

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS G. DUNCAN and DEPARTMENT OF THE AIR FORCE,
MYRTLE BEACH AIR FORCE BASE, Myrtle Beach, S.C.

*Docket No. 00-112; Submitted on the Record;
Issued May 10, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that he sustained a medical condition or disability causally related to the December 15, 1964 employment injury.

This case is on appeal to the Board for the sixth time.¹ In the first appeal, the Board affirmed the Office of Workers' Compensation Programs' decision dated April 29, 1996, that the weight of the medical evidence established that appellant's work-related disability ended on March 10, 1986, the date the Office terminated compensation. In the second appeal, the Board affirmed the Office's decisions dated December 20, October 19 and September 13, 1989, finding that the medical evidence did not establish that appellant had a work-related herniated nucleus pulposus or that his back condition after May 10, 1986 was related to the December 15, 1964 employment injury.

In the third appeal, the Board vacated the Office's March 3, 1992 decision, finding that a part of the record which had been missing prior to the Office's decision was found and remanded the case for reconstruction and a *de novo* decision to preserve appellant's appeal rights. In the fourth appeal, the Board vacated the Office's April 19, 1993 decision, finding that some of the record was still missing and remanded the case to the Office for reconstruction of the record, to be followed by a *de novo* decision.

In the fifth appeal, the Board affirmed the Office's September 28, 1994 decision. The Board found that none of the medical reports appellant submitted from his treating physicians, Drs. J.S. Neviassar, a Board-certified orthopedic surgeon, Frederick J. Hamilton, an osteopath and James W. Markworth, the referral physician and Board-certified orthopedic surgeon, contained any rationalized medical opinion explaining how appellant's herniated disc or spondylolisthesis

¹ Docket No. 86-1540 (issued September 30, 1986); Docket No. 90-665 (issued July 19, 1990); Docket No. 92-1170 (issued March 11, 1993); Docket No. 93-1523 (issued July 18, 1994); Docket No. 95-534 (issued March 27, 1997). The facts and history surrounding the prior appeals are set forth in the prior decisions and are hereby incorporated by reference.

and chronic degenerative disc disease were caused by or related to the December 15, 1964 employment injury.

By letter dated August 8, 1998, appellant requested reconsideration and submitted a report dated May 22, 1998 from Dr. Joe T. Minchew, a Board-certified orthopedic surgeon. Dr. Minchew considered appellant's history of injury, performed a physical examination and reviewed x-rays, a magnetic resonance imaging (MRI) scan dated August 14, 1987, a computerized axial tomography (CAT) scan, an electromyogram (EMG) and nerve conduction studies. He found that the MRI and CAT scans showed that appellant did not have a herniated disc. Dr. Minchew added that appellant's physical examination was consistent with spondylolisthesis at L5-S1 and that appellant had chronic low back pain. He concluded:

“[I]t is virtually impossible at this point, with any medical certainty, to assess any causation as it relates to his 1964 back injury and his current symptoms. It is almost entirely certain that his spondylolisthesis and spondylolysis predated his military injury. It is unclear as to whether or not he truly ha[ve], or ever had, a disc herniation at L4-5. In any event, if there was a left-sided herniation present, it would seem to be not clinically relevant, as the majority of his subjective radicular symptoms related to his right lower extremity.”

Dr. Minchew “strongly encouraged” appellant to improve his symptoms and recommended aggressive, conservative care with physical therapy and medications.

By decision dated September 3, 1998, the Office denied modification.

The Board finds that appellant has not established that his current medical condition or disability is causally related to his 1964 employment injury.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of the burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.²

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.³

² *Judith J. Montage*, 48 ECAB 292-93 (1997).

³ *Gary L. Fowler*, 45 ECAB 365, 371 (1994); *Ern Reynolds*, 45 ECAB 690, 695 (1994).

The Board's March 27, 1997 decision reviewed the evidence of record up to that time. In this case, the evidence submitted on reconsideration consisting of Dr. Minchew's May 22, 1998 report is insufficient to establish that appellant's current back condition is causally related to the December 15, 1964 employment injury. He performed a physical examination, reviewed diagnostic tests, found no disc herniation and stated that he was "almost entirely certain" that appellant's spondylolisthesis and spondylolysis predated his military injury. Further, he concluded that it was "virtually impossible" to assess whether appellant's back condition was related to the 1964 employment injury. Dr. Minchew's opinion that he was unable to determine whether appellant's current back condition was work-related does not establish the requisite causal connection between appellant's medical condition or disability and his federal employment. Appellant has, therefore, failed to establish his claim.

The September 3, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 10, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member