U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID A. BURCHAM and DEPARTMENT OF THE ARMY, ABERDEEN PROVIING GROUND, Aberdeen, Md.

*Docket No. 96-553; Submitted on the Record;*
*Issued June 19, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant did not sustain an injury to his back in the performance of duty on April 30, 1992.

On April 30, 1992 appellant, a 38-year-old equipment tester, allegedly felt a tear in his middle back and shoulder when he reached for an item on top of a cabinet.[1] Appellant filed a Form CA-1 claim for benefits based on traumatic injury on November 28, 1994.

By letter dated December 30, 1994, the Office requested that appellant submit additional information in support of his claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office further requested that appellant submit a detailed description of how his employment injury occurred, why he didn't report the injury within 30 days of the date it allegedly occurred. The Office stated that appellant had 30 days in which to submit the requested information.

In response appellant submitted a handwritten reply to the Office's questionnaire wherein he stated that he initially claimed the April 30, 1994 injury was a recurrence of a back injury he sustained on September 10, 1990, but that the Office refused to accept his injury as a recurrence.[2] Appellant also submitted a statement from a coworker who witnessed the injury on April 30, 1994, who corroborated appellant's account of events, a statement from a supervisor

[1] An April 30, 1992 Form CA-16 requesting authorization for treatment stated that appellant had recurring low back pain, with continuing back pain for 6 days.

[2] There is no indication in the record that appellant filed a previous claim for a lower back injury. The record does, however, contain 2 Form CA-16 requests for authorization for examination of his lower back based on a back strain sustained on September 15, 1990, dated February 15, 1991, and May 8, 1992 some treatment notes pertaining to his lower back dated May-June 1992 treatment notes pertaining to chest pain and stress dated October 1992 and March 1993 and treatment notes in March 1994 pertaining to treatment for continued back pain.

who asserted that appellant sustained a back injury on April 30, 1994 as well as one in 1990, which resulted in his being given a light duty job, and a statement from the commanding officer at appellant's base, who indicated that he sustained an injury at work in 1990 as well as a reinjury in 1992.

In addition, appellant submitted to the Office a January 24, 1995 report from Dr. John P. O'Hearn, a Board-certified orthopedic surgeon, who noted that appellant had previously been evaluated in 1990 and was believed to have evidence of degenerative disease of the lumbar spine, with persistent symptoms in the interim. Dr. O'Hearn noted that appellant had underwent a magnetic resonance imaging scan (MRI) of the thoracolumbar spine, with no evidence of disc herniation. Dr. O'Hearn stated that appellant related chronic lower back pain with intermittent numbness involving the anterior aspect of his right leg. Dr. O'Hearn stated that radiographic evaluation of the lumbar spine did not reveal any evidence of spondylolysis or spondylolisthesis, but did indicate evidence of degenerative disease at L4-5 and L5-S1, with chronic low back pain. Dr. O'Hearn further stated that:

> "[Appellant] does relate at least a couple of episodes of increased back symptoms which is certainly not surprising given his persistent problems with his weight and his lack of an ongoing exercise program. It would certainly be anticipated that [appellant's] sedentary lifestyle and lack of an ongoing exercise program, and his persistent problems with weight control, that the underlying degenerative disease of the lumbar spine would be persistently symptomatic with intermittent exacerbations. The episode in 1992, I believe, is nothing more than a transient exacerbation of this pre-existing condition."

In a decision dated February 6, 1995, the Office rejected appellant's claim for compensation, stating that although the evidence of record supported the fact that he had been injured in the manner alleged, the medical evidence submitted by appellant was not sufficient to establish that he suffered a medical condition or disability causally related to the April 30, 1992 work incident.

In a letter dated February 21, 1995, appellant requested a hearing, which by letter dated July 3, 1995 the Office scheduled for July 24, 1995.

At the hearing held on July 24, 1995, appellant testified that he suffered a previous back injury in September 1990 and that the injury he allegedly suffered on April 30, 1992 was to the same area. Appellant stated that he reported his injury to the employing establishment's clinic, which allegedly recorded his injury as a recurrence. Appellant further stated that he didn't know whether a claim was forwarded to the Office, but that he assumed it was. Appellant asserted that he filed a claim for a separate injury on November 28, 1994 because his employee representative instructed him to do so, and because his recurrence claim had been rejected. Appellant remained on the job full-time and did not claim time off from work, but he did accumulate a total of $1,350 in overdue fees for chiropractic care. Appellant sought reimbursement for these expenses.

