

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROMAN JONES and U.S. POSTAL SERVICE,
CENTRAL PARK STATION, Buffalo, NY

*Docket No. 02-1478; Submitted on the Record;
Issued October 22, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a recurrence of disability on May 25, 2000 causally related to his June 6, 1995 employment injury.

On June 6, 1995 appellant, then a 54-year-old letter carrier, filed a claim for an injury occurring on that date in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for cervical radiculitis and paid him compensation for intermittent periods of total disability until July 13, 1996.

On May 26, 2000 appellant filed a claim for a recurrence of disability causally related to his June 6, 1995 employment injury. He described his condition subsequent to his return to work as follows:

"I was never taken out of work, but was given some work restrictions. Since the initial injury my neck and shoulder have not been 100 percent functional. On heavy mail carrying days, I experience a considerable amount of discomfort and pain."

Appellant related that, when he returned to work following his employment injury he had restrictions of half the usual amount of mail and, when "possible no carrying of the mail satchel." On the reverse side of the claim form, appellant's supervisor stated that he had resumed his usual employment following his injury.¹

By decision dated November 21, 2000, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained a recurrence of disability on May 25, 2000 due to his June 6, 1995 employment injury. On November 29, 2000 appellant

¹ In a letter dated June 15, 2000, the employing establishment informed the Office that appellant had filed his current claim after receiving a reprimand.

requested a hearing before an Office hearing representative. At the hearing, held on September 27, 2001 the hearing representative noted that appellant maintained that he worked with restrictions following his original injury.² Appellant stated that the employing establishment informally accommodated his restrictions until November 2000, but that he did not work in a light-duty capacity. He further stated that, at the time of his recurrence of disability, his job duties had not changed. By decision dated January 14, 2002, the hearing representative affirmed the Office's November 21, 2000 decision.³

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of disability on or after May 25, 2000 causally related to his accepted employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.⁴ This burden includes the necessity of furnishing evidenced from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁵

In this case, appellant maintained that he worked with restrictions following his employment injury, though not in an official light-duty position.⁶ He, however, did not attribute his increase in disability beginning May 25, 2000 to a change in his employment duties. Therefore, the issue is whether the medical evidence is sufficient to establish that appellant was disabled on or after May 25, 2000 due to his June 6, 1995 employment injury.

In a medical report dated May 25, 2000, Dr. Timothy J. Collard, a Board-certified orthopedic surgeon and appellant's attending physician, related that appellant "has noted symptoms on the right side of his neck and shoulder that he has had since 1995. I have reviewed x-rays taken on April 26, 2000 that show degenerative disc disease at C5-6 and C6-7."

² In an office visit note dated July 26, 1996, a physician found that appellant could resume work on August 2, 1996 without restrictions. In an office visit note dated November 7, 1996, Dr. Timothy J. Collard, a Board-certified orthopedic surgeon and appellant's attending physician, found that appellant could return to his regular employment with "decreas[ed] weight and carrying time on r[ight] shoulder as ... restrictions."

³ The hearing representative noted that the record contained no medical evidence between November 26, 1996 and May 24, 2000.

⁴ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁵ *Id.*

⁶ Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements. *Terry R. Hedman*, 38 ECAB 222 (1986).

Dr. Collard discussed appellant's complaints of pain and numbness on the right side and some problems on the left side and stated:

“[Appellant] questioned me regarding whether this would be work related and I explained that if he does not have a particular incident to relate, he would have to check this with the doctors at work. He states that these symptoms are similar to those that he experienced previously.”

Dr. Collard diagnosed cervical radiculitis and degenerative disc disease and updated appellant's work restrictions to include reduced lifting with the left arm.⁷ As he indicated that he was unable to determine whether appellant's current condition and disability was employment related, his opinion is insufficient to meet appellant's burden of proof. Additionally, while Dr. Collard noted that appellant related that his symptoms were comparable to those he experienced after his employment injury, appellant's belief that his condition was caused or aggravated by the employment is insufficient to establish causal relation.⁸

In a disability certificate dated June 8, 2000, Dr. Collard opined that appellant should remain off work until June 15, 2000. In an accompanying office visit note, Dr. Collard stated: “In reviewing [appellant's] complaints and initial history of injury, physical findings remain static with no new history of injury or other medical problems.” He referred appellant for “therapy with cervical traction.” On June 15, 2000 Dr. Collard found that appellant could return to work with restrictions and noted some improvement. In his June 8 and 15, 2000 reports, he did not render an opinion regarding the cause of appellant's condition and, therefore, the reports are of little probative value.⁹

In an office visit note dated June 20, 2000, Dr. Collard stated that appellant was “presently under treatment for his compensable injury of June 6, 1995.” He diagnosed cervical radiculitis and found that appellant could work with restrictions of three hours of carrying and five hours of office work. While Dr. Collard indicated that he was treating appellant for his June 6, 1995 work injury, he did not explain how, with reference to the specific facts of the case, appellant's June 6, 1995 employment injury limited his ability to work. As his opinion does not contain medical rationale, it is of little probative value.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factor. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition

⁷ Dr. Collard had evaluated appellant on April 24, 2001 and found that he had “no new history of injury or other medical problems.” He diagnosed cervical radiculitis and opined that appellant's work restrictions were unchanged.

⁸ *Lourdes Harris*, 45 ECAB 545 (1994).

⁹ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹⁰ *Caroline Thomas*, 51 ECAB 451 (2000) (a medical opinion not fortified by medical rationale is of little probative value).

and the specific employment factors identified by the claimant.¹¹ Further, Dr. Collard did not provide “bridging evidence” relating appellant’s current cervical radiculitis and resulting disability to the accepted employment injury.¹²

In an office visit note dated July 13, 2000, Dr. Collard diagnosed right cervical radiculopathy with no new history of injury and requested authorization for a magnetic resonance imaging (MRI) scan. He completed a disability certificate on July 13, 2000 finding that appellant could work with restrictions. The record contains similar office visit notes and disability certificates from Dr. Collard dated August 14, September 12, October 24 and December 5, 2000, January 2, February 15, April 24 and August 7, 2001. In his office visit notes and disability certificates, he did not offer any opinion regarding the cause of appellant’s condition and thus, his opinion is of little probative value on the issue of causal relationship.¹³

In an office visit note dated September 18, 2001, Dr. Collard related: “[Appellant] has been treating with our office since 1996 for his compensable injury of June 6, 1995.” He diagnosed cervical radiculitis. Dr. Collard, however, did not find appellant disabled from employment or address the relevant issue of whether he sustained a recurrence of disability beginning May 25, 2000. Consequently, his report is insufficient to meet appellant’s burden of proof.

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.¹⁴ As he failed to submit a rationalized medical report supporting that his employment injury resulted in his inability to perform his employment on or after May 25, 2000 the Office properly denied his claim for compensation.

¹¹ *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹² Medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician’s conclusion of a causal relationship. In this case, the record is devoid of medical evidence between late 1996 and April 2000. For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 738 (1986).

¹³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decision of the Office of Workers' Compensation Programs dated January 14, 2002 is affirmed.

Dated, Washington, DC
October 22, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member