

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CLAUDE COUSINS, JR. and U.S. POSTAL SERVICE,  
POST OFFICE, Norfolk, Va.

*Docket No. 95-3029; Submitted on the Record;  
Issued January 27, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained a recurrence of disability on or after November 8, 1993 causally related to his September 5, 1985 employment injury.

On September 5, 1985 appellant, then a 47-year-old mail handler, sustained a cervical strain and right shoulder strain in the performance of duty due to loading and unloading mail trucks and was off work through October 11, 1985.

On December 20, 1993 appellant filed a notice of recurrence of disability alleging that he sustained a recurrence of disability on November 8, 1993 which he attributed to his September 5, 1985 employment injury.

In a report dated December 16, 1993, Dr. Anwarul Islam, an internist, diagnosed spinal stenosis and indicated by checking the block marked "yes" that the condition was caused or aggravated by appellant's employment activity. He wrote "[history] [of] work-related injury to neck [and] lower back since 1985."

In a report dated April 19, 1994, Dr. Nasrollah Fatehi, a Board-certified neurosurgeon, diagnosed a cervical sprain of the lower back and indicated by checking the block marked "yes" that the condition was sustained while pushing and lifting containers of mail. No date of injury was provided.

In a report dated May 25, 1994, Dr. Fatehi diagnosed moderately severe stenosis and checked the block marked "yes" indicating that the condition was related to appellant's employment.

By decision dated August 24, 1994, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish causal relationship between his claimed recurrence of disability and his 1985 employment injury.

By letter dated March 10, 1995, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In notes dated September 12, 1994, Dr. Thomas C. Markham, a Board-certified orthopedic surgeon, provided a history of appellant's condition and noted that in 1985 appellant had a work-related back injury and that during the past six months appellant had experienced increased neck pain and weakness in his arms.

In a narrative report dated December 27, 1994, Dr. David C. Waters, a Board-certified neurosurgeon, provided a history of appellant's condition and findings on examination and diagnosed resolving myelopathy and long-standing severe degenerative arthritis and severe lumbar arthritis.

In a report dated November 30, 1993, Dr. Fatehi provided a history of appellant's condition and findings on examination. He diagnosed degenerative disease of the cervical spine.

In a report dated February 17, 1994, Dr. Fatehi provided findings on examination and diagnosed low back pain, "probably due to degenerative disease of the lumbar spine" and cervical sprain in remission.

In a report dated May 19, 1994, Dr. Fatehi diagnosed moderately severe tandem spinal stenosis and suggested surgery.

By decision dated June 14, 1995, the Office denied modification of its August 24, 1994 decision.

The Board finds that appellant had failed to meet his burden of proof to establish that he sustained a recurrence of disability on or after November 8, 1993 causally related to his September 5, 1985 employment injury.

As used in the Federal Employees' Compensation Act,<sup>1</sup> the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of the injury.<sup>2</sup> When an employee claims a recurrence of disability due to an accepted employment injury, he has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the recurrence claimed is causally related to an accepted employment injury.<sup>3</sup> As part of this burden, the employee must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the current disabling condition and the accepted employment injury.<sup>4</sup> Causal relationship is medical in nature and can be established only by medical

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 20 C.F.R. § 10.5(17); *Richard T. DeVito*, 39 ECAB 668, 674 (1988); *Frazier V. Nichol*, 37 ECAB 528, 540 (1986).

<sup>3</sup> 20 C.F.R. § 10.121(a). *See also Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>4</sup> *E.g., Kevin J. McGrath*, 42 ECAB 109, 116 (1990); *Herman W. Thornton*, 39 ECAB 875, 887 (1988);

evidence.<sup>5</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>6</sup>

In this case, appellant sustained a cervical and right shoulder strain on September 5, 1985 in the performance of duty. He subsequently filed a claim alleging that he sustained a recurrence of disability on November 8, 1993 which he attributed to his September 5, 1985 employment injury.

In a report dated December 16, 1993, Dr. Islam, an internist, diagnosed spinal stenosis and indicated by checking the block marked “yes” that the condition was caused or aggravated by appellant’s employment activity. He wrote “[history] [of] work-related injury to neck [and] lower back since 1985.” However, the accepted condition was cervical strain, not spinal stenosis and Dr. Islam provided no medical rationale explaining how the spinal stenosis was causally related to the 1985 employment injury. Therefore, his opinion as to causal relationship is of limited probative value and is insufficient to discharge appellant’s burden of proof.

In a report dated April 19, 1994, Dr. Fatehi, a Board-certified neurosurgeon, diagnosed cervical sprain of the lower back and indicated by checking the block marked “yes” that the condition was sustained while pushing and lifting containers of mail. However, he provided no medical rationale explaining how this condition was causally related to the 1985 employment injury and therefore this report does not support appellant’s claim of a recurrence of disability.

In notes dated September 12, 1994, Dr. Markham, a Board-certified orthopedic surgeon, provided a history of appellant’s condition and noted that in 1985 appellant had a work-related back injury and that during the past six months he had experienced increased neck pain and weakness in his arms. However, he provided no diagnosis of appellant’s condition and no medical rationale explaining how appellant’s back problems in 1993 were causally related to his 1985 employment injury. Therefore, this report is not sufficient to discharge appellant’s burden of proof.

In a narrative report dated December 27, 1994, Dr. Waters, a Board-certified neurosurgeon, provided a history of appellant’s condition and findings on examination and diagnosed resolving myelopathy and long-standing severe degenerative arthritis and severe lumbar arthritis. He provided no rationalized medical opinion linking these conditions to appellant’s 1985 employment injury and therefore this report does not suffice to support appellant’s claim of an employment-related recurrence of disability.

In a report dated November 30, 1993, Dr. Fatehi provided a history of appellant’s condition and findings on examination. He diagnosed degenerative disease of the cervical spine

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*Dennis E. Twardzik*, 34 ECAB 536, 542 (1983). See 20 C.F.R. § 10.110(a).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

<sup>6</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

but he did not opine that this condition was related to the 1985 employment injury. Therefore, this report does not discharge appellant's burden of proof.

In a report dated February 17, 1994, Dr. Fatehi provided findings on examination and diagnosed low back pain, "probably due to degenerative disease of the lumbar spine" and cervical sprain in remission. Dr. Fatehi attributed the low back pain to a degenerative condition, not the 1985 employment injury and he opined that the accepted employment injury, cervical strain, was in remission. Therefore, this report does not establish that appellant sustained a recurrence of disability in 1993 causally related to his 1985 employment injury.

In a report Dr. May 19, 1994, Dr. Fatehi diagnosed moderately severe tandem spinal stenosis. He did not opine that this condition was related to the 1985 employment injury and therefore this report is insufficient to discharge appellant's burden of proof.

The June 14, 1995 and August 24, 1994 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
January 27, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member