

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHELWAN A. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Coppel, TX

*Docket No. 03-2029; Submitted on the Record;
Issued October 27, 2003*

DECISION and ORDER

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

The issue is whether appellant has established a recurrence of disability commencing September 6, 2002 causally related to her February 4, 1998 lumbar strain.

On a February 21, 1998 appellant, then a 32-year-old distribution clerk, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that, on February 4, 1998, she injured her back while picking up mail. In a February 11, 1998 report, Dr. Michael Benson, an orthopedist, noted that x-rays of appellant's lumbar spine revealed intervertebral discs not significantly narrowed with mild scoliotic curvature at the thoracolumbar junction to the left. He indicated that there were no fractures or subluxation identified but, there were small hypertrophic spurs anteriorly on multiple lumbar and lower thoracic vertebral bodies. Dr. Benson diagnosed a moderate thoracolumbar scoliosis. On February 23, 1998 appellant returned to work in a light-duty capacity and later returned to her regular duties. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain.

On October 16, 2002 appellant filed a notice of recurrence of disability (Form CA-2a), stating that her back had given her trouble since her 1998 injury and that she experienced muscle spasms making it difficult for her to move. She reported the date of recurrence as September 4, 2002 and indicated that she stopped work intermittently as of September 6, 2002. In a letter received on October 17, 2002, the employing establishment opposed appellant's claim alleging that appellant had been building up to this claim as she had attendance problems and had used all her sick and unpaid leave and was looking for a way to get out of work.

In a November 6, 2002 report, Dr. Sharon Gibbs, a specialist in physical medicine and rehabilitation, diagnosed lower back pain and strain and myofascial pain syndrome. She indicated that appellant could return to work in light-duty capacity with no prolonged standing, stooping or overhead lifting. Results of a magnetic resonance imaging (MRI) scan on October 25, 2002 revealed multilevel spondylosis changes that were predominantly associated with facet arthropathy in the mid and lower lumbar segments. There were also minimal disc bulges at several levels with no focal protrusion or high grade central canal or foraminal

narrowing. In an October 29, 2002 letter to appellant, the employing establishment notified appellant of a disciplinary action pending due to her attendance problems.

In a February 4, 2003 report, Dr. Gibbs noted that appellant complained of pain in her upper back and cervical muscles in her left shoulder. She reported that appellant had injured her back while lifting at work on September 4, 2002. Dr. Gibbs added that she felt appellant could work in a light-duty capacity if it were located closer to her home, but appellant's one way commute of 1 hour and 20 minutes exacerbated her myofascial pain syndrome. Dr. Gibbs recommended that appellant return to work or at least find a job closer to home, but appellant strongly resisted due to the commute.

In a February 18, 2003 decision, the Office denied appellant's claim finding that the medical and factual evidence did not establish that appellant's condition was related to her accepted work injury. In a February 26, 2003 letter, she requested a review of the written record. In support of her request, appellant submitted a October 25, 2002 MRI scan and a December 31, 2002 duty status report from Dr. Gibbs that indicated appellant could not work due to diffuse low back pain and myofascial pain syndrome.

In a July 11, 2003 decision, the hearing representative affirmed the February 18, 2003 decision due to the insufficient medical evidence. The hearing representative found insufficient medical rationale explaining the relationship between appellant's current condition and her accepted injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability.

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.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, the 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 Appellant failed to submit rationalized medical evidence

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 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).

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.

In the present case, appellant failed to submit sufficient medical evidence to establish that she sustained a recurrence of total disability. In her November 6, 2002 form report, Dr. Gibbs diagnosed lower back pain/strain and myofascial pain syndrome and indicated that appellant could work light duty. The Board notes that myofascial pain syndrome is not a condition accepted by the Office as employment related and Dr. Gibbs did not explain how that condition was related to the February 4, 1998 employment injury, accepted for a lumbar strain. Dr. Gibbs does not discuss disability commencing September 6, 2002 or the causal relationship between any disability and the accepted lumbar strain. In her February 4, 2003 report, Dr. Gibbs indicated that appellant reported a lifting injury at work on September 4, 2002. If appellant is claiming that a new work incident caused injury, this represents a new injury claim and requires the filing of an appropriate claim form.⁵ The issue in this case is whether there was a recurrence of disability on or after September 6, 2002 causally related to the accepted February 4, 1998 employment injury. Dr. Gibbs does not provide a reasoned medical opinion supporting a recurrence of disability in this case.

The record does not contain a medical report with a complete factual and medical history, and a reasoned opinion supporting a recurrence of disability on or after September 6, 2002 causally related to the February 4, 1998 employment injury. The Board accordingly finds that appellant has not met her burden of proof in this case.

⁵ A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997).

The decisions by the Office of Workers' Compensation Programs dated July 11 and February 18, 2003 are affirmed.

Dated, Washington, DC
October 27, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member