

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HAROLD R. MANN and TENNESSEE VALLEY AUTHORITY,  
SEQUOYAH NUCLEAR PLANT, Chattanooga, Tenn.

*Docket No. 96-1755; Submitted on the Record;  
Issued April 20, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on April 25, 1994.

On May 17, 1994 appellant, then a 60-year-old radio-chemical laboratory analyst, filed a traumatic injury claim alleging that on April 25, 1994, he felt dizzy and experienced an unusual heavy feeling in his chest due to heat exposure in the laboratory because the air conditioner was not working on that date. Appellant stopped work on April 25, 1994 and returned to work on May 12, 1994. His claim was accompanied by the May 17, 1994 medical treatment notes of Dr. Mary A. Duffy, a Board-certified family practitioner and employing establishment physician, the April 25, 1994 medical treatment notes of an employing establishment registered nurse whose signature is illegible, and the April 25 and May 12, 1994 medical treatment notes of Betty S. Jones, an employing establishment registered nurse. Appellant's claim was also accompanied by an April 25, 1994 narrative statement of Bobby M. Cline, appellant's coworker, providing a description of the employment incident. In addition, appellant's claim was accompanied by a May 31, 1994 statement from M.J. Doyle, an employing establishment employee, controverting appellant's claim.

By letter dated June 21, 1994, the Office of Workers' Compensation Programs advised appellant to submit medical and factual evidence supportive of his claim.

The Office received the May 10, 1994 medical treatment notes of Dr. Robert A. Drake, a family practitioner. The Office also received Dr. Drake's July 22, 1994 medical report revealing a history of the April 25, 1994 employment incident and appellant's medical treatment. Dr. Drake stated that appellant was admitted to the emergency department with a possible diagnosis of cardiac chest pain versus noncardiac chest pain which was "probably" precipitated by his heat exposure. He further stated that subsequent investigation failed to demonstrate any evidence of cardiac pathology. Dr. Drake then stated that appellant underwent gastrointestinal investigation which revealed that appellant had gastroesophagitis. He concluded that he felt appellant's admission to the hospital was caused by his heat exposure which resulted in his near

syncope. Dr. Drake further concluded that the subsequent findings of gastritis and esophagitis were probably preexisting conditions.

By decision dated August 2, 1994, the Office found the evidence of record insufficient to establish that appellant had sustained an injury as alleged. In an accompanying memorandum, the Office found that the incident occurred at the time, place and in the manner alleged, but the medical evidence was insufficient to establish that appellant had a condition causally related to the April 25, 1994 employment incident.

The Office received Dr. Drake's November 28, 1994 medical report indicating that his July 22, 1994 medical report clearly stated that appellant's admission to the hospital was a direct result of his heat exposure at work which resulted in near syncope. Dr. Drake stated that all tests were conducted to determine a diagnosis of cardiac chest pain or noncardiac chest pain.

In a December 12, 1994 letter, appellant requested reconsideration of the Office's August 2, 1994 decision.

By letter dated February 6, 1995, the Office found that Dr. Drake's November 28, 1994 medical report was insufficient to establish appellant's claim, but sufficient to warrant further development of the claim. The Office advised appellant to submit additional factual and medical evidence.

By letter dated March 1, 1995, appellant submitted a narrative statement describing the April 25, 1994 employment incident. Appellant also submitted Dr. Drake's medical treatment notes covering the period March 30 through June 1, 1994. The April 25, 1994 medical report of Dr. Marshall Horton, a Board-certified internist, provided a history of the April 25, 1994 employment incident and appellant's medical treatment, his findings on physical and objective examination, and that appellant's admitting diagnosis was chest pain not yet determined. Dr. Drake's May 10, 1994 disability certificate indicated that appellant had chest pain, a heat-related condition and other conditions which are illegible. The certificate also indicated that appellant could return to work on May 12, 1994. Appellant submitted hospital records and a medical bill, Dr. Drake's May 23, 1994 discharge summary revealing that appellant had chest pain probably secondary to gastritis and duodenitis, and Dr. Horton's medical treatment notes covering the period April 27 through 28, 1994. Appellant also submitted Dr. Horton's May 3, 1994 consultative medical report which provided a history of appellant's condition and medical treatment, his findings on physical and objective examination, and a diagnosis of atypical chest pain, intermittent dyspepsia which was probably reflux esophagitis and abnormal upper gastrointestinal with questionable gastric rigidity ruling out infiltrative process. Further, appellant submitted Dr. Horton's May 3, 1994 operative report indicating that he performed a panendoscopy on April 28, 1994 and that appellant had gastritis and duodenitis, and that there was no evidence of proximal gastric infiltration, and that the proximal stomach appeared to be normal. Additionally, appellant submitted an April 28, 1994 Holter report of Dr. Calvin A. Bell, a Board-certified internist, revealing that appellant had normal sinus rhythm throughout, occasional premature atrial contraction and no episodes of supraventricular or ventricular tachyarrhythmia. An April 26, 1994 chest x-ray of Dr. Alan Davidoff, a Board-certified radiologist, indicated that appellant had borderline cardiomegaly and no evidence of active lung parenchymal disease. Dr. Davidoff's April 26, 1994 esophagram provided normal results.

