

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE S. BUTLER and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 03-211; Submitted on the Record;
Issued March 18, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability on or after July 12, 1999 due to his June 9, 1999 employment injury.

On June 9, 1999 appellant, then a 48-year-old custodian, filed a traumatic injury claim alleging that he sustained a contusion of his left foot on that date when the left side of his foot was run over by a pallet jack pushed by a coworker. The Office of Workers' Compensation Programs accepted that appellant sustained a left foot contusion. Appellant worked in a limited-duty position from June 9 to June 11, 1999 and returned to his regular work on June 12, 1999. On December 14, 2001 appellant filed a claim alleging that he sustained a recurrence of disability on July 12, 1999 due to his June 9, 1999 employment injury. Appellant indicated that he had experienced left knee pain since the June 9, 1999 injury.¹ By decision dated March 21, 2002, the Office denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after July 12, 1999 due to his June 9, 1999 employment injury. By decision dated August 21, 2002, the Office affirmed its March 21, 2002 decision.²

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after July 12, 1999 due to his June 9, 1999 employment injury.

¹ Appellant later indicated that he sustained both left foot and left knee pain on June 9, 1999 but that the foot pain was greater. He stated, "But I am sure that I made mention to the attending person that my knee was also injured when my foot was pinned under the pallet jack. When I snatched my foot away, sudden jerking motion caused injury to my knee."

² In its August 31, 2002 decision, indicated in part of the text that it was denying appellant's request for merit review. However, when the decision is read in whole, it is clear that the Office weighed the probative value of the evidence submitted by appellant in support of his reconsideration request. Therefore, the Office effectively conducted a merit review of appellant's claim and affirmed its March 21, 2002 decision.

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.³ 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.⁴ Where no such rationale is present, medical evidence is of diminished probative value.⁵

In support of his recurrence of disability claim, appellant submitted a May 8, 2002 report in which Dr. Jonathan L. Schaffer, an attending Board-certified orthopedic surgeon, indicated that he had recently undergone arthroscopic surgery which confirmed the existence of a meniscal tear in his left knee.⁶ He stated, “This is certainly consistent with his reported injury pattern of his foot being planted when his body twisted over and hearing a snapping or popping in the knee.” Dr. Schaffer indicated that appellant might be able to return to work in three weeks. This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Schaffer did not clearly indicate that he was making reference to the June 9, 1999 injury when he spoke of appellant’s reported injury or that he was providing an opinion on causal relationship.⁷

Even if Dr. Schaffer’s report were interpreted as containing an opinion that appellant sustained a left knee injury and disability due to the June 9, 1999 injury, such an opinion would be of little probative value because it would not be based on a complete and accurate factual and medical history.⁸ Appellant did not report any left knee pain or involvement at the time of the June 9, 1999 injury and treatment records from that period only mention appellant’s reporting of left foot pain. The earliest medical evidence of record which mentions appellant’s reporting of left knee pain dates from March 2001, almost two years after the June 9, 1999 injury. Moreover, the medical evidence from March 2001 onward does not indicate that appellant related his left knee pain to the June 9, 1999 injury and provides conflicting references to the time that the left knee pain commenced.⁹

³ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁵ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁶ The record contains diagnostic testing from December 2001 which shows the existence of such a meniscal tear.

⁷ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

⁸ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

⁹ For example, in a November 27, 2001 report, appellant reported that he had left knee pain for more than a year and that he could not relate it to any specific trauma. In a report dated December 12, 2001, appellant reported that he had left knee pain since 1990 and that he could not relate it to any specific trauma.

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 his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.¹⁰ Appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated August 21 and March 21, 2002 are affirmed.

Dated, Washington, DC
March 18, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹⁰ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).