

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MICHAEL C. WALKER and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, IL

*Docket No. 02-2389; Submitted on the Record;  
Issued February 13, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability causally related to his work injury of January 5, 1984.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally related to his employment injury. As part of such burden of proof, rationalized medical evidence showing causal relationship must be submitted.<sup>1</sup>

This case has previously been before the Board. In a decision dated October 3, 2001, the Board affirmed the Office of Workers' Compensation Programs' September 19 and May 22, 2000 decisions which found that appellant failed to establish a causal relationship between his original injury of January 5, 1984 and his alleged recurrence of disability of September 19, 1998.<sup>2</sup> The facts and procedural history as set forth in the Board's October 3, 2001 decision are herein incorporated by reference.

Following the Board's decision, appellant, through his representative, requested reconsideration on April 16, 2002. Medical evidence from Dr. Philip S. Rubin, a Board-certified family practitioner and appellant's treating physician, was submitted along with physical therapy notes. On July 30, 2002 the Office denied modification of its denial of recurrence of disability.

In a telephonic deposition taken on March 6, 2002, Dr. Rubin advised he had been treating appellant since November 1993. He noted that appellant had informed him that he had a prior injury back in 1984 and first complained about it in March 1994 when appellant mentioned that he had chronic neck pain relating to an old injury, "but he did n[o]t go into detail about it."

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986).

<sup>2</sup> Docket No. 01-224.

Dr. Rubin stated that appellant complained about neck pain again in September 1995. He related that a November 1995 examination revealed moderate spasm and tenderness of the right trapezius muscle. Dr. Rubin stated that “It [i]s possible that the symptoms that he had in 1995 were at least, ... made worse by the fact that he had a prior injury. Certainly when you have a cervical injury, you typically can injure, ... the surrounding muscles, which the trapezius is right in the surrounding area. So, ... it [i]s possible that the old injury made his symptoms that he complained about in 1995, ... worse.” Dr. Rubin offered the following diagnosis: “Well, I think what fits him best is the myofascial pain syndrome involving the neck and upper back. And I think it [i]s a combination of his original injury in 1984, which from what [appellant] told me never totally resolved, that he had ongoing symptoms from that, but then got much worse around 1998, 1999, again, related to his work.” Dr. Rubin explained that: “[H]e probably sustained some permanent damage back in 1984. He probably developed some scar tissue and that scar tissue then can become a focus for ongoing pain and then it becomes an area that [i]s just more vulnerable to getting reinjured. [T]hat [i]s probably what happened. He probably had the original injury that ... he was never 100 percent ... and then ... he [i]s that much more vulnerable to getting reinjured.” When asked to make a distinction between “probable” and “possible,” Dr. Rubin responded: “... I [a]m using the word probable is that I think that there [i]s more than a 50 percent chance that [i]s the case, whereas possible means that there [i]s just a one percent chance.”

Medical treatment notes from Dr. Rubin were submitted. An April 3, 2002 treatment note reports chronic neck and upper back pain. Examination revealed moderately tight trapezius and paracervical muscles. An assessment of exacerbation of chronic neck and upper back pain was provided. A May 15, 2002 treatment note reports complaints of exacerbation of chronic neck pain and notes trapezius spasm, left greater than right. A June 7, 2002 treatment note provides an assessment of exacerbation of chronic neck pain. It was noted that appellant has been baby-sitting for his 11-month-old grandson who weighs about 15 to 16 pounds and he decided two days ago that he could not keep doing this because he has been having to lift the child up a lot. Also submitted were two prescription notes dated June 7, 2002 which contained the diagnosis exacerbation of chronic neck pain.

These reports, however, are of limited probative value on the relevant issue of the present case as Dr. Rubin fails to provide a clear, unequivocal and rationalized explanation for his opinion on the basis of a complete and accurate factual and medical history. In his March 6, 2002 deposition, Dr. Rubin notes that appellant had a number of “exacerbation” injuries, both work and nonwork related, since 1984. His reliance on appellant’s assessment that the 1984 work injury never resolved and the fact that Dr. Rubin admits that he does not know the particulars of the 1984 work injury renders his opinion speculative at best as it is not based on an accurate factual and medical history. Dr. Rubin further has not provided adequate medical rationale in support of his conclusion on causal relationship.<sup>3</sup> Neither the fact that subsequent “exacerbations” of symptoms happen to be near or in the “surrounding” general area of the prior injury or that appellant has a predisposition to new exacerbation injuries can be considered

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<sup>3</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

evidence of causal relationship, absent the necessary medical rationale. The Board has held that the mere fact an employee experiences such symptoms does not show causal relationship between the employment injury and the claimed disability.<sup>4</sup> Appellant's claim was accepted for a neck strain and later modified to include a right shoulder myositis. Dr. Rubin has not explained how and why appellant continues to experience an effect from the accepted conditions so many years after the original injury of 1984 given the fact that appellant had experienced a number of new "exacerbation" injuries, both work and nonwork related, since 1984.

For these reasons, appellant did not meet his burden of proof to establish that he sustained a recurrence of disability causally related to his work injury of January 5, 1984.

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

Dated, Washington, DC  
February 13, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).