

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LAWRENCE LEE BROWN and DEPARTMENT OF THE ARMY,  
U.S. ARMY MATERIAL COMMAND, SIERRA ARMY DEPOT, Herlong, CA

*Docket No. 00-709; Submitted on the Record;  
Issued March 12, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof in establishing that he developed a low back condition in the performance of duty.

On February 24, 1999 appellant, then a 40-year-old carpenter, filed a notice of occupational disease and claim for compensation, Form CA-2, alleging that he originally injured his back in 1987, while working at Mare Island Naval Shipyard.<sup>1</sup> He noted that his back had bothered him off and on for the past 12 years and had now developed into a lower back condition and herniated disc. Appellant alleged that his lower back condition was causally related to his federal employment. On the reverse side of the form, appellant's supervisor noted that appellant stopped working September 21, 1998 and returned to work on March 16, 1999. In an accompanying supplemental statement, appellant noted first injuring his back at work on September 10, 1987.<sup>2</sup> Since that time, appellant stated that his back had bothered him "off and on" and that the work factors causing his condition were heavy lifting, bending and stooping. Appellant noted that his "back went out again" on September 21, 1998 and that on January 27, 1999 he had surgery to remove a herniated disc.

In support of his claim, appellant submitted a September 11, 1987 emergency care record from Dr. Leland Hilburg, a specialist in occupational medicine. The report noted a history of appellant twisting his back at work while running out of the way of a sprinkler. Dr. Hilburg diagnosed a low back strain, which he attributed to an occupational injury. Appellant also submitted an August 31, 1990 report from Dr. Adalberto L. Renteria, a Board-certified family

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<sup>1</sup> Appellant previously filed a 1987 claim for a strained right wrist, under Office of Workers' Compensation Programs claim number 13-826282 and a 1992 claim for an upper thigh strain, under claim number 13-0982241. Neither claim is before the Board at this time.

<sup>2</sup> The record before the Board does not indicate that appellant filed a traumatic injury claim for any September 10, 1987 injury that may have occurred.

practitioner, who diagnosed a back strain following a work-related injury in October 1987. He provided a visit verification form, signed by Dr. Renteria on September 20, 1990, which indicated that appellant would be able to return to work on September 24, 1990, with no restrictions.

Additional evidence included a radiological report dated January 21, 1999, signed by Dr. Reed M. Grabow, a Board-certified radiologist, which indicated a lumbarization of the S1 disc, with a rudimentary disc space of the S1-2. Also included is a magnetic resonance imaging report (MRI) dated January 11, 1999, signed by Dr. C. Gary Green, a Board-certified radiologist, who noted that there was no known history of injury. He found that appellant had a transitional vertebral body at the lumbosacral junction, possibly a partially sacralized L5 segment.

Finally, appellant provided three medical reports from Dr. Jamshid Saleh, a neurologist. The first, dated January 21, 1999, diagnosed a very large free fragment of herniated disc at L5-S1. He noted an “initial” injury of August 30, 1998 that occurred at work. The other two, dated February 12 and March 15, 1999, were reported after appellant underwent a right L5-S1 lumbar disc excision. In the March 15, 1999 report, Dr. Saleh gave appellant permission to return to work in a light-duty capacity.

In a May 19, 1999 letter, the Office advised appellant the information submitted in his claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees’ Compensation Act,<sup>3</sup> because the evidence failed to support a work-related back injury and contained other information not mentioned in appellant’s CA-2 statement. In particular, appellant was advised to submit a comprehensive medical report giving a clarifying and accurate history of his alleged injury. The Office requested that the physician’s report contain a reasoned opinion on the cause of appellant’s disc herniation. Finally, appellant was advised to have his physician forward a copy of his admission and surgery reports.

In a June 17, 1999 report, Dr. Saleh responded to the Office’s May 19, 1999 letter. He stated that appellant initially sustained an injury on August 30, 1998, which improved with conservative therapy, only to recur spontaneously due to a herniated disc at the right L5-S1. Dr. Saleh opined that he was “fairly confident” that appellant’s condition was work related and dated “back to his injury on August 30, 1999 [sic].”

