

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS CIAK and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Washington, DC

*Docket No. 00-2349; Submitted on the Record;
Issued August 16, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury to his back in the performance of duty.

On May 21, 1999 appellant, then a 38-year-old special agent, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained back pain as a result of lifting heavy boxes and twisting as part of his federal employment. The employing establishment controverted the claim.

In support of his claim, appellant submitted a May 12, 1999 x-ray report by Dr. Mohsen Gharib, a Board-certified radiologist, wherein Dr. Gharib concluded that appellant had bilateral spondylolysis with minimal spondylolisthesis, L5-S1. He also submitted hand-written progress notes by Dr. Lita Lerma, dated May 11 and 19, 1999, that were illegible and a note from Dr. Lerma dated May 19, 1999 referring appellant to a neurologist for an evaluation "for back pain w/ radiation to the right thigh."

Appellant submitted a statement from his supervisor wherein she indicated that appellant made her aware of his back pain in early May 1999 and that during that time, she was aware that appellant was moving heavy boxes of documents.

By letter dated May 28, 1999, the Office of Workers' Compensation Programs requested further information. In response, appellant submitted a medical report dated May 21, 1999, wherein Dr. William R. Leahy, a Board-certified neurologist, noted that appellant appeared to have no focal deficit. He further stated: "[Appellant] has musculoskeletal spasm which may be related to some underlying disc degeneration or spondylolisthesis." He noted that appellant was unaware of any particular precipitating cause for this.

By decision dated July 23, 1999, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish that the condition was caused by the employment factor. Appellant requested an oral hearing.

At the hearing held on February 9, 2000, appellant testified that he never had any prior injuries to his back and that in May 1999, he hurt his back lifting boxes that weighed between 50 and 60 pounds. The hearing representative held the record open for 30 days to provide appellant the opportunity to submit further medical evidence with regard to causation.

In a posthearing medical report dated February 25, 2000, Dr. Leahy, who noted that he saw appellant on May 21 and 26, 1999, stated that appellant did suffer from degenerative changes in the lumbar spine with no disc herniation and no spinal stenosis evidence by an MRI scan. He stated:

“The disc herniation may indeed be a reflection of either acute or chronic strain on the back which may include lifting heavy objects such as boxes or moving heavy objects. This, on a repetitive basis, may lead to bulging of the disc.”

In a decision dated April 12, 2000, the hearing representative found that as the medical evidence failed to support a causal relationship between appellant’s federal employment and his back problem, the Office acted correctly in denying the claim.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.¹

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact 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

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 of 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 is rationalized medical opinion evidence.

Rationalized medial 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, must be one of medical

¹ Oral argument was scheduled for July 2, 2002 at appellant’s request. He did not appear and this matter proceeds to decision based on the record.

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

³ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

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

Appellant has failed to submit sufficient rationalized medical opinion evidence to establish that the diagnosed condition was causally related to the employment factors identified by appellant. He alleged that he sustained back pain as a result of lifting heavy boxes and twisting as part of his federal employment. The x-ray report by Dr. Gharib does not address the issue of causation. The progress notes submitted from Dr. Lerma are not legible and the note from her requesting an evaluation for back pain does not address causation. Dr. Leahy, in his report dated May 21, 1999, stated that appellant was unaware of any particular precipitating cause for his musculoskeletal spasm. Later, in a medical report dated February 25, 2000, Dr. Leahy indicated that appellant's lifting and moving of heavy objects on a repetitive basis may have resulted in the herniated disc. However, this opinion is far too speculative to be considered rationalized medical opinion evidence.

An award of compensation may not be based on surmise, conjecture or speculation or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition as caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁶

⁴ *Id.*

⁵ *Id.* at 218.

⁶ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The decisions of the Office of Workers' Compensation Programs dated April 12, 2000 and July 23, 1999 are affirmed.

Dated, Washington, DC
August 16, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member