

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL J. SWIERCZYNSKI and U.S. POSTAL SERVICE,
EASTSIDE STATION, Buffalo, NY

*Docket No. 03-1704; Submitted on the Record;
Issued September 22, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability on December 27, 2002 causally related to his May 28, 2002 employment injury.

On May 28, 2002 appellant, then a 37-year-old casual carrier, filed a traumatic injury claim alleging on that date he sustained a dog bite on his upper left leg. Appellant stopped work on the date of injury.

On March 18, 2003 appellant filed a claim alleging that on December 27, 2002 he sustained a recurrence of disability. Appellant stated that his arm and hand hurt. The employing establishment submitted a March 21, 2003 letter controverting appellant's claim on the grounds that there was no mention of an injury to any body part on May 28, 2002 except appellant's left leg. The employing establishment also contended that appellant had not presented any medical evidence indicating that his arm, hand or shoulder was injured on May 28, 2002.

By letter dated April 1, 2003, the Office of Workers' Compensation Programs accepted appellant's claim for a dog bite of the left leg with no time lost from work.

In an April 2, 2003 letter, the Office requested that appellant submit factual and medical evidence supportive of his claim. The Office requested that the employing establishment submit factual evidence regarding appellant's recurrence claim.

In response, appellant submitted employment and medical records. The employing establishment resubmitted its March 21, 2003 letter controverting appellant's claim and responded to the questions posed by the Office.

By decision dated May 31, 2003, the Office found the evidence of record insufficient to establish that appellant sustained a recurrence of disability on December 27, 2002 causally related to his May 28, 2002 employment injury.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on December 27, 2002 causally related to his May 28, 2002 employment injury.

A person 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 he claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish 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 reasoning.¹

In this case, appellant has not submitted rationalized medical evidence establishing that his arm and hand conditions on December 27, 2002 were caused by the May 28, 2002 accepted employment injury. Appellant submitted a May 28, 2002 report from Dr. Deborah Milleimo, an employing establishment physician, who described the injury he sustained on that date, diagnosed a dog bite to the left upper thigh and noted his medical treatment. Dr. Milleimo stated that appellant could perform regular work on May 28, 2002. Dr. Milleimo's report fails to establish appellant's burden because it predates the alleged recurrence of disability on December 27, 2002.

Appellant also submitted discharge instructions from Catholic Health System regarding his neuropathy condition, appointment slips for medical treatment, an authorization form for right carpal tunnel release and documents regarding a job offer and an opportunity to apply for a position at the employing establishment. This evidence is not relevant to appellant's recurrence of disability claim because it failed to address the issue whether appellant's arm and hand conditions were caused by the May 28, 2002 employment injury.

An April 15, 2003 disability certificate of Dr. Thaddeus E. Szaranowicz, an orthopedist, revealed that appellant could return to work on April 29, 2003 with the restriction of no lifting greater than one to two pounds with the right arm. This disability certificate is insufficient to establish appellant's burden because it failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by the May 28, 2002 employment injury.²

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that he sustained arm and hand conditions causally related to the May 28, 2002 employment injury, the Board finds that he has failed to satisfy his burden of proof in this case.

¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

² *Daniel Deparini*, 44 ECAB 657, 659 (1993).

The May 31, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 22, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member