

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARRYL L. HAZEN and DEPARTMENT OF DEFENSE,
DEFENSE CONTRACT MANAGEMENT AGENCY, Salt Lake City, UT

*Docket No.01-1459; Submitted on the Record;
Issued February 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty as alleged.

The Board has duly reviewed the case record and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 filed within the applicable time limitations 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 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 claimant.

¹ 5 U.S.C. § 8101.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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, 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

In this case, appellant filed an occupational disease claim on September 29, 2000, alleging that beginning July 15, 2000, he developed pain in his lower and middle back from moving computer equipment weighing from 30 to 85 pounds. The Office of Workers' Compensation Programs denied appellant's claim on January 22, 2001, finding that the factual evidence supports that appellant performed the duties alleged at the time, place and in the manner alleged. However, the Office found that the medical evidence submitted failed to establish the presence of a condition for which compensation was claimed. By letter dated February 15, 2001, appellant requested reconsideration of the prior decision. By decision dated March 2, 2001, after a merit review, the Office denied appellant's claim.⁵

The medical evidence in support of appellant's claim consists of a November 13, 2000 report of a magnetic resonance imaging (MRI) of the lumbar spine taken that day and interpreted by Dr. Mark E. Fruin, a Board-certified radiologist, as being normal; a November 8, 2000 report by Dr. Arif Chowdhury, a neurologist, who stated that he saw appellant that day for acute onset low back pain secondary to moving heavy computer equipment at work; a February 15, 2001 report by Dr. Chowdhury accompanied by a nerve conduction report; November 28, 2000 and January 17, 2001 office notes by Dr. Chowdhury; and a January 17, 2001 authorization for examination and/or treatment, Form CA-16, completed by Dr. Chowdhury.

In the November 8, 2000 report, Dr. Chowdhury provided a history of injury, stated that the etiology of appellant's condition is unclear, but his symptoms are possibly from a low back injury with possible L3-4 and L4-5 distribution disc disease. He recommended an MRI of the lumbar spine. Dr. Chowdhury failed to provide a firm diagnosis or give a medical opinion with supporting rationale causally relating a diagnosed condition to the factors of employment identified by appellant, *i.e.*, moving heavy computer equipment. Therefore, Dr. Chowdhury's November 8, 2000 report is insufficient to establish appellant's claim.

In a February 15, 2001 report, Dr. Chowdhury reported his findings from a nerve conduction test performed that day. He interpreted the test to reveal an abnormal electrodiagnostic study indicating a possible right L5-S1 radiculopathy versus possible sciatica. Dr. Chowdhury's opinion was speculative in nature and failed to provide a firm diagnosis and to

⁴ *Id.*

⁵ The Office modified the January 22, 2001 decision to reflect that fact of injury was established and the reason for denial was insufficient medical evidence to support a causal relationship.

causally relate a firm diagnosis to the factors of employment identified by appellant. The February 15, 2001 report is insufficient to establish appellant's claim.

In the November 28, 2000 office note, Dr. Chowdhury discussed the findings of the November 13, 2000 MRI of the lumbar spine as being normal, and noted he planned to have electrodiagnostic tests performed. In the January 17, 2001 office note, Dr. Chowdhury stated that he referred appellant for physical therapy for back pain. Neither note provided a history of injury, a diagnosis nor addressed a causal relationship between a diagnosed condition and the factors of employment to which appellant attributes a condition.

In the January 17, 2001 report, Dr. Chowdhury failed to diagnose a condition, but checked "yes" to the question that a condition was caused or aggravated by appellant's employment activity.⁶ His January 17, 2001 report is insufficient to establish appellant's claim.

There is no contemporaneous medical evidence of record. None of the medical evidence submitted established the existence of a disease or condition for which compensation is claimed nor provided a medical opinion with supporting rationale causally relating a diagnosed condition to the factor of employment to which appellant attributes a condition. (The evidence failed to explain how engaging in his employment duties over a period of time either contributed or caused a condition.) Therefore, none of the medical evidence is sufficient to establish appellant's occupational disease claim. By letter dated November 23, 2000, the Office advised appellant of the specific evidence needed to establish his claim, but such evidence has not been received. The Board finds that appellant has failed to meet his burden of proof.

⁶ *Ruth S. Johnson*, 46 ECAB 237 (1994); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991). The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden included the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.

The March 2 and January 22, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.⁷

Dated, Washington, DC
February 4, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ The Board notes that on appeal appellant submitted additional evidence. As this evidence was not previously considered by the Office prior to its decision of March 2, 2001, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may submit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).