Dr. Davidoff's upper gastrointestinal series of the same date revealed that there was questionable rigidity to the greater curvature side of the proximal gastric antrum while the mucosal folds in this area were unremarkable and that the possibility of an infiltrative process could not be entirely excluded. Dr. Davidoff suggested that an endoscopy be performed.

By letter dated April 17, 1995, the Office advised Dr. Drake to provide a detailed narrative medical report based on an accompanying statement of accepted facts and a list of specific questions regarding appellant's condition.

By decision dated May 19, 1995, the Office denied modification of its prior decisions.

Dr. Drake submitted a May 23, 1995 medical report stating that he could not provide an accurate answer to the Office's first question regarding the temperature in the laboratory on April 25, 1994 inasmuch as contrary to the Office's finding that the room temperature was between 75 degrees and 82 degrees, there was no accurate record of the temperature on that date due to the time of the onset of appellant's symptoms and the possibility that the temperature had increased. Dr. Drake further stated:

“[Appellant] had suffered from long-standing gastritis and esophagitis but at no time had this ever resulted in syncope or the symptoms that were associated with his presentation to the Tennessee Valley Authority Medical Unit. It is conceivable that he experienced an attack of gastritis and esophagitis which caused vasovagal syncope which in turn caused the symptoms of light headedness, weakness, sweating, etc. It is equally probable that the elevated temperature in the office together with his preexisting gastritis and esophagitis resulted in the vasovagal syncope and that the symptoms were subsequently a result of that vasovagal syncope. One wonders if his gastritis and esophagitis alone were the only cause why this had not happened on prior occasions. I would therefore favor that the heat exposure was a precipitating factor in his symptoms and that the preexisting gastritis and esophagitis may have been concomitant factors in the symptoms that developed. Certainly the ingestion of nonsteroidal anti-inflammatory medications before the aforementioned date could very well increase the likelihood of his gastritis and esophagitis becoming symptomatic. Once again, one has to consider the reality that the presentation of his symptoms occurred during a period of significant temperature elevation in his lab.

“I am not suggesting that his gastritis and esophagitis are workmans [sic] compensation related, only that the episode that led to his hospitalization (*i.e.*, syncope) was in all probability compensable and secondary to the exposure of higher than normal temperatures in the workplace.

“The only point on which I might concur with your finding is that the length of disability was not entirely related to the heat exposure episode. The heat exposure episode probably precipitated the syncopal attack which necessitated the hospitalization. The period of disability from April 25 through May 12 [, 1994] in all probability is not related solely to the compensable episode but in part related to the gastritis and esophagitis. Certainly, the disability from April 25

through May 1 [, 1994] (his hospital stay) should be considered completely related to his compensable claim in that during that time he was being investigated to rule out cardiac consequences of his syncopal episode.”

Dr. Drake concluded that by the time appellant was discharged from the hospital, any heat exposure problems were resolved and the remainder of the disability could be attributed to appellant’s preexisting gastritis and esophagitis.

In a July 31, 1995 letter, appellant requested reconsideration of the Office’s May 19, 1995 decision accompanied by Dr. Drake’s May 23, 1995 medical report.

By decision dated September 29, 1995, the Office denied modification of its prior decisions.

In a February 7, 1996 letter, appellant requested reconsideration of the Office’s decision accompanied by hospital records, a medical bill, and Dr. Drake’s July 22 and November 28, 1994 medical reports.

By decision dated February 23, 1996, the Office denied appellant’s request for reconsideration without reviewing the merits of the claim on the grounds that the evidence submitted was of a repetitious nature, and thus insufficient to warrant review of the prior decision.

The Board finds appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty on April 25, 1994.

An employee seeking benefits under the Federal Employees Compensation Act<sup>1</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 limitations 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>2</sup> 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.<sup>3</sup>

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 employment incident which is alleged to have occurred.<sup>4</sup> In this case,

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

the Office accepted that the incident occurred at the time, place and in the manner alleged. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident caused a personal injury and generally can be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup> In the present case, appellant has submitted no rationalized medical evidence establishing that his heat exhaustion was causally related to the April 25, 1994 employment incident.

The March 30, April 27 and 28, May 10, and June 1, 1994 medical treatment notes of Dr. Duffy, a Board-certified family practitioner and employing establishment physician, the May 10, 1994 medical treatment notes of Dr. Drake, a family practitioner, and the April 27 through 28, 1994 medical treatment notes of Dr. Horton, a Board-certified internist, are insufficient to establish appellant's burden inasmuch as they failed to address a causal relationship between appellant's heat exhaustion and the April 25, 1994 employment incident. The April 25, 1994 medical treatment notes of an employing establishment registered nurse whose signature is illegible, and the April 25 and May 12, 1994 medical treatment notes of Ms. Jones, an employing establishment registered nurse, are insufficient to establish appellant's burden because a nurse is not considered a physician within the meaning of the Act, and therefore, their opinion does not constitute competent medical evidence.<sup>6</sup>

In his July 22, 1994 medical report, Dr. Drake indicated that appellant had no cardiac pathology and that appellant's hospital admission was caused by the April 25, 1994 employment incident. Dr. Drake failed to provide a definite diagnosis and medical rationale explaining how or why appellant's hospital admission was causally related to the April 25, 1994 employment incident. Similarly, in his November 28, 1994 medical report revealing that appellant's hospital admission was a direct result of his heat exposure at work which resulted in near syncope, Dr. Drake failed to explain how or why appellant's condition was caused by the April 25, 1994 employment incident. Therefore, the Board finds that these reports are insufficient to establish appellant's burden.

