

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE KOVANDA and DEPARTMENT OF AGRICULTURE,
AGRICULTURE STABILIZATION & CONSERVATION SERVICE, Nelson, Nebr.

*Docket No.97-296; Submitted on the Record;
Issued October 5, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his employment.

On December 29, 1995 appellant, then a 36-year-old county executive director, filed an occupational disease claim alleging that his duties, which involved looking downward to read, caused severe neck pain and headaches and resulted in a misalignment of two neck vertebrae.

Accompanying appellant's claim were, among other things, an employing establishment record of sick leave used by appellant "due to neck/back injury and treatment"; a January 8, 1996 statement by appellant's supervisor indicating "The injury [appellant] is claiming could certainly be due to the type of work he does. Long periods of time studying and/or terminal work on a computer"; a January 17, 1996 report by Dr. Daniel Schuldt, a chiropractor, who diagnosed a cervical strain/sprain, vertebral subluxation complex as defined by x-ray to exist and stated that appellant attributed his condition to extensive flexing forward while doing paperwork and climbing grain bins; and appellant's statement identifying factors of his employment (looking down to do paperwork or read and climbing grain bins) to which he attributes his condition.

By letter dated March 25, 1996, the Office of Workers' Compensation Programs requested detailed factual and medical evidence from appellant, most importantly, a comprehensive medical report from his treating physician which included a medical opinion with supporting rationale. By another March 25, 1996 letter, the Office also requested factual evidence from the employing establishment.

By decision dated April 25, 1996, after receiving no response from appellant or the employing establishment, the Office denied appellant's claim for failure to establish that his claimed medical condition or disability is causally related to factors of his employment.

By letters dated April 24 and May 9, 1996 appellant request reconsideration. In support, he submitted an authorization for release of information, appellant's April 24, 1996 response to

the Office's earlier request for additional information; a May 1, 1996 statement by appellant's supervisor; and a May 5, 1996 report by Dr. Schuldt. On August 7, 1996 the Office denied reconsideration.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

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 is 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 the claimant.

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 the instant case, there is no rationalized medical evidence supporting a causal relationship between appellant's diagnosed condition and factors of his employment. In his January 17, 1996 report, Dr. Schuldt, a chiropractor, provided a diagnosis and related appellant's opinion that his condition was caused by factors of his employment. However, Dr. Schuldt failed to provide his own opinion with supporting rationale on the issue of causal relation. Although, by letter dated March 25, 1996, the Office advised appellant of the specific type of

¹ 5 U.S.C. § 8101.

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

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

⁴ *Id.*

evidence needed to establish his claim, such evidence was not submitted. Therefore, the Board finds that as of the date of the Office's April 25, 1996 decision, the evidence of record was insufficient to meet appellant's burden of proof.

On reconsideration appellant submitted evidence, some of which was duplicative of evidence already in the record, and therefore, of no probative value⁵ and some that was irrelevant to the issue of causal relationship which is medical in nature. Also submitted was a new report dated May 5, 1996 by Dr. Schuldt in which he stated that he first saw appellant for complaints of neck pain and headaches which appellant attributed to climbing ladders to inspect grain bins. Dr. Schuldt reported his findings on examination and diagnosed cervical strain/sprain injury with muscle spasm, vertebral subluxation as defined by x-ray.⁶ Dr. Schuldt further stated that "It is my opinion that his condition is a direct result of his injury and has been greatly aggravated by his desk job description at work." Dr. Schuldt's report failed to provide a medical opinion with supporting rationale causally relating a specific diagnosed condition to appellant's identified factors of employment. Therefore, Dr. Schuldt's May 5, 1996 report is inadequate to meet appellant's burden of proof.

The decisions of the Office of Workers' Compensation Programs dated August 7 and April 25, 1996 are affirmed.

Dated, Washington, D.C.
October 5, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁵ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁶ A chiropractor is considered a physician only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.