

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS NAGY and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, Wash.

*Docket No. 96-152; Submitted on the Record;
Issued June 16, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish his claim for a back injury on July 20, 1995, as alleged.

On July 21, 1995 appellant, then a 46-year-old pipefitter who was assigned to a light duty fire watch position, filed a claim for a back injury on July 20, 1995, when he unknowingly stepped into a 10-inch drop in the pavement while backing away from sparks. He had multiple claims for back injuries sustained in the 10 years prior to his current claim, due primarily to lifting, bending and grinding while performing his prior pipe fitter position.¹ Based on

¹ As a result of two separate lifting incidents in August 1984 and September 1985, appellant stopped work for 2 and 10 days respectively. He was placed on a light duty assignment which he worked for three weeks following the September 1985 work injury, until October 8, 1985 when he stopped work following an incident when he bent over and sustained back pain. Appellant was off work for six weeks following the October 8, 1985 work injury, and worked until the spring of 1987, when he reported further pain from grabbing his back to avoid a fall. He was off work again for two weeks following an incident in February 1988, when he reported feeling a pop in his back while reaching over the staging to perform his grinding duties. While he returned to light duty with restrictions against grinding, he performed this work for only three days prior to a nonemployment-related automobile accident which further disabled him. He did not return to work until September 9, 1988 based on the lack of light duty jobs, and the record shows that he worked the light duty job for almost three years until he stopped work again during the summer of 1991 due to performing more strenuous duties of his regular pipefitter position. He was off work for five weeks and requested a return to full duty, for which he was cleared by the employing establishment health clinic. He worked until the Spring of 1992, when he was off work for six weeks following an incident when he bent down to lift a water hose. Appellant was off work for three weeks in the Fall of 1992 and for 10 days in the Spring of 1993 after two further lifting incidents. After his requested to return to his regular work again, he performed his pipefitter duties for seven more months from April 26, 1993 until November 16, 1993, when he stopped work for eight weeks after slipping off an employing establishment bus he was exiting. He worked for a few months until he reported his back popping again while working, together with left arm symptoms he related to grinding in an overhead position. Appellant was off work for four months, from April 7 to August 12, 1994, due to the lack of available light duty positions. During this period, appellant was treated by Dr. Larry Gorman, a Board-certified orthopedic surgeon, who reported that appellant's back strain resolved by April 28, 1994 but that on account of his continued employment-related lateral epicondylitis, he required a light duty position. Appellant was provided with a fire watchman position which he performed for 12 days, prior to being asked to perform light grinding which was

chiropractic reports, coupled with employing establishment health unit records, the Office accepted appellant's claims for either subluxations or strains. In developing one of the claims, the Office obtained an opinion from Dr. Theodore A. Wagner, a Board-certified orthopedic surgeon, who evaluated appellant in 1986. Dr. Wagner interpreted x-ray results to show an old compression fracture which he related to a prior nonemployment-related accident 1981, which involved a dune buggy which overturned. He opined that the incidents of lifting and bending aggravated appellant's preexisting back condition. Dr. Wagner also identified narrowing at L4-5, which was later diagnosed by other physicians to be degenerative disc disease.

With respect to appellant's claim for a back injury on July 21, 1995, appellant submitted a July 26, 1995 form report from Dr. Collins, a chiropractor, which was identical to prior reports but noted the date of evaluation as July 21, 1995. The form report however, did not provide a history of injury. He also submitted disability notes from Dr. Collins, who continued to support total disability every week for a total of three weeks. The reports from the employing establishment health unit, signed by Dr. James Krueger, an internist, provided a history of injury. The initial health unit treatment note, indicated a history of injury occurring while appellant "was working as a fire watch, standing on a very large piece of iron that was being cut off." The treatment note states that appellant "attempted to get away from a stream of sparks that were coming at him [and] he went backward off this piece and twisted his back." The treatment note reported that appellant denied radicular symptoms in his leg but also indicated that appellant denied a history of any significant injuries to his lower back. Based on reported findings, appellant was diagnosed with a muscle strain and referred to his chiropractor, with a recommendation for one month off from work. On August 21, 1995 appellant returned to the health unit, at which time Dr. Rolando Dulay, a specialist in occupational medicine, who diagnosed a lower back strain and recommended a return to light duty work on September 5, 1995.

