

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVE BARNES and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Cincinnati, Ohio

*Docket No. 96-176; Submitted on the Record;
Issued January 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained a recurrence of disability in 1988 causally related to his August 16, 1978 employment injury.

On August 16, 1978 appellant, then a 34-year-old operating room technician, sustained a cervical strain with muscle spasms in the performance of duty when he struck his neck on an operating room lamp. Appellant sustained a recurrence of disability from July 1, 1980 through May 24, 1982.

By letter received by the Office of Workers' Compensation Programs on January 7, 1988, appellant requested a change in physicians.

By letter dated February 11, 1988, the Office noted that appellant had not corresponded with the Office since 1984 and asked that he provide information regarding all treatment he had received for his neck, whether he had any additional problems with his employment injury, and whether he had sustained any new injuries.

In a form report dated March 7, 1988, a physician whose signature is illegible, diagnosed cervical strain and muscle spasms of the cervical spine. He noted the date of injury as August 17, 1978 and indicated that appellant was totally disabled from January 4 through March 7, 1988 but was able to perform light duty commencing on March 8, 1988.

A radiology report dated March 30, 1993 indicated that appellant had mild degenerative disc disease at C6-7 with mild arthritic changes over the mid to lower cervical spine.

In a form report dated March 30, 1993, Dr. Jana H. Braden, a Board-certified internist, diagnosed cervical strain and stated her opinion that this condition was unlikely to be due to appellant's employment injury in 1978.

By decision dated July 19, 1993, the Office denied appellant's claim for compensation benefits.

By letter dated July 26, 1993, appellant requested an oral hearing before an Office hearing representative.

On April 5, 1994 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated January 4, 1995, the Office hearing representative affirmed the Office's July 19, 1993 decision.

By letter dated May 29, 1995, appellant requested reconsideration of the denial of his claim and submitted additional medical evidence.

Appellant submitted test results and chart note entries from Dr. Braden for treatment and testing between January 8, 1993 and October 5, 1994. These documents did not contain any rationalized medical opinion explaining how the claimed disability commencing in 1988 was causally related to the 1978 employment injury.

By decision dated September 7, 1995, the Office denied appellant's request for further merit review of his claim.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of disability in 1988 causally related to his August 16, 1978 employment injury.

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.¹ 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.² Where no such rationale is present, medical evidence is of diminished probative value.³

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 his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁴ Appellant failed to submit rationalized medical evidence

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

establishing that his claimed recurrence of disability was causally related to the accepted employment injury and, therefore, the Office properly denied appellant's claim for compensation benefits.

In a form report dated March 7, 1988, a physician diagnosed cervical strain and muscle spasms of the cervical spine. He noted the date of injury as August 17, 1978 and indicated that appellant was totally disabled from January 4 through March 7, 1988. However, the physician did not opine as to the cause of appellant's condition and disability and therefore this report is not sufficient to establish that appellant sustained a recurrence of disability in 1988 causally related to his 1978 employment injury.

In a form report dated March 30, 1993, Dr. Braden, a Board-certified internist, diagnosed cervical strain and stated her opinion that this condition was unlikely to be due to appellant's employment injury in 1978. As she opined that appellant's condition was not related to the 1978 employment injury, this report does not suffice to discharge appellant's burden of proof.

Appellant also submitted test results and chart note entries from Dr. Braden for treatment and testing between January 8, 1993 and October 5, 1994. However, these documents did not contain any rationalized medical opinion explaining how the claimed disability commencing in 1988 was causally related to the 1978 employment injury. Therefore, this evidence is not sufficient to support appellant's claim of an employment-related recurrence of disability.

The decisions of the Office of Workers' Compensation Programs dated September 7 and January 4, 1995 are affirmed.

Dated, Washington, D.C.
January 13, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member