

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELVIN MEDINA and DEPARTMENT OF AGRICULTURE,
JOHN F. KENNEDY INTERNATIONAL AIRPORT, Jamaica, NY

*Docket No. 98-1173; Submitted on the Record;
Issued September 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a recurrence of disability on February 17, 1996 causally related to his October 4, 1994 employment injury.

The Board has duly reviewed the case record on appeal and finds that appellant has not established that he sustained a recurrence of disability on February 17, 1996 causally related to his October 4, 1994 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.¹ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.²

On October 4, 1994 appellant, then 28-year-old plant protection and quarantine officer, sustained a lumbosacral sprain and a herniated disc at L5-S1 while in the performance of duty. Appellant stopped work on the date of the injury and returned to full duty on October 17, 1994. On November 2, 1995 appellant alleged that he sustained a recurrence of disability on October 26, 1995 causally related to his October 4, 1994 employment injury. Appellant stopped work following the alleged recurrence of disability on October 26, 1995 and returned to full duty on November 2, 1995. In a decision dated August 9, 1996, the Office approved appellant's claim for a recurrence of disability on October 26, 1995. On March 1, 1996 appellant alleged

¹ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

² *Id.*

that he sustained a recurrence of disability on February 17, 1996 causally related to his October 4, 1994 employment injury. Appellant stopped work on the date of the recurrence and returned to full duty on February 26, 1996.

In a decision dated September 30, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish a causal relationship between his accepted injury and the claimed disability commencing February 17, 1996. By letter dated October 12, 1997, appellant requested reconsideration of the Office's decision. On December 23, 1997, in an attempt to clarify the issues involved in the claim, a telephone conference was held between the Office, appellant and his physician, Dr. Harold Sirota. By decision dated January 30, 1998, the Office found the evidence submitted with appellant's request for reconsideration insufficient to warrant modification of the prior decision.

In support of his claim for a recurrence of disability, appellant submitted a narrative statement dated July 11, 1996, in which he stated that on February 17, 1996, when he was pulling baggage out of an x-ray machine to conduct a baggage inspection, he felt a sharp and deep lower back pain. Given his previous history of a herniated disc, he immediately sought medical attention from his personal physician, Dr. Sirota of Sunrise Medical Associates. In a statement accompanying his October 12, 1997 request for reconsideration, appellant added that the work activity that he was engaged in at the time of the recurrence actually caused him to feel lower back pain and "such pain just spontaneously returned."

Appellant also submitted medical evidence in support of his claim, including a February 19, 1996 work exemption slip signed by a physician at Sunrise Medical Associates, indicating that appellant was being treated for a herniated disc and that he would be able to return to work on February 26, 1996. In addition, appellant submitted an unsigned treatment note dated February 19, 1996, which noted that he presented complaining of low back pain of one week's duration, which became severe on February 18, 1996, and radiated down his leg. The note further indicated that appellant had a previous history of a herniated disc and prescribed treatment. A follow-up note dated February 28, 1996 indicated that appellant was feeling better. These reports, however, do not contain any rationale on the causal relationship, if any, between appellant's diagnosed condition and his prior accepted herniated disc, and therefore are entitled to little probative value and are insufficient to meet appellant's burden of proof.³ During the telephone conference conducted on December 29, 1997, at appellant's request, the Office spoke directly with appellant's physician, Dr. Sirota. The Office explained to Dr. Sirota the type of medical evidence he needed to submit and held the record open for 15 days to allow for such submission. At the time of the Office's January 30, 1998 decision, no additional medical evidence had been received.⁴

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his

³ *Arlonia B. Taylor*, 44 ECAB 591 (1993).

⁴ Dr. Sirota's report dated January 5, 1998 was submitted to the Office on February 17, 1998, after the issuance of the Office's final decision dated January 30, 1998. It is not before the Board in the present appeal; *see* 20 C.F.R. § 501.2(c).

employment.⁵ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, states whether the employment injury caused or aggravated appellant's diagnosed conditions and presents medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated January 30, 1998 and September 30, 1997 are hereby affirmed.

Dated, Washington, D.C.
September 15, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ *Donald W. Long*, 41 ECAB 142 (1989).