U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of McNAIR J. GRAHAM and U.S. POSTAL SERVICE,
POST OFFICE, New York, N.Y.

Docket No. 96-890; Submitted on the Record;
Issued January 27, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained back injuries in the performance of duty.

On May 20, 1995 appellant, then a 52-year-old labor custodian, filed an occupational disease claim, alleging that he sustained back injuries in the performance of duty of which he first became aware on February 1, 1995 and first realized was work related on April 18, 1995. Appellant stated that his job duties included mopping the floor and staircase, keeping the lobby area clean and constant use of the stairs. Appellant stopped work on April 18, 1995. In a supplemental statement dated July 12, 1995, he indicated that during the winter of 1993 to 1994 between December and February there was heavy snowfall. Appellant stated that the maintenance department was responsible for the removal of the snow with no equipment other than shovels and salt, and he believed his injury occurred during this time period although he could not give a specific date since an accident report was not filed. By decision dated December 19, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish that an injury was sustained as alleged.

The Board has carefully reviewed the entire case file and finds that appellant has not met his burden of proof in establishing that he sustained back injuries in the performance of duty.

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;[1] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[2] and (3) medical evidence establishing that

[1] *See Ronald K. White*, 37 ECAB 176 (1985).

[2] *See Walter D. Morehead*, 31 ECAB 188 (1979).

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 was causally related to the employment factors identified by the claimant.[3] The medical evidence required to establish causally 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 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,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific factors identified by claimant.[6]

In the present case, the Office accepted that the claimed events, incidents or exposures occurred at the times, places and in the manner alleged, however, it further found that a medical condition resulting from the accepted exposure was not supported by the medical evidence of record. Appellant submitted several form medical reports from Dr. David S. Krasner, a chiropractor, who indicated that appellant had been under his care since May 10, 1995 for a severe acute low back condition. By letter dated July 5, 1995, the Office advised appellant that the evidence submitted was not sufficient to accept his claim and requested additional information, including a detailed statement of employment-related activities he believed caused his claimed condition and a rationalized medical opinion from his attending physician which provided a diagnosis and discussion of the cause of the diagnosed condition as related to the claimed employment activities. In response, appellant submitted a supplemental statement which related his claimed condition to snow removal during the winter of 1993 to 1994 and indicated that he had been treated since April 1995 by Dr. Alexander. He also submitted a narrative report dated July 26, 1995 by Dr. Krasner who reported that appellant had been under care in a Veterans Administration hospital from November 28, 1994 to May 5, 1995 for his back condition. He referred to a magnetic resonance imaging scan dated May 4, 1995, which appellant also submitted, that revealed a bulging disc at level L3 to L4. Dr. Krasner indicated that appellant had a "low back condition" which he stated had been developing over the past two years due to the strenuous condition of his employment with the employing establishment. In two additional form reports dated October 18 and November 24, 1995, Dr. Krasner reiterated his diagnosis of low back condition and indicated that appellant had been unable to work but could return to work on November 29, 1995 with restrictions on heavy lifting. Pursuant to section 8101(2) of the Federal Employees' Compensation Act, "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." Thus, Dr. Krasner is not considered a physician within the meaning of the Act since he

[3] *See generally Lloyd C. Wiggs*, 32 ECAB 1023 (1981).

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

[5] *See Morris Scanlon*, 11 ECAB 384 (1960).

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

did not diagnose a subluxation of the spine as demonstrated by x-ray.[7] As appellant did not submit any medical evidence from the Dr. Alexander referenced in his supplemental statement and since the reports by Dr. Krasner did not constitute medical evidence under the Act, appellant has not met his burden of proof in establishing that he sustained back injuries while in the performance of duty.[8]

The decision of the Office of Workers' Compensation Programs dated December 19, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 27, 1998

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *Linda L. Mendenhall*, 41 ECAB 532 (1990).

[8] In any case, Dr. Krasner's July 26, 1995 report, the only report in which he related the diagnosed condition to factors of appellant's federal employment, would not be sufficient to discharge appellant's burden of proof inasmuch as Dr. Krasner did not fully explain his conclusions and believed appellant was employed as a mail handler. Thus, his report was not rationalized and was based on an inaccurate factual history.