

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**RENEE D. SMITH, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
St. Louis, MO, Employer**

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**Docket No. 05-1740  
Issued: November 1, 2005**

*Appearances:*  
*Renee D. Smith, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
WILLIE T.C. THOMAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 22, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 28, 2005 merit decision denying her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after March 22, 2005 due to her February 11, 2004 employment injury.

**FACTUAL HISTORY**

On February 11, 2004 appellant, then a 46-year-old clerk, filed a traumatic injury claim alleging that she sustained injury to her right elbow at work on that date.<sup>1</sup> Appellant stated that

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<sup>1</sup> Appellant's regular duty required such duties as pushing and pulling for 6 hours per day, engaging in fine manipulation for 8 hours per day and lifting up to 70 pounds.

her right elbow popped when she picked up two priority mailbags and threw them into a container. She stopped work on February 11, 2004 but began working in a light-duty position. The Office accepted that she sustained a strain/sprain of her right elbow and forearm.

Appellant initially was treated for her condition by Dr. Lester E. Krenning, an attending Board-certified family practitioner.<sup>2</sup> Appellant reported that she was experiencing tenderness in the deep structure of the right lateral elbow area and she began to participate in regular physical therapy sessions.

Dr. Krenning referred appellant to Dr. William K. Feinstein, a Board-certified orthopedic surgeon. In a report dated March 2, 2004, Dr. Feinstein diagnosed right lateral epicondylitis and recommended work restrictions. The Office expanded the list of accepted conditions to include right lateral epicondylitis.

In a report dated March 23, 2004, Dr. Feinstein stated that upon examination appellant had no tenderness in her right lateral epicondylitis or radial tunnel, that she had no pain with resisted right wrist extension and that she had full range of motion in all of her right upper extremity. In an attached form report dated March 23, 2004, he indicated that appellant could return to her regular duty on March 23, 2004.

Appellant returned to her regular duty with the employing establishment in late March 2004. The record contains no medical evidence between this time and June 7, 2005 when she was seen by Dr. Feinstein. In a report dated June 7, 2005, Dr. Feinstein indicated that appellant could perform her regular duty without restrictions. He diagnosed right lateral epicondylitis and recommended that she “have a specialized test or see another specialist.”<sup>3</sup>

Appellant stopped work on March 22, 2005 and claimed that she sustained a recurrence of disability due to her February 11, 2004 employment injury.

By letter dated June 24, 2005, the Office requested that appellant submit additional factual and medical evidence in support of her recurrence of disability claim within 30 days. Appellant did not submit any medical evidence in response to the Office’s request within the allotted time.<sup>4</sup>

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<sup>2</sup> On February 11, 2004 Dr. Krenning obtained x-ray testing of appellant’s elbow, which revealed normal results. He initially diagnosed a right elbow sprain.

<sup>3</sup> On February 16, 2005 appellant filed a claim alleging that she sustained a recurrence of disability on February 7, 2005 due to her February 11, 2004 employment injury. Appellant asserted that she began having pain again in her right elbow, but she did not stop work at that time. The record contains an April 1, 2005 letter in which an Office claims examiner indicated that appellant’s recurrence of disability claim had been accepted. However, this appears to be in error as other evidence of record shows that appellant’s claim was only open for medical benefits and there was no medical evidence showing such a recurrence in February 2004.

<sup>4</sup> It appears that appellant returned to work for the employing establishment on June 8, 2005.

By decision dated July 28, 2005, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after March 22, 2005 due to her February 11, 2004 employment injury.<sup>5</sup>

### **LEGAL PRECEDENT**

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.<sup>6</sup> 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.<sup>7</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>8</sup>

### **ANALYSIS**

The Office accepted that on February 11, 2004 appellant sustained an employment strain/sprain of the right elbow and forearm and right lateral epicondylitis. Appellant returned to her regular duty with the employing establishment in late March 2004. She stopped work on March 22, 2005 and claimed that she sustained a recurrence of disability due to her February 11, 2004 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after March 22, 2005 due to her February 11, 2004 employment injury. She submitted a June 7, 2005 report in which Dr. Feinstein, an attending-Board-certified orthopedic surgeon, diagnosed right lateral epicondylitis but indicated that she could perform her regular duty without restrictions. Appellant was provided an opportunity to provide probative medical evidence in support of her claim that she sustained an employment-related recurrence of disability on or after March 22, 2005, but she failed to submit such evidence.<sup>9</sup>

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.<sup>10</sup> Appellant failed to submit rationalized medical evidence establishing that her

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<sup>5</sup> The Office noted that compensation was approved to cover appellant's attendance of a medical examination with Dr. Feinstein on June 7, 2005.

<sup>6</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>7</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>8</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

<sup>9</sup> Dr. Feinstein's June 7, 2005 report is the only medical evidence of record between late March 2004 and the Office's July 28, 2005 decision.

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

claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied her claim for compensation.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after March 22, 2005 due to her February 11, 2004 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' July 28, 2005 decision is affirmed.

Issued: November 1, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board