Dr. Drake's May 10, 1994 disability certificate revealing that appellant had chest pain, a heat-related condition and other conditions which are illegible merely provided a diagnosis of appellant's conditions and failed to discuss whether or how the diagnosed conditions were caused by the April 25, 1994 employment incident.<sup>7</sup> Therefore, the Board finds that this certificate is insufficient to establish that appellant's heat exhaustion was caused by the April 25, 1994 employment incident.

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<sup>5</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>6</sup> *Joseph N. Fassi*, 42 ECAB 677, 679 (1991); *Betty G. Myrick*, 35 ECAB 922, 923 (1984).

<sup>7</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

Dr. Horton's April 25, 1994 medical report providing that appellant may have had chest pain, Dr. Horton's May 3, 1994 consultative medical report revealing that appellant had atypical chest pain, intermittent dyspepsia which was probably reflux esophagitis and abnormal upper gastrointestinal with questionable gastric rigidity ruling out infiltrative process, and Dr. Horton's May 3, 1994 operative report indicating that appellant had gastritis and duodenitis are insufficient to establish appellant's burden inasmuch as they do not address a causal relationship between appellant's condition and the April 25, 1994 employment incident. Similarly, Dr. Drake's May 23, 1994 discharge summary revealing that appellant's chest pain was probably secondary to gastritis and duodenitis, the hospital records, medical bill, and Dr. Davidoff's April 26, 1994 chest x-ray, esophagram and upper gastrointestinal results are insufficient to establish appellant's burden because they failed to address whether appellant's condition was causally related to the April 25, 1994 employment incident. In addition, the Holter report of Dr. Bell, a Board-certified internist, also failed to address a causal relationship between appellant's heat exhaustion and the April 25, 1994 employment incident.

The Board finds that Dr. Drake's May 23, 1995 medical report is insufficient to satisfy appellant's burden. In this report, Dr. Drake stated that it was conceivable that appellant experienced an attack of gastritis and esophagitis which caused vasovagal syncope which then caused the symptoms of light headedness, weakness and sweating. Dr. Drake further stated that "[i]t was equally probable" that the elevated temperature in the office along with appellant's preexisting gastritis and esophagitis resulted in the vasovagal syncope and that the symptoms were subsequently a result of that vasovagal syncope. Dr. Drake stated that certainly the ingestion of nonsteroidal anti-inflammatory medications before the employment incident could have increased the likelihood of appellant's gastritis and esophagitis becoming symptomatic. Dr. Drake concluded that based on reality, appellant's symptoms were present at his laboratory during the period of significant temperature elevation. Dr. Drake further concluded that the employment incident which led to appellant's hospitalization was in all "probability" compensable and secondary to the exposure of higher than normal temperatures in the workplace. Dr. Drake also concluded that appellant's disability was not entirely due to the employment incident noting that the heat exposure episode "probably" precipitated the syncopal attack, but that appellant's disability from April 25 through May 12, 1994 was probably related in part to his gastritis and esophagitis. The Board has held that while the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>8</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>9</sup> The Board finds that Dr. Drake's opinion regarding the causal relationship between appellant's heat exhaustion and the April 25, 1994 employment incident is equivocal and speculative. Therefore, it is of diminished probative value to establish that appellant's condition was caused by the April 25, 1994 employment incident. Moreover,

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<sup>8</sup> See *Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>9</sup> *Phillip J. Deroo*, 39 ECAB 1294 (1988); *Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

Dr. Drake has implied that appellant's condition was caused by the April 25, 1994 employment incident because his gastritis and esophagitis had never resulted in syncope or the symptoms that appellant had experienced on that date. The Board has previously held that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury was insufficient, without supporting medical rationale, to establish causal relationship.<sup>10</sup> Dr. Drake did not provide any medical rationale to support his opinion that appellant's heat exhaustion was caused by the April 25, 1994 employment incident because appellant was asymptomatic prior to the incident. Rather, Dr. Drake merely stated that if appellant's gastritis and esophagitis alone were the only cause of appellant's condition, then why had appellant not suffered from this condition on prior occasions.

Because appellant has failed to submit the necessary rationalized medical evidence to substantiate that his heat exhaustion was caused by the April 25, 1994 employment incident, he has failed to meet his burden.

The February 23, 1996, and September 29 and May 19, 1995 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
April 20, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>10</sup> *Thomas D. Petrylak*, 39 ECAB 276 (1987).