

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH N. BERNSTEIN and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, Ohio

*Docket No. 96-1226; Submitted on the Record;
Issued April 9, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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 federal employment.

The Board has duly reviewed the record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet his burden of proof in establishing that he sustained a double hernia 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 are 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

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).

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.

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 this case, appellant filed an occupational disease claim on June 19, 1995, alleging that while performing his duties as a mail handler, he developed a double hernia due to lifting and carrying heavy sacks, packages and trays of mail weighing up to 70 pounds and pulling and pushing rolling equipment weighing up to 1,200 pounds. The Office denied appellant's claim on September 29, 1995, finding that the evidence of record failed to demonstrate a causal relationship between appellant's diagnosed condition and factors of his employment. By letter dated October 23, 1995, appellant requested reconsideration of the September 29, 1995 decision. By decision dated January 16, 1996, after a merit review, the Office denied appellant's claim, finding that the evidence submitted was insufficient to warrant modification of the prior decision.

The medical evidence in support of appellant's claim consists of progress notes dated May 2, 1995 from Dr. Salim El-Hayek, a Board-certified surgeon; a June 19, 1995 attending physician's report (Form CA-20) by Dr. El-Hayek; and a September 29, 1995 report by Dr. El-Hayek.

In Dr. El-Hayek's progress notes dated May 2, 1995, it was noted that appellant stated that this condition was not work related. It was also noted that appellant related that he had had the condition, which caused him occasional discomfort, for at least two years. It was further noted that Dr. El-Hayek's findings on examination were consistent with bilateral inguinal hernia. The progress notes included a diagnosis, but failed to identify specific factors of appellant's employment or to address a causal relationship between those factors and appellant's diagnosed condition. Also, at that time, appellant stated his condition was not work related. Therefore, Dr. El-Hayek's May 2, 1995 progress notes are insufficient to establish appellant's occupational disease claim. In a June 19, 1995, attending physician's report (Form CA-20) Dr. El-Hayek gave a history of occasional discomfort, diagnosed bilateral inguinal hernia and checked yes to the question whether he believed the condition was caused or aggravated by factors of employment. However, Dr. El-Hayek failed to provide supportive rationale. The Board had held that a physician's opinion on causal relationship which consists only of checking "yes" to a form

⁴ *Id.*

question has little probative value and is insufficient to establish causal relationship.⁵ Therefore, Dr. El-Hayek's June 19, 1995 attending physician's report is also insufficient to establish appellant's claim. In a September 29, 1995 report, Dr. El-Hayek stated that he examined appellant on May 2, 1995, and at that time he diagnosed a bilateral inguinal hernia, which appellant had had for at least two years. Dr. El-Hayek went on to say, "When [appellant] was hired he was hernia free, according to your records. I feel this is an industrial injury and should be treated as one." In the September 19, 1995 report, Dr. El-Hayek stated that appellant's bilateral inguinal hernia is causally related to his employment; however, the doctor failed to provide rationale to support his opinion, *i.e.*, Dr. El-Hayek did not identify the factors of employment to which appellant attributed his condition. Moreover, Dr. El-Hayek did not address how engaging in his employment duties over a period of time either caused or contributed to appellant's diagnosed condition. In addition, the Board had held that the mere manifestation of a condition during a period of employment does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment nor the belief that the employment caused or aggravated a condition is sufficient to establish causal relationship.⁶ For these reasons, Dr. El-Hayek's September 29, 1995 report is insufficient to establish appellant's occupational disease claim.

In summary, there is no dispute that appellant has a condition, bilateral inguinal hernia, and that appellant has sufficiently identified the factors of his employment to which he attributed his condition. However, the medical evidence submitted is insufficient to establish a causal relationship between appellant's claimed condition and the identified factors of his employment. By letters dated August 8 and September 9, 1995, the Office advised appellant in detail of the specific medical evidence needed to establish his claim, but such evidence was not provided. The Board finds that appellant has failed to meet his burden of proof.

⁵ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁶ *William S. Wright*, 45 ECAB 498 (1994); *Kathryn Haggerty*, 45 ECAB 383 (1994).

The decision of the Office of Workers' Compensation Programs dated January 16, 1996 and September 29, 1995 are affirmed.

Dated, Washington, D.C.
April 9, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member