

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRYAN L. WESTMORELAND and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 00-1020; Submitted on the Record;
Issued February 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed left and right knee conditions and a back condition in the performance of duty.

On September 17, 1997 appellant, then a 39-year-old mail processing equipment mechanic, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that his left and right knee condition and back problem were employment related. Appellant stated that he first became aware of his knee condition in 1980 while performing his employment duties which included climbing ladders, lifting equipment, kneeling and squatting. Appellant retired from the employing establishment under a retirement disability on September 11, 1997.

Accompanying appellant's claim was an attending physicians report and a supplemental attending physicians report, both dated August 21, 1997, prepared by Dr. George O. Sertl, a Board-certified orthopedic surgeon; a medical progress note dated August 5, 1997 from Dr. Sertl and a personal narrative. The attending physician's reports indicated a diagnosis of a torn medial and lateral meniscus of the right knee. Dr. Sertl noted that appellant's condition was possibly caused by extra strain to the right knee due to a disabled left knee. He also noted appellant was totally disabled from June 20 to November 25, 1996, but could return to light-duty status on November 25, 1996. The progress note from Dr. Sertl dated August 5, 1997 indicated that a lateral meniscectomy was performed on appellant's left knee. Dr. Sertl noted appellant's low back complaints with intermittent numbness and tingling in his legs. The x-rays of the lumbar spine revealed minor degenerative changes but were otherwise normal. He noted a magnetic resonance imaging (MRI) scan revealed a tear of the medial and lateral meniscus of the right knee. Dr. Sertl indicated appellant should continue with a sedentary employment position. The narrative statement indicated that appellant hyperextended his left knee in 1980 and underwent surgery to repair the lateral meniscus of the left knee in 1984. Appellant indicated that he also underwent left knee surgery in 1994 and 1996. He noted that he later developed back pain and a medial and lateral meniscus tear of the right knee due to his employment duties, which included climbing ladders, lifting, kneeling and bending.

In a letter dated April 23, 1998, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In response to the Office's request appellant submitted progress notes from Dr. Sertl and a personal statement. The progress notes dated June 11, 1996 to May 5, 1998 documented appellant's knee conditions and back complaints. Dr. Sertl noted he performed surgery on appellant's left knee in July and August 1996. He indicated with regard to the right knee that the "etiology of the torn menisci is uncertain." Appellant indicated on Dr. Sertl's intake sheet that his left knee condition was not due to an injury. Appellant's narrative noted that his employment duties, which included climbing ladders, lifting equipment, bending and squatting have caused or aggravated his knee conditions.

On June 9, 1998 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.¹ The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

By a note date-stamped January 19, 1999, appellant requested reconsideration and submitted additional medical evidence. Appellant submitted a medical report from Dr. James F. Krohn, a chiropractor.

On January 25, 1999 the Office issued a decision and denied appellant's claim for compensation. The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

The Board finds that appellant has not met his burden of proof in establishing that he developed left and right knee conditions in the performance of duty, or a back condition in the performance of duty.

An employee seeking benefits under the 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 the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are casually 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 an occupational disease.³

¹ 5 U.S.C. §§ 8101-8193.

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

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

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) 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 casually related to the employment factors identified by the claimant. The medical evidence required to establish casual relationship is generally 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 casual 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, it is not disputed that appellant's employment duties included climbing ladders, lifting equipment, kneeling and squatting. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged knee or back injury is casually related to the employment factors or conditions. In support of his claim appellant submitted an attending physicians report dated August 21, 1997, prepared by Dr. Sertl, which indicated appellant's condition was "possibly" caused by extra strain to the right knee due to a disabled left knee. The Board has held that speculative and equivocal medical opinions regarding casual relationship have no probative value.⁵ On April 23, 1998 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant submitted progress notes from Dr. Sertl, however, the notes do not address how specific employment factors may have caused or aggravated his knee or back condition. Dr. Sertl indicated in a note dated August 5, 1997 regarding the right knee condition that "the etiology of the torn menisci is uncertain." The only other medical report submitted by appellant in support of his claim was a report dated September 16, 1998 from Dr. Krohn, a chiropractor. Section 8103 of the Act provides that chiropractors are considered physicians to the extent that they diagnose a subluxation of the spine as demonstrated by x-ray to exist. In this case, Dr. Krohn did not diagnose a subluxation as demonstrated by an x-ray to exist and, therefore, his report is not that of a physician. Therefore, Dr. Krohn's report is of no probative medical value.⁶

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 his condition was caused, precipitated or aggravated by his employment is

⁴ *Id.*

⁵ See *Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

⁶ *Carmen Gould*, 50 ECAB ____ (Docket No. 97-2225, issued August 3, 1999).

sufficient to establish casual relationship.⁷ Casual relationships 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.⁸

The decision of the Office of Workers' Compensation Programs dated January 25, 1999 is hereby affirmed.

Dated, Washington, DC
February 22, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

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

⁸ With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and requesting reconsideration pursuant to 5 U.S.C. § 8128(a).