

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MIKLE W. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-1100; Submitted on the Record;
Issued January 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he has developed additional medical conditions causally related to his accepted employment injury or other factors of his federal employment; and (2) whether appellant has established that he sustained a recurrence of total disability on or after May 20, 1996, causally related to his accepted September 22, 1993 employment injury.

In the present case, on March 11, 1994 the Office of Workers' Compensation Programs accepted that on or around September 22, 1993, appellant developed a right heel spur and right plantar fasciitis as a result of performing his duties as a letter carrier. Appellant lost intermittent time from work during the period February 19 through March 18, 1994, and was totally disabled from March 19 until May 31, 1994, when he returned to work as a limited-duty letter carrier.

By letter dated July 18, 1994, appellant informed the Office that subsequent to the surgery for his accepted right heel condition he began experiencing muscular spasm in his lower back and swelling in both knees and requested a decision as to whether additional medical treatment would be approved. In support of his request, appellant submitted medical evidence noting his complaints of back and bilateral knee pain and documenting the physical findings of lumbar strain, chondromalacia patellar right knee, sclerotic lesion right knee, osteophytes right knee and left knee pain. In a decision dated June 4, 1996, the Office found the medical evidence of record insufficient to establish that the additional claimed conditions were related to the original accepted injury by proximate causation, precipitation, acceleration or aggravation. The Office limited approval for medical expenses to treatment of the accepted injury. Appellant's subsequent request for reconsideration was denied by the Office in a decision issued on June 28, 1996.

On August 24, 1996 appellant filed a notice of recurrence of disability. Appellant indicated that the recurrence occurred on May 20, 1996 and that he stopped work on June 6, 1996. Appellant stated that following his return to modified duty as a letter carrier, he

experienced intermittent chronic pain and later, excruciating pain and physical discomfort in his right foot, as before. Appellant further stated that he was continuously instructed by management to perform duties prohibited by his physicians and that the performance of these duties, combined with driving the additional distance to the station where he was reassigned, had aggravated his heel spurs as well as his knee, back, neck, shoulder, leg, head, arm and hand conditions. In a decision dated October 14, 1996, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence of record was insufficient to establish that the claimed recurrence of disability was causally related to the original accepted injury. On November 4, 1996 appellant requested reconsideration based on "the new medical evidence." Appellant's reconsideration request was denied by the Office on December 20, 1996, on the grounds that the request neither raised substantive legal questions nor included new and relevant evidence.

The Board has duly reviewed the case record and concludes that appellant has not established that he has developed additional medical conditions 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 claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

In support of his claim that he developed lumbar strain, chondromalacia patellar right knee, sclerotic lesion of the right knee, osteophytes of the right knee and left knee pain, appellant submitted several medical reports from his attending physicians, Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, Dr. Jonathan M. Kletz, a podiatrist and Dr. Tich Ngoc Truong, a Board-certified physiatrist. While these reports document the presence of the additional claimed medical conditions none of the reports provide the requisite objective findings, rationale or explanation to establish that these conditions are causally related either to appellant's accepted injury, or to other factors of his federal employment.

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

³ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1)

⁴ 5 U.S.C. § 8122.

⁵ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁶ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Initially, the Board notes that the several reports from Drs. Truong and Kletz pertain exclusively to their treatment of appellant's original accepted foot injuries and therefore, lend no support to appellant's contention that he subsequently developed additional knee and back conditions, as a result of either the original injury or other factors of his federal employment. Although Dr. Shade's May 20, 1994 report specifically document's appellant's complaints of knee and low back pain subsequent to his April 1994 foot surgery and diagnoses right knee chondromalacia by x-ray and chronic low back strain, the physician does not offer an opinion as to the cause of these additional conditions, except to note that appellant had injured his back two years prior. In his follow-up report dated July 16, 1994, Dr. Shade noted that when he evaluated appellant on June 23, 1994 appellant indicated that his back pain was improved except for morning stiffness and soreness and denied radicular symptoms. Dr. Shade concluded that as appellant had not returned to his office since his June 23, 1994 visit, he assumed appellant's back symptomology had completely resolved. While Dr. Shade's documentation of appellant's complaints offers some support for appellant's contention that subsequent to his foot surgery he began experiencing back and knee pain, as Dr. Shade's reports do not contain any opinion as to the cause of these additional conditions, his reports are insufficient to establish the requisite causal relationship between appellant's back and knee conditions and either his prior accepted injury or other factors of his federal employment, and thus insufficient to establish appellant's claim. 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 sufficient to establish causal relationship.⁷ Causal relationship must be established by rationalized medical opinion evidence. As such the physicians' reports of file are insufficient to establish appellant's claim as none of them offers a rationalized medical opinion as to the cause of appellant's right knee or low back conditions.⁸ The Office advised appellant of the type of evidence needed to establish his claim, however, appellant failed to submit such evidence. The Office, therefore, properly denied appellant's claim for compensation for his additional medical conditions.

