-related recurrence of total disability.

On February 28, 2001 appellant, then a 53-year-old clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that repetitive lifting of large and heavy mailbags, parcels, letter trays and flat tubs resulted in tendinitis in her left thumb. She later began working in a light-duty position. In a February 26, 2001 report, Dr. Ezra Rabie, a specialist in occupational medicine, wrote that appellant started to have aches and pains in her thumb in the summer of 2000. X-rays were taken in June 2000 and revealed degenerative changes at the carpometacarpal joint that he felt were aggravated by her work. He noted that appellant received two injections and has been wearing a thumb spike. Dr. Rabie placed appellant on modified duty. In an April 30, 2001 report, Dr. Rabie wrote that appellant presented with severe pain in her left thumb. He indicated that he explained to her that her arthritic condition was not caused by work and recommended surgery, which she declined.

On May 3, 2001 the Office of Workers' Compensation Programs accepted appellant's claim for "sprain in her left metacarpophalange." Appellant continued to work on modified duty with limited use of her left hand.

On January 22, 2003 appellant filed a claim alleging that she sustained an employment-related recurrence of disability. She stated that the pain never went away and seems to be getting worse, but she did not stop work or identify a specific date of recurrence. In a February 12, 2003 letter, the Office requested more information including a rationalized medical report. No further evidence was submitted.

In an April 24, 2003 decision, the Office denied appellant's claim finding that the medical evidence failed to establish a causal relationship between her claimed recurrence of disability and her accepted injury.

The Board finds that appellant has not established that she sustained an employment-related recurrence of total disability.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty.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

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

In the present case, appellant failed to submit any medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.⁵

¹ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

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

⁴ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

⁵ The Board notes that appellant submitted new medical evidence subsequent to Office's April 24, 2003 decision. However, the Board cannot consider that evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

The April 24, 2003 decision by the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member