By decision finalized on September 29, 1995, the hearing representative affirmed the Office's February 6, 1995 decision. The hearing representative stated that the instant medical

record did not contain a medical report which provided a complete and accurate history of the work injury or a diagnosis of the condition resulting from the implicated incident, and that therefore it was "simply not possible" to find appellant was injured in the performance of duty on April 30, 1994. The hearing representative also denied reimbursement for chiropractic bills, noting that pursuant to Section 8101(2),[3] the term physician as used in the Act includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as shown by x-ray, and that the instant medical record contained reports from two physicians who performed an x-ray and an MRI of appellant's spine but did not diagnose subluxation. The hearing representative therefore stated that, even if he had found appellant had been injured in the performance of duty, there would still be no basis for reimbursing appellant for his chiropractic expenses.

The Board finds that appellant did not sustain an injury to his back in the performance of duty on April 30, 1992.

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing that 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 limitation 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.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8] The medical evidence required to establish causal relationship is usually rationalized medical 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,

[3] 5 U.S.C. § 8101(2).

[4] 5 U.S.C. § 8101 *et seq.*

[5] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Id.* For a definition of the term "injury," *see* 20 C.F.R. §10.5(a)(14).

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.[9]

In the present case it is uncontested the appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,[10] and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on April 30, 1992 caused a personal injury and resultant disability.

In the present case, the only medical evidence bearing on causal relationship is the January 24, 1995 report from Dr. O'Hearn. Dr. O'Hearn's only references pertaining to the issue of whether appellant's claimed back condition was caused or aggravated by the April 30, 1992 employment was his statement that "the episode" in 1992 was nothing more than a transient exacerbation of his preexisting back condition, and his comment that appellant's sedentary lifestyle, lack of an ongoing exercise program, persistent problems with weight control, and underlying degenerative disease of the lumbar spine would be persistently symptomatic with intermittent exacerbations. The Board finds that Dr. O'Hearn's report falls short of meeting appellant's burden to provide a probative, rationalized medical opinion sufficient to establish that he sustained an injury or disability on April 30, 1992 causally related to employment factors.

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 her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.[11]

Dr. O'Hearn's January 24, 1995 medical report does not constitute sufficient medical evidence demonstrating a causal connection between appellant's April 30, 1992 employment incident and the claimed injury to his lower back. Causal relationship must be established by rationalized medical opinion evidence. The opinion of Dr. O'Hearn on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his

[9] *Id.*

[10] *See John J. Carlone*, 41 ECAB 353 (1989).

[11] We note that the hearing representative erred in finding that appellant did not sustain an injury in the performance of duty on April 30, 1994 because the record did not contain a report giving a complete and accurate history of injury or providing a diagnosis of a condition arising from the employment incident. Contrary to the hearing representative's finding, Dr. O'Hearn's January 24, 1995 report accurately documented appellant's history of back pain and diagnosed degenerative disc disease and facet joint arthropathy at L4-5 and L5-S1. Further, the hearing representative misstated the standard; as stated above, for the type and quality of medical evidence required to establish causal relationship. Causal relationship must be shown by rationalized medical opinion evidence, to which the hearing representative made no reference. However, given our finding herein that Dr. O'Hearn's January 24, 1995 report fell short of this standard, and given that there is no other medical evidence in the record except for several treatment notes which render no opinion on causal relationship, we affirm the hearing representative's September 29, 1995 decision denying benefits and reimbursement for chiropractic care.

conclusions.[12] He did not sufficiently describe or explain the medical process through which the April 30, 1992 work accident would have been competent to cause the claimed injury. Thus, the Office's decisions are affirmed.

Lastly, we affirm the hearing representative's denial of reimbursement for chiropractor care. As the hearing representative indicated, the record does not contain a diagnosis of subluxation by x-ray; thus, there is no basis for reimbursement for chiropractic expenses under Section 8101(2). Further, all of the chiropractic treatment documented in the record was provided several years prior to April 30, 1994, the date of injury.

The decisions of the Office of Workers' Compensation Programs dated February 6, 1995 and September 29, 1995 are hereby affirmed.

Dated, Washington, D.C.
June 19, 1998

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] *William C. Thomas*, 45 ECAB 591 (1994).