U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

---

In the Matter of JERVEY V. SMALLS and DEPARTMENT OF THE NAVY, NAVAL WEAPONS CENTER, Charleston, SC

*Docket No. 00-1198; Submitted on the Record;*
*Issued February 12, 2001*

---

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained bilateral avascular necrosis of the hips caused or aggravated by factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On April 18, 1995 appellant, then a 49-year-old heavy mobile equipment repair inspector, filed an occupational disease claim alleging that the soreness in both hips was caused by working with a weedeater and a chainsaw on multiple dates in July 1993, January and February 1994 and March 1995.

By decision dated November 8, 1995, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that avascular necrosis of his hips was caused or aggravated by his federal employment. In decisions dated November 4, 1996, January 23, 1998 and March 1, 1999, the Office denied modification of its November 8, 1995 decision. By letter dated January 20, 2000, appellant, through his attorney, requested reconsideration of his claim. By decision dated February 2, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was irrelevant and thus insufficient to warrant merit review of the claim.

The Board finds that appellant did not meet his burden of proof to establish that he sustained bilateral avascular necrosis of the hips caused or aggravated by factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including the fact that an injury was

[1] 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.[2]

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 the 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.[3] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4]

Rationalized medical opinion evidence is medical evidence which includes a 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,[5] must be one of reasonable medical certainty[6] 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.[7]

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. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[8]

In this case, appellant alleged that his avascular necrosis was caused or aggravated by working with a weedeater and a chainsaw in the course of his employment.

Appellant submitted office visit notes from Dr. J. David Dalton, a Board-certified orthopedic surgeon, dated April 27, 1994 to May 24, 1995. In a note dated April 27, 1994,

---

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

Dr. Dalton related that appellant "has a painful right hip and has had for several months. There is no known trauma." He diagnosed possible avascular necrosis by x-ray. In a note dated May 11, 1994, Dr. Dalton found that a magnetic resonance imaging (MRI) study confirmed the diagnosis of bilateral avascular necrosis and noted that appellant was "doing better." In a note dated October 25, 1994, he indicated that appellant "said that he was in an accident a couple of months ago and since then he has been having more pain." Dr. Dalton found that an x-ray revealed "cyst formation in the posterior aspect of the femoral head and the collapse of the bone is more obvious." He recommended that appellant lose weight. In a note dated December 23, 1994, Dr. Dalton related:

> "[Appellant] has bilateral hip pain but the severity of it varies and he appears to be getting along reasonably well. His job involves inspecting cranes and he is required to climb heavy, tall ladders from time to time. That, to me, presents some potential danger. He states that he uses a belt all the time. [Appellant] knows when he can climb and when he [cannot]."

On March 15, 1995 Dr. Dalton noted that appellant's pain increased after doing yard work and found that he could not perform heavy work or lifting.

Dr. Dalton's office visit notes are of little probative value on the relevant issue in this case because he did not provide any opinion on the cause of appellant's avascular necrosis or relate this condition to the performance of his work duties.[9]

In a letter to the Office dated November 30, 1995, Dr. Dalton related that he had treated appellant for avascular necrosis of the right hip since 1994 and that his condition would be aggravated by any work other than "in a seated position." He further opined that appellant's work at the employing establishment "would certainly aggravate his present condition." Although Dr. Dalton stated that the type of work performed by appellant could aggravate his avascular necrosis, the Board notes that the possibility of future injury does not constitute an injury under the Act and, therefore, is not compensable.[10]

Appellant submitted chart notes from the employing establishment's clinic. In a clinic note dated June 22, 1994, Dr. R.F. Munn noted that appellant was using a bushwacker outside when "his hips started getting stiff and sore" and that he wanted to "document here that his hips [did not] hurt him before using the bushwacker." In a chart note dated April 10, 1995, Dr. Archibald M. Martin, a Board-certified surgeon, diagnosed bilateral femoral head necrosis and noted that Dr. Dalton believed that appellant's work aggravated his condition. Neither Dr. Martin nor Dr. Munn, however, rendered an independent causation finding and thus their opinions are insufficient to meet appellant's burden of proof.

