

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

M.E., Appellant)	
)	
and)	Docket No. 09-301
)	Issued: August 21, 2009
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Atlanta, GA, Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 12, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 19 and August 14, 2008 merit decisions denying her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, 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 20, 2008 due to her March 29, 2005 employment injury.

FACTUAL HISTORY

The Office accepted that on March 29, 2005 appellant, then a 41-year-old transportation security screener, sustained right shoulder, right upper arm and lumbosacral sprains due to carrying and tossing luggage. Appellant stopped work at the time of her injury but in July 2005

she returned to work for the employing establishment in a light-duty position. She returned to her regular duty on December 17, 2007. Appellant received appropriate Office compensation for periods of disability.

Appellant stopped work on March 20, 2008 and filed a claim alleging that she sustained a recurrence of disability on March 20, 2008 due to her March 29, 2005 employment injury.

Appellant submitted a March 20, 2008 form report in which Dr. Ethel Smith, an attending Board-certified family practitioner, diagnosed right shoulder and right lumbar strains and recommended restrictions including lifting no more than 5 pounds, pushing or pulling no more than 10 pounds and not using her right arm. Dr. Smith stated, "Her injuries are permanent." In a May 29, 2008 report, she responded to the Office's request to explain her use of the term "permanent" with respect to appellant's injuries. Dr. Smith cited a Webster's dictionary definition of permanent and stated:

"[Appellant's] injuries which were sustained in 2006 have been unresponsive to medications and physical therapy. Also, some of the pain may respond (emphasis on may) to recommend[ed] surgery, but surgery will not decrease or eliminate her disability. That is to say, [appellant] would not be able to perform the duties that I have prescribed to limits after any surgical intervention. In fact, her limitations may increase after surgery."

In a June 19, 2008 decision, 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 20, 2008 due to her March 29, 2005 employment injury.

In a July 2, 2008 report, Dr. Smith corrected her May 29, 2008 report to indicate that appellant was first treated for her back and shoulder injuries in March 2005 rather than March 2006. She stated that the injuries were deemed permanent in 2006 after medication, physical therapy and referral to orthopedic surgery. Dr. Smith noted that appellant reported constant pain that increased with the activities she was advised to limit and also complained of exacerbation of her back and shoulder conditions in July 2007 after returning to previous work-related activities. She stated, "Since July 2007, [appellant] has had to take more medication, secondary to her increased work activities. Her physical exam[ination] reveals increased spasms, decreased range of motion and an agonal gait."¹

In an August 14, 2008 decision, the Office affirmed its June 19, 2008 decision denying appellant's recurrence of disability claim.

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

¹ In a July 2, 2008 form report provided by the employing establishment, Dr. Smith discussed appellant's arm and back symptoms and recommended various permanent work restrictions.

injury.² 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.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

ANALYSIS

The Office accepted that on April 7, 2005, appellant sustained right shoulder, right upper arm and lumbosacral sprains due to carrying and tossing luggage. Appellant stopped work on March 20, 2008 and filed a claim alleging that she sustained a recurrence of disability on March 20, 2008 due to her March 29, 2005 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 20, 2008 due to her March 29, 2005 employment injury.

Appellant submitted a March 20, 2008 form report in which Dr. Smith, an attending Board-certified family practitioner, diagnosed right shoulder and right lumbar strains and recommended restrictions including lifting no more than 5 pounds, pushing or pulling no more than 10 pounds and not using her right arm. Dr. Smith stated, “[Appellant’s] injuries are permanent.” This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain a clear opinion on the cause of the recommended work restrictions.⁵ Nor does the report contain a rationalized medical opinion explaining how objective findings showed that appellant’s condition worsened such that she sustained a recurrence of disability on or after March 20, 2008 due to her March 29, 2005 employment injury.

In a May 29, 2008 report, Dr. Smith suggested that appellant had permanent work-related restrictions that caused disability and discussed the possible effect that future surgery might have on her ability to work. She did not discuss appellant’s March 29, 2005 employment injury in any detail,⁶ however, or explain how she could have sustained a recurrence of disability on or after March 20, 2008 due to this injury. In a July 2, 2008 report, Dr. Smith corrected her May 29, 2008 report to indicate that appellant was first treated for the back and shoulder injuries in March 2005 rather than March 2006. She noted that appellant complained of exacerbation of her back and shoulder conditions in July 2007 after returning to previous work-related activities. Dr. Smith did not provide a clear opinion that appellant sustained a recurrence of disability on or after March 20, 2008 due to her March 29, 2005 injury. She noted that appellant’s physical

² *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

³ *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ 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).

⁶ Dr. Smith suggested that the employment occurred in 2006.

examination revealed increased spasms, decreased range of motion and an agonal gait, but she did not indicate when this examination occurred or provide any further details of its findings.⁷

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 his employment is sufficient to establish causal relationship.⁸ She failed to submit rationalized medical evidence 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.

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 20, 2008 due to her March 29, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 14 and June 19, 2008 decisions are affirmed.

Issued: August 21, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁷ In a July 2, 2008 form report provided by the employing establishment, Dr. Smith discussed appellant's arm and back symptoms and recommended various permanent work restrictions. She did not indicate that a work-related condition necessitated these restrictions.

⁸ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).