

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLAY R. TUSSEY and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, KY

*Docket No. 98-985; Submitted on the Record;
Issued November 8, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

Appellant filed a claim alleging that he injured his coccyx while performing the duties of his federal employment.¹ Appellant submitted a statement describing the factors of his employment he believed caused the injury to his coccyx. The Office, in a decision dated July 17, 1996, denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that his coccyx injury was causally related to factors of his federal employment. Appellant requested reconsideration and submitted additional medical evidence. By decision dated June 17, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. Appellant requested reconsideration in an undated letter received by the Office on September 16, 1997 and submitted Forms CA-20 and CA-17 in support of his request. By decision dated November 17, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that an injury was

¹ On the reverse side, the employing establishment noted appellant first reported this condition to his supervisor on April 18, 1996 and the form was received by the Office of Workers' Compensation Programs on April 24, 1996.

² 5 U.S.C. §§ 8101-8193.

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.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 the 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.⁴ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁵ 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,⁶ must be one of reasonable medical certainty⁷ 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.⁸ 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.⁹

In support of his claim, appellant submitted a statement from his supervisor, reports from Dr. Steger, Ph.D, reports dated April 3, April 10 and June 24, 1996, reports from Dr. W. Clark Bailey,¹⁰ test results, treatment notes from Bluegrass Family practice, letters dated January 24 and May 20, 1994 from Dr. Terrence R. Grimm,¹¹ a pain management questionnaire and multiple

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 may be dispensed 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).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

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

⁹ *See Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ Appellant's attending Board-certified family practitioner.

¹¹ A Board-certified urologist.

reports from various physicians at the University of Kentucky Medical Center and at the Pain Management Clinic.¹²

The multiple medical reports submitted from the various physicians from the University of Kentucky Pain Management Clinic, Dr. Bailey and Dr. Grimm are insufficient to support appellant's burden of proof. None of these reports provided an opinion supported by medical rationale linking his coccyx pain to factors of his federal employment. Dr. Bailey in his reports diagnosed coccyx pain or pain of the coccyx.

Dr. Bailey speculated, in a June 24, 1996 report, that it was possible that appellant's coccyx pain was due to appellant sitting in an awkward manner while delivering mail. In a report dated August 11, 1994, Dr. Whitworth noted that appellant's chief complaint was of pain in his tailbone and that "coccydynia (sic) may be due in part to this repeated subacute injury vs. possible osteoarthritis of the coccyx." In a physical therapy report dated August 9, 1994, the medical diagnosis was coccygemia and in the history appellant reported "that his pain began after a UTI that never went away." Both Dr. Bailey and Dr. Whitworth opined that appellant's pain in the coccyx could be due to his riding in the mail truck in an awkward manner.

Dr. Grimm, in a May 20, 1994 report, opined that appellant's pain in his tailbone was "a deep bruising of his coccyx perhaps from riding in the postal truck for long periods." These opinions are speculative and thus, insufficient to meet appellant's burden.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal connection between his condition and his employment.¹³ 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 his 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 condition.¹⁴ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

¹² The physicians involved are Dr. Rose Marie Classi, a Board-certified anesthesiologist and internist; Dr. Michael L. Whitworth, a Board-certified anesthesiologist, and Dr. Florence A. Melio, a Board-certified anesthesiologist.

¹³ *William S. Wright*, 45 ECAB 498 (1993).

¹⁴ *Id.*

The decisions of the Office of Workers' Compensation Programs dated November 17 and June 17, 1997 are hereby affirmed.

Dated, Washington, D.C.
November 8, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member