

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERIC L. RUGGS and DEPARTMENT OF THE ARMY,
Fort Sam Houston, TX

*Docket No. 03-781; Submitted on the Record;
Issued November 13, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty.

On October 31, 2002 appellant, then a 43-year-old firefighter, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that the physical demands of his job such as carrying approximately 70 pounds of gear, climbing multistory buildings, pulling hoses, climbing ladders, bending, stooping, twisting, reaching and physical training, caused him to develop a hernia. On the reverse side of appellant's claim form, his supervisor noted that he was informed of the incident on October 25, 2002 and noted that appellant first received medical attention on that date. He stated: "No lost time to this point, [appellant] continues to work."

In support of his claim, appellant submitted a description of his job requirements. He noted that he has been in the fire service for 25 years, all of which have had physical challenges to various degrees. He noted that the level of his pain had increased over the last four to six weeks, which prompted him to visit his primary care physician on October 25, 2002. Appellant noted that he had a successful hernia repair in 1972.

Appellant also submitted an attending physician's report from Dr. Sara Apsley-Ambriz, an osteopath primary care physician. She diagnosed appellant with a left inguinal hernia and a unilateral hernia. She checked the box "yes" that she believed appellant's condition was caused or aggravated by his employment activity and noted that "[he]rnia occurs from strain causing muscle fiber separation." She recommended that appellant not lift, push, or pull over 40 pounds and referred him to Dr. George E. Mimari, a Board-certified surgeon, for consultation and treatment.

By letters dated November 18, 2002, the Office of Workers' Compensation Programs requested that appellant and the employing establishment submit additional evidence including a physician's opinion supported by medical explanation as to how the reported work incident

caused or aggravated appellant's claimed injury. The Office provided a detailed list of evidence needed and questions to be followed. The Office allotted 30 days for the requested evidence to be submitted. No response was received within the allotted time.

By decision dated December 19, 2002, the Office denied appellant's claim for compensation on the grounds that the medical evidence did not establish that he sustained a hernia condition as a result of his federal employment.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a hernia in the performance of duty as alleged.

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 the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period 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.¹ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.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 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 certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the

¹ *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

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 is not necessary 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).

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 the present case, appellant submitted an attending physician's report in which the physician diagnosed inguinal and unilateral hernias. She opined that "[h]ernias occur from strain causing muscle fiber separation." However, Dr. Apsley-Ambriz' opinion of how hernias occur is couched in speculative terms and therefore of diminished probative value⁹ as she did not discuss how specific factors of appellant's federal employment caused or contributed to his condition or provide sufficient rationale for her opinion.¹⁰

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and provide medical rationale in support of his opinion.¹¹

As appellant has not submitted rationalized medical evidence to substantiate that he sustained an occupational disease due to factors of his federal employment, the Office properly denied his claim.¹²

⁷ *Victor J. Woodhams*, *supra* note 3.

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

⁹ *William S. Wright*, 45 ECAB 498 (1994).

¹⁰ *Carolyn F. Allen*, 4 ECAB 240 (1995) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹¹ *Donald W. Long*, 41 ECAB 142 (1989).

¹² Additional medical evidence was submitted to the Office after the December 29, 2002 decision. As this evidence was not before the Office of the time of its final decision, it cannot be reviewed by the Board on appeal. 5 U.S.C. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated December 19, 2002 is affirmed.

Dated, Washington, DC
November 13, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member