By decision dated September 14, 1995 the Office denied appellant's claim for a back injury on July 21, 1995 based on the lack of history of injury and statement of causal relationship by Dr. Collins, the chiropractor.

Appellant requested reconsideration and submitted a September 18, 1985 report by Dr. Collins, together with a copy of his treatment notes which noted a history of injury as "stepped back on uneven slab[...]lost balance and felt pain in low back." In a list of treatment dates, Dr. Collins noted that x-rays were taken on July 26, 1995 and that appellant was diagnosed with lumbar subluxation at L4 and L5, which had been previously diagnosed on prior x-rays. Appellant also submitted a July 21, 1995 report from the employing establishment health unit, reviewed by Dr. Krueger, who noted appellant's complaints of left arm pain which appellant related to holding an item in his hand which he jammed when he lost his balance on that date. Appellant was diagnosed as having left lateral epicondylitis, and was restricted against using vibrating tools as he had been in the past.

against his restrictions and which he claimed caused increased arm pain. He returned to a light duty fire watchman position in November 1994, with work restrictions continued through the summer of 1995.

The Office combined appellant's prior back claims with the current claim under claim number A14-293863. By decision dated September 28, 1995 the Office denied a review of the merits of appellant's claim on the grounds that the evidence submitted was cumulative in nature and did not warrant a review.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴ As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁵ Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.⁶ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of relationship of the diagnosed condition and the specific employment factors or employment injury.⁷

In the instant case, appellant has a history of multiple strains superimposed on a diagnosed compression fracture at T7 and degenerative disc disease at L4-5. Appellant was off for intermittent periods of time following his multiple work injuries, due primarily to lifting and bending incidents in his job as a pipe fitter. Appellant submitted a report from Dr. Collins, a chiropractor who had treated him for 10 years, to support his claim for a further back injury on July 21, 1995, when he stepped backward to avoid sparks and had a mistep due to the uneven pavement. While the Office denied appellant's claim on the grounds that Dr. Collins did not provide a history of the work injury, the Board notes that with his request for reconsideration, appellant submitted treatment notes from Dr. Collins containing the history of injury. In addition, the treatment notes from Dr. Krueger, an internist at the employing establishment health unit, contain a history of injury and diagnose a resulting back strain. The Board notes that while there is a history of a preexisting condition, the treatment notes from both Drs. Krueger

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ The Office's regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift; see 20 C.F.R. §§ 10.5(a)(15),(16).

⁵ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucretia M. Nielson*, 42 ECAB 583 (1991).

⁶ *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

⁷ *Id.*

and Collins support the existence of a back strain occurring at work on July 21, 1995. The Board has held that where there is evidence of a preexisting condition, the employee must provide a rationalized medical opinion discussing the nature of the condition, including its natural or traditional course, and how the underlying condition was affected by the employment with reference to medical records.⁸ While Drs. Krueger and Collins did not provide rationale for their opinions of a back injury due to the work incident on July 21, 1995, the Board finds that the record contains no medical opinion contrary to appellant's claim and that the case should be remanded for further development with respect to his claim for a back injury due to the work incident on July 21, 1995.⁹

The decisions of the Office of Workers' Compensation Programs dated September 14 and 28, 1995 are hereby set aside and remanded for further development, in accordance with this decision of the Board.

Dated, Washington, D.C.
June 16, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *Newton Ky Chung*, 39 ECAB 919 (1988); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). An employee's entitlement to compensation for an established employment-related aggravation, is limited to the period of disability caused by the aggravation. An employee who is found medically disqualified to continue in employment because of the effect that the employment factors might have on the underlying condition does not qualify for compensation; see *Gaeten F. Valenza*, 39 ECAB 1349 (1988); *James L. Hearn*, 29 EAB 278 (1978).

⁹ See *John J. Carlone*, 41 ECAB 354 (1989) (where the Board held that the lack of a contrary medical opinion or the referral of the record to an Office medical adviser, warranted further development of the claim).