The Board further finds that appellant has not established that he sustained a recurrence of disability causally related to his accepted September 22, 1993 right foot injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the

⁷ *Victor J. Woodhams, supra* note 6.

⁸ *Id.*

employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁹

In this case, appellant has not shown a change in the nature and extent of his modified-duty job requirements, nor has he submitted sufficient medical evidence to show a change in the nature and extent of his injury-related condition. Although appellant alleged that he is continuously instructed by management to perform duties outside of his medical restrictions, he has not specified what these duties are, and has not provided any evidence in support of this allegation. In addition, appellant has not described the circumstances of his recurrence, except to say that he is experiencing excruciating pain the same as before. More importantly, however, the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability causally related to his accepted employment injury. In support of his claim for recurrence of disability, appellant submitted several medical reports from his treating physicians. In an attending physician's report, Form Ca-20, dated July 12, 1996, Dr. Truong indicated that appellant gave a history of hand, foot, neck, shoulder, low back and knee pain, listed his physical findings as lumbar strain with right lower extremity radiculitis, right knee effusion, patella chondromalacia, plantar and post heel spurs of the right and left feet, and hand pain and spurs, and listed his diagnosis as lumbar strain with right lower extremity radiculitis. Although Dr. Truong indicated by check mark that these conditions were caused or aggravated by appellant's employment activities, he offered no objective findings in support of his diagnosis, and offered no explanation or rationale in support of his conclusion that these assorted conditions were employment related. Moreover, Dr. Truong did not list a date of injury and did not specifically address the issue of whether appellant's current right foot condition, or any of the diagnosed conditions, is causally related to appellant's accepted employment injury.

Appellant also submitted a July 31, 1996 duty status report, Form Ca-17, from Dr. Shade on which the physician listed his physical findings as lumbar strain, heel spurs, and plantar fasciitis, answered "yes" to an inquiry as to whether the diagnosis was due to injury, and indicated that appellant could return to work within restrictions, but did not provide any discussion, explanation or rationale to establish a relationship between appellant's current condition and his accepted employment injury. Finally, appellant submitted a duty status report dated July 9, 1996, from a podiatrist whose signature is illegible, on which the physician indicated that appellant had sustained a bone spur on September 22, 1993, listed his clinical findings as right foot heel spur and plantar fasciitis, and noted that appellant had been released to work on May 31, 1994 and that appellant was still capable of working eight hours per day, within restrictions.

Causal relationship is a medical issue¹⁰ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated

⁹ *Gus N. Rodes*, 46 ECAB ____ (Docket No. 93-950, issued February 14, 1995); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

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.¹¹

The Board has held that merely checking a box on an Office form, by a physician, is insufficient to establish causal relationship.¹² Moreover, neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹³

None of the physicians of record specifically attribute, with supporting medical reasoning, any continuing condition or disability on or after May 20, 1996 to appellant's March 1, 1993 work injury. These reports are therefore insufficient to establish a change in the nature and extent of the injury-related condition.¹⁴ Appellant therefore has not submitted rationalized medical evidence explaining how and why any of his conditions, on and after May 20, 1996 were related to the September 22, 1993 employment injury¹⁵ and thus has not met his burden of proof in establishing his claim.¹⁶

¹¹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 6.

¹² *Debra S. King*, 44 ECAB 203 (1992).

¹³ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

¹⁴ *Ruth S. Johnson*, 46 ECAB ____ (Docket No. 93-1657, issued November 18, 1994); *Lillian M. Jones*, 34 ECAB 379 (1982).

¹⁵ The Board notes that the file presented to the Board contains evidence that was stamped received by the Office but was not considered by the Office in its decision dated December 20, 1996, as it was received subsequent to the issuance of the decision. The Board cannot consider this evidence, however, as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

¹⁶ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of diminished probative value).

The decisions of the Office of Workers' Compensation Programs dated December 20, October 14, June 28 and June 4, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 27, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member