In a report dated June 19, 1995, Dr. Lane Goolsby discussed appellant's bilateral hip condition and the physical requirements of his employment. Dr. Goolsby stated:

---

[9] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[10] *Gaeten F. Valenza*, 39 ECAB 1349 (1988).

> "There are many conditions which can predispose a person to aseptic necrosis of the hip; most of them are traumatic and those related to vasculitis. As to whether his work could potentially cause him to develop avascular necrosis, I would have to defer that question to Dr. Dalton…."

As Dr. Goolsby declined to address the issue of the relationship between appellant's avascular necrosis and factors of his federal employment, his opinion does not support appellant's claim.

In a report dated June 19, 1996, Dr. Drouse D. Rustin, a Board-certified orthopedic surgeon, indicated that appellant related that his hip discomfort began at work with no specific history of injury. He recommended a total replacement of the right hip. In a report dated September 17, 1996, Dr. Rustin related:

> "[Appellant] was seen by me initially on June 19, 1996 with avascular necrosis of both hips with gradual onset of symptoms from 1993. He had onset of his symptoms while working. [Appellant] state[d] he had to work on hard floors, [etcetera], which probably helped augment his symptoms and bring his problem to the forefront. Although there is no causal relationship to his avascular necrosis, I certainly feel that his job probably did indeed aggravate the condition of avascular necrosis."

Dr. Rustin's opinion that appellant's employment "probably" aggravated his avascular necrosis is speculative in nature and thus of diminished probative value.[11]

In a letter dated January 11, 1999, Dr. Rustin stated that appellant's employment did not cause his preexisting idiopathic bilateral avascular necrosis of the hips. He opined:

> "It is my opinion that [appellant] had aggravation of his condition caused by his work activities as documented by [appellant] and the physician notes who saw him at these times. He had increased symptoms after repeated bending and lifting as well as using a sling blade and clearing the right of way. There were other incidents, which I certainly feel contributed to exacerbation of his symptoms and acceleration of the disease process. It is Dr. Dalton's opinion that any other activity than sitting would aggravate his avascular necrosis is certainly true, however, activity which requires repeated bending and lifting, sling balding is, by far, more significant than the normal ambulation."

Dr. Rustin noted that appellant reported more symptoms after working; however, the fact that work activities produced symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment.[12] Causal relationship may not be inferred but must be established by rationalized medical opinion evidence, which explains how the implicated factors of employment caused the diagnosed

[11] *Albert S. Williamson*, 47 ECAB 569 (1996).

[12] *Norman E. Underwood*, 43 ECAB 719 (1991).

condition. Dr. Rustin did not provide medical rationale explaining how employment duties caused a disabling condition rather than merely symptoms of pain.

Further, Dr. Rustin did not describe the other incidents, which he found exacerbated appellant's condition or indicate any knowledge of the accident described by appellant to Dr. Dalton in August 1994. To be of probative value in establishing injury, the opinion of a 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.[13]

As appellant has not submitted rationalized medical evidence to substantiate that he sustained an occupational disease caused or aggravated by factors of his federal employment, the Office properly denied his claim.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration under section 8128.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[14] Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[15]

In support of his request for reconsideration, appellant submitted an affidavit indicating that the "yard work" referred to by Dr. Dalton in his March 15, 1995 office visit note was activity performed at work rather than at home. Appellant also submitted an affidavit from his attorney, who indicated that he asked Dr. Dalton about his reference to "yard work" and that Dr. Dalton "stated to me that he did not recall what that referred to." However, the issue in this case is medical and must be resolved by the submission of relevant medical evidence. The Board has held that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[16]

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and

[13] *Bobby J. Parker*, 49 ECAB 260 (1997).

[14] 20 C.F.R. § 10.606(b)(2).

[15] 20 C.F.R. § 10.608(b).

[16] *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

probable deductions from known facts.[17] Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

The decisions of the Office of Workers' Compensation Programs dated February 2, 2000 and March 1, 1999 are hereby affirmed.

Dated, Washington, DC
February 12, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[17] *Rebel L. Cantrell*, 44 ECAB 660 (1993).