

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GENE HALE and U.S. POSTAL SERVICE,
POST OFFICE, Albany, NY

*Docket No. 01-2044; Submitted on the Record;
Issued April 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained lower back and hip conditions in the performance of duty.

Appellant, a 50-year-old mail carrier, filed a claim for benefits on August 17, 2000 alleging that he developed sciatica in his left hip and a herniated disc in his lower back caused or aggravated by factors of his federal employment. In support of his request, appellant submitted a February 4, 2000 report from Dr. David A. Dunn, a Board-certified family practitioner. He noted findings of pain and discomfort in appellant's left lower back and left hip area and kept him out of work for an indefinite period. Appellant also submitted a May 10, 2000 report of a magnetic resonance imaging (MRI) scan which showed a central disc herniation at the L5-S1 level with some slight bulging at the L4-5 level and a February 4, 2000 radiographic report.

By letter dated October 27, 2000, the Office of Workers' Compensation Programs advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed conditions were causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted a Form CA-17 duty status report from Dr. Dunn dated November 29, 2000. This form report listed restrictions on appellant's work activities and indicated he could continue on sedentary light duty for eight hours a day, but did not provide an opinion regarding whether appellant's current conditions were causally related to factors of his federal employment.

By decision dated January 27, 2001, the Office denied appellant's claim on the grounds that the claimed medical conditions were not causally related to factors or incidents of employment.

By letter dated April 24, 2001, appellant requested reconsideration. He submitted an April report of Dr. Luc Perrier, a specialist in orthopedic surgery, who stated:

“Recurrent low back pain that is chronic in origin. It is difficult to find the exact cause of this degenerative disease, the fact that he has been a mail carrier walking long distances with 30 to 35 [pounds] on his shoulder may indeed be a factor that has contributed to his present condition although again [while] the relationships cannot be proved, it certainly did not help his situation.”

Appellant also submitted treatment reports from Dr. Perrier dated February through April 2000 and treatment reports from Dr. Dunn dated February through June 2000 in which he essentially reiterated his previous findings and conclusions.

By decision dated June 15, 2001, the Office denied reconsideration.

The Board finds that appellant did not meet his burden of proof to establish that he sustained lower back and left hip conditions in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

An award of compensation may not be based on surmise, conjecture or speculation. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁵ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence.

In the present case, appellant has not submitted a rationalized, probative medical opinion sufficient to demonstrate that his claimed condition was causally related to factors of his federal employment. The Office advised him of the type of evidence required to establish his claim; however, appellant failed to submit such evidence.⁷ He submitted several reports from Drs. Perrier and Dunn, but these did not contain a probative, rationalized medical opinion indicating that appellant's lower back and left hip conditions were causally related to factors of his federal employment. Accordingly, as appellant failed to submit any probative medical evidence establishing that his claimed back condition was causally related to his employment, the Office properly denied appellant's claim for compensation.

⁴ *Id.*

⁵ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁶ *Id.*

⁷ On appeal appellant submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501(c).

The decisions of the Office of Workers' Compensation Programs dated June 15 and January 27, 2001 are hereby affirmed.

Dated, Washington, DC
April 4, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member