

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK L. EASTLAND and TENNESSEE VALLEY AUTHORITY,
TRANSPORTATION SERVICES, Muscle Shoals, AL

*Docket No. 02-1075; Submitted on the Record;
Issued September 17, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established an injury in the performance of duty on July 14, 1982.

On May 30, 2000 appellant, then a 59-year-old pilot, filed a traumatic injury claim (Form CA-1) alleging that on July 14, 1982 he sustained injury to his back when the helicopter he was flying made a hard landing. Appellant stated that since the incident he had problems with his back and was now in constant pain. In an August 17, 2000 statement, appellant noted that he was in a motor vehicle accident in 1988, while driving an employing establishment vehicle.¹

In a decision dated February 2, 2001, the Office of Workers' Compensation Programs denied the claim, finding that the medical evidence of record was insufficient to establish fact of injury. By decision dated December 17, 2001, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on July 14, 1982.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that he or she sustained an injury while in the performance of duty.³ In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the

¹ In a July 29, 2000 response, appellant indicated that he had not filed any claims prior to the instant claim.

² 5 U.S.C. §§ 8101-8193.

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

In this case, the Office accepted that an incident occurred as alleged. The medical evidence in this case, however, is insufficient to establish causal relationship between a diagnosed condition and the July 14, 1982 incident. The only contemporaneous medical evidence is a July 15, 1982 treatment note from the employing establishment medical facility. The note states that the helicopter appellant was flying developed engine trouble and landed with a jolt; he reported a stiff neck, tension in the lower back and numbness in the right arm. The physician provided results on examination diagnosed possible mild nerve root syndrome of the cervical spine, without providing any opinion on causal relationship. Without a clear statement on causal relationship between a diagnosed condition and the employment incident, this report is of diminished probative value. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.⁵

The record does not contain any additional medical evidence with respect to the July 14, 1982 incident until a report dated August 7, 2000, from Dr. Lloyd Johnson, Jr., an orthopedic surgeon, who stated that appellant gave a history of injuring his back in 1982, receiving treatment from Dr. Wyatt C. Simpson, Jr., since 1990.⁶ He indicated that May 15, 2000 x-rays showed L5-S1 disc narrowing and a magnetic resonance imaging scan showed L2-3 spinal stenosis, spinal and foraminal stenosis L4-5 and desiccation of the L4-5 disc. Dr. Johnson stated, "it is my opinion that his problem now is directly related to the 1982 accident. As you know, these accidents often cause initial problems, then they go through a period where there is no problem then the problem will resurface. That is what happened in this case, in my opinion." The Board finds that Dr. Johnson did not provide a reasoned medical opinion based on a complete background. The incident in this case occurred 18 years earlier; Dr. Johnson does not provide a complete history of injury and medical treatment, or a reasoned opinion explaining the causal relationship between a current diagnosed condition and the employment incident. In an August 29, 2001 report, Dr. Johnson stated that 1982 x-rays showed L5-S1 disc space narrowing, with progressive narrowing shown in 1993 and opining that the narrowing was directly related to the helicopter crash. Dr. Johnson does not discuss in any further detail the x-rays he reviewed, or otherwise provide a reasoned medical opinion on causal relationship based on an accurate and complete background.

It is appellant's burden of proof to submit the necessary medical evidence to establish causal relationship between a diagnosed condition and the July 14, 1982 employment incident. The Board finds that appellant has not met his burden of proof in this case.

⁴ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁵ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

⁶ Dr. Johnson indicated that appellant had not located medical records from Dr. Simpson.

The December 17, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 17, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member