

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN C. EVOLA and DEPARTMENT OF JUSTICE,
IMMIGRATION & NATURALIZATION SERVICE, Detroit, Mich.

*Docket No. 97-1160; Submitted on the Record;
Issued November 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a back condition in the performance of duty.

Appellant, a 29-year-old clerk, sustained a head injury on August 2, 1994 when she slipped on a bathroom floor and struck the right side of her head. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on August 2, 1994.

Appellant subsequently submitted a Form CA-16 dated August 3, 1994 from Dr. Konstantin V. Elisevich, a Board-certified neurosurgeon, who examined and treated appellant on August 3, 1994 for the alleged injuries resulting from the August 2, 1994 work incident. Dr. Elisevich provided a brief history of the August 2, 1994 employment incident and stated that, in addition to injuring her head, appellant also suffered a recurrence of her preexisting low back and left hip condition when she landed on her buttock. Dr. Elisevich checked a box which indicated that appellant's condition was caused or aggravated by the August 2, 1994 employment incident.¹

By letter dated September 12, 1994, the Office submitted a letter to the employing establishment in which it requested that appellant submit additional information in support of her claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury.

In response, the employing establishment submitted a letter to the Office dated September 22, 1994 in which it indicated appellant had been placed on continuation of pay from

¹ The employing establishment submitted to the Office of Workers' Compensation Programs a letter dated August 24, 1994 which indicated appellant had undergone back surgery on July 18, 1994, and that she was released to return to work for four hours per day until August 1, 1994, when she was released to return to full duty.

August 3 through September 16, 1994, and that she was still unable to return to duty as of September 22, 1994.

The employing establishment submitted a follow-up letter to the Office dated November 4, 1994 in which it indicated that it had attached a Form CA-8, claim for continuing compensation, dated October 21, 1994, and a Form CA-20 dated October 24, 1994. The Form CA-8 and CA-20 claims indicated that appellant was seeking total disability compensation from September 19 to October 14, 1994; the Form CA-20 stated that appellant had recurrent neurogenic pain which might become a chronic problem related to a primary nerve root injury. Appellant also submitted a September 22, 1994 report from Dr. John Grossmith, a specialist in neurological surgery and a resident physician from Dr. Elisevich's office, who indicated that appellant was totally disabled from August 3 through October 20, 1994.

By decision dated November 10, 1994, the Office rejected appellant's claim for compensation, finding that the evidence appellant submitted was not sufficient to establish that her claimed condition or disability was caused or aggravated by the August 2, 1994 employment incident.

By letter dated April 10, 1995, appellant requested reconsideration of the Office's previous decision. In support of her request, appellant submitted a November 29, 1994 report from Dr. Elisevich who stated that on August 2, 1994 appellant presented not only with the superficial head injury but with the far more serious problem within her back which was also sustained as a result of her fall at work. Dr. Elisevich advised that the soft tissue injury of the head had resolved when she was examined in the hospital on August 3, 1994, and that appellant was treated exclusively for her back injury at that time.

By decision dated July 3, 1995, the Office rejected appellant's claim for compensation, finding that the evidence appellant submitted was not sufficient to warrant modification of its previous decision. The Office stated that Dr. Elisevich's November 29, 1994 report failed to provide a diagnosis or opinion as to how appellant's back condition was caused or aggravated by the August 2, 1994 employment incident.

By letter dated August 31, 1995, appellant requested reconsideration of the Office's previous decision. In support of her request, appellant submitted an August 17, 1995 report from Dr. Elisevich. Dr. Elisevich stated:

“On August 2, 1995 [appellant] fell at work within the bathroom where she struck her head against a paper dispenser without loss of consciousness and sustained what appeared to have been a local injury within her back, likely the result of a dynamic change at the site of her previous surgery when she twisted and fell to the ground. She had recurrent problems at the L4-5 disc space level previously which now were exacerbated by direct mechanical injury and further troubled by a neurogenic-like discomfort which extended into her leg seriously limiting her truncal and ambulatory motion....”

Dr. Elisevich further stated:

“Throughout the time since her fall until the present, [appellant] has been totally disabled in my opinion. She certainly has had difficulties preceding the fall with regards to her lower back condition but the nature of this latter condition predisposed her to having the recurring problems that she suffered subsequent to the fall....”

By decision dated July 26, 1996, the Office rejected appellant’s claim for compensation, finding that the evidence appellant submitted was not sufficient to warrant modification of its previous decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back condition in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing that 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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. The medical evidence required to establish causal relationship is usually 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

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

In the present case, the only medical evidence bearing on causal relationship consists of the November 29, 1994 and August 17, 1995 reports from Dr. Elisevich. Dr. Elisevich stated in his November 29, 1994 report that appellant had a “serious” problem within her back resulting from her fall at work, and that she had been treated at the hospital the next day for her back injury. In his August 17, 1995 report, Dr. Elisevich stated that appellant sustained what appeared to have been a local injury within her back on August 2, 1995 which was “likely” the result of a dynamic change at the site of her previous surgery when she twisted and fell to the ground. Dr. Elisevich noted that appellant had recurrent problems at the L4-5 disc space level previously which were exacerbated by direct mechanical injury and aggravated by a neurogenic-like discomfort extending into her leg, which seriously limited her truncal and ambulatory motion. Dr. Elisevich opined that appellant had been totally disabled since her fall, and although she had problems concerning her lower back condition prior to the fall, the nature of her condition predisposed her to having the recurring problems that she suffered subsequent to the fall. The Board finds that Dr. Elisevich’s reports fall short of meeting appellant’s burden to provide a probative, rationalized medical opinion sufficient to establish that the claimed condition or disability was causally related to employment factors.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant’s claim for compensation.

Dr. Elisevich’s November 29, 1994 and August 17, 1995 reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant’s August 2, 1994 employment incident and her claimed back condition or disability. Causal relationship must be established by rationalized medical opinion evidence. The opinion of Dr. Elisevich on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.⁶ He did not sufficiently describe or explain the medical process through which the August 2, 1994 work accident would have been competent to cause the claimed condition or disability. He did not describe appellant’s accident in any detail or how the accident would have been competent to cause the claimed back condition. Moreover, his opinion is of limited probative value for the further reason that it is generalized in nature and equivocal.

As there is no reasoned medical evidence addressing and explaining why her claimed condition and disability were caused by her August 2, 1994 employment incident, appellant has

⁵ *Id.*

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

not met her burden of proof in establishing that she sustained a low back condition causally related to employment factors. Thus, the Office's decision is affirmed.

The Board notes that appellant would be entitled to reimbursement for or payment of expenses incurred for medical treatment from Dr. Elisevich for the period commencing August 3, 1994. By Form CA-16, authorization for examination and/or treatment, signed by an employing establishment official on August 3, 1994, the employing establishment authorized Dr. Elisevich to provide medical care. The employing establishment's authorization for appellant to obtain medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment and emergency surgery regardless of the action taken on the claim.⁷ On return of the case record, the Office should further develop this appeal of appellant's claim.

The decision of the Office of Workers' Compensation Programs dated July 26, 1996 is hereby affirmed.

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

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ *Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.