

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY A. CHARETTE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Iron Mountain, Mich.

*Docket No. 96-1994; Submitted on the Record;
Issued July 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she developed a back condition due to factors of her federal employment.

Appellant alleged that she developed low back pain due to pushing a loaded supply cart in the course of her federal employment.¹ By decision dated July 7, 1995, the Office denied appellant's claim and in a merit decision dated May 20, 1996, the Office denied appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that she developed a back condition causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including that fact 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 is causally related to the employment injury.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

¹ Appellant initially filed a notice of recurrence of disability alleging that she sustained a recurrence of disability on November 30, 1994 causally related to a November 14, 1989 employment injury. The Office of Workers' Compensation Programs, by letter dated February 3, 1995, informed appellant that it was developing her claim as an occupational disease claim.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

factual statement identifying the employment factors alleged to have caused or contributed to the 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 the claimant.⁴ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁵ 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,⁶ must be one of reasonable medical certainty,⁷ 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.⁸ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁹

In the present case, appellant alleged that she sustained pain in her lower back due to pushing a heavy cart in the course of her employment. Although the Office accepted the occurrence of the claimed employment factors, appellant did not submit sufficient medical evidence to establish that she sustained an occupational injury due to these factors.

In support of her claim, appellant submitted chart notes dated November 15, 1989 to May 10, 1994 from the employing establishment's health clinic. The chart notes reported certain of appellant's employment duties and indicated that she received treatment for, *inter alia*, low back pain.¹⁰ This evidence, however, is of limited probative value on the relevant issue in the present case, as it provides no opinion that appellant developed an occupational disease of her lower back causally related to employment factors.

In a report dated December 20, 1994, Dr. Richard A. Rovin, a neurologist, noted appellant's history of recurrent lower back pain for the past four or five years and that

⁴ *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384-85 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

¹⁰ The chart notes also mention employment-related traumatic injuries to her lower back. The Office accepted that appellant sustained several employment-related traumatic injuries to her lower back.

“[m]anipulating the supply cart aggravates her lower back pain.” Dr. Rovin diagnosed “chronic intermittent lower back pain most commonly associated with degenerative change.” As Dr. Rovin did not provide a specific opinion regarding whether employment factors caused or contributed to the diagnosed condition, his opinion is insufficient to meet appellant’s burden of proof.¹¹

Appellant further submitted numerous reports from Dr. Dennis W. Ziembra, an osteopath and her attending physician. In disability reports dated December 5 to 23, 1994 Dr. Ziembra found that appellant was disabled from work. In a report dated January 13, 1995, Dr. Ziembra noted that appellant pushed a cart at work and opined that she should remain off work pending his review of her functional capacities evaluation. In a report dated January 24, 1995, Dr. Ziembra found that appellant could perform most of her employment duties with the exception of lifting in her supply clerk position and recommended a work hardening program. Dr. Ziembra’s reports, however, are of little probative value as they do not contain a diagnosis or relate the cause of appellant’s restrictions to factors of her federal employment.

In a report dated June 19, 1995, Dr. Ziembra stated that he treated appellant for progressively worsening chronic back pain with “no apparent precipitating event.” He found that she could return to work in one week. Dr. Ziembra, however, does not reach a diagnosis or address the issue of causation and thus his opinion is not relevant to the issue of whether appellant sustained a back condition due to factors of her federal employment.

In a report dated January 29, 1996, Dr. Ziembra stated that, beginning November 1994, he treated appellant for low back pain, which she related “has been a recurring problem since her injury while pushing a heavy cart onto an uneven surface” at the employing establishment. Dr. Ziembra discussed his treatment of appellant and opined that her “back pain has been continuing over the last year and are not separate events.” Dr. Ziembra, however, does not indicate the nature of appellant’s back condition or discuss how specific factors of appellant’s federal employment caused her back condition and thus his opinion is insufficient to meet appellant’s burden of proof.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between her condition and her employment.¹² To establish causal relationship, appellant must submit a physician’s report, in which the physician reviews that factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant’s medical history, state whether these employment factors caused or aggravated appellant’s diagnosed condition.¹³ Appellant failed to submit such evidence and, therefore, failed to discharge her burden of proof.

¹¹ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

¹² *William S. Wright*, 45 ECAB 498 (1993).

¹³ *Id.*

The decisions of the Office of Workers' Compensation Programs dated May 20, 1996 and July 7, 1995 are hereby affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member