By letter dated July 23, 1999, the Office directed appellant to clarify the discrepancy between Dr. Saleh’s statement that appellant’s injury occurred August 30, 1998, while appellant’s notice of occupational disease and claim for compensation, Form CA-2, indicated that his injury occurred September 21, 1998. Appellant responded that the actual injury did occur on September 21, 1998 and he only gave the August 30, 1998 date as a guess, because he did not have a calendar to reference when he was answering Dr. Saleh’s questionnaire.

By decision dated October 20, 1999, the Office rejected appellant’s claim and found that appellant failed to explain how the September 21, 1998 injury occurred, or whether such injury occurred while in the performance of duty. The Office noted that a September 21, 1998 injury

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

did not appear to be consistent with an occupational disease and that Dr. Saleh's reports did not clarify the date of injury or provide a history of injury.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a low back condition in the performance of duty.

An employee seeking benefits under the Act<sup>4</sup> 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 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.<sup>5</sup>

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;<sup>6</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>7</sup> 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<sup>8</sup> or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>9</sup>

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>10</sup> 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.<sup>11</sup>

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *See Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>7</sup> *See John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Walter D. Morehead*, 31 ECAB 188, 194 (1979); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

<sup>8</sup> *See Georgia R. Cameron*, 4 ECAB 311, 312 (1951); *Arthur C. Hamer*, 1 ECAB 62, 64 (1947).

<sup>9</sup> *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

<sup>10</sup> *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

<sup>11</sup> *See James Mack*, 43 ECAB 321 (1991).

In the present case, appellant filed an occupational disease claim and indicated that, since 1987, his low back condition had been caused by lifting, bending and stooping at work. It is not disputed that appellant is an employee, or that he has a lower back condition, originally documented by a September 18, 1987 visit to an emergency room, culminating in a right L5 -- S1 lumbar disc excision. However, the medical reports of record either do not address whether the claimed occupational low back condition is work related or, in the case of Dr. Saleh, they indicate that it resulted from an "initial" work injury of August 30, 1998. This would tend to indicate a traumatic injury for which appellant has not filed a claim.<sup>12</sup> Additionally, after inquiry by the Office, it appears that the August 30, 1998 date used by Dr. Saleh is incorrect as appellant indicated that the actual injury date was September 21, 1998 and that he inadvertently supplied Dr. Saleh with the wrong date. Once again, this would appear to be indicative of a traumatic claim.<sup>13</sup> In any event, Dr. Saleh did not demonstrate a familiarity with the history of appellant's work factors alleged to have caused his claimed occupational disease<sup>14</sup> nor did he otherwise explain how particular work factors caused or aggravated appellant's low back condition.<sup>15</sup> Thus, while Dr. Saleh supports the existence of a work-related low back condition, he indicates that it occurred on a specific date in 1998 while appellant's claim is for a condition that occurred over an approximate 12-year period. He also did not identify or explain how any particular employment factor, such as bending, lifting and stooping identified by appellant, may have caused appellant's condition. Therefore, Dr. Saleh's reports are not based on an accurate history and are insufficiently rationalized to meet appellant's burden of proof. Other medical reports submitted by appellant do not specifically address whether employment caused or aggravated an occupational disease.

For these reasons, appellant did not meet his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

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<sup>12</sup> Regarding the definitions of and differences between a traumatic injury claim and an occupational disease claim, *see* 20 C.F.R. § 10.5(q), (ee) (1999) (an occupational disease occurs over more than a single workday or shift while a traumatic injury is caused by a specific event or incident, or series of events or incidents, within a single workday or shift).

<sup>13</sup> This decision does not preclude appellant from filing a traumatic injury claim.

<sup>14</sup> Additionally, neither appellant nor Dr. Saleh described the particulars of any employment incident on September 21, 1998 that may have caused or contributed to an injury. Appellant and Dr. Saleh mentioned a September 21, 1998 work injury but neither person describes what employment factors caused or aggravated any particular injury on that date.

<sup>15</sup> *See Vernon R. Stewart*, 5 ECAB 276, 280 (1953) (where the Board held that medical opinions based on histories that do not adequately reflect the basic facts are of little probative value in establishing a claim).

The decision of the Office of Workers' Compensation Programs dated October 20, 1999 is affirmed.

Dated, Washington, DC  
March 12, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member