

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY DAMMARELL and U.S. POSTAL SERVICE,
POST OFFICE, Reno, Nev.

*Docket No. 96-1960; Submitted on the Record;
Issued June 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that his right and left leg conditions were caused by factors of his federal employment.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that his right and left leg conditions were caused by factors of his federal employment.

On November 10, 1995 appellant, then a letter carrier, filed a claim for an occupational disease (Form CA-2) assigned number A13-1094084 alleging that he first became aware that his leg conditions were caused or aggravated by his employment on July 22, 1994.¹ Appellant stated that his condition started with varicose veins, slight leg cramps and leg aches in both legs, but mainly in the left leg due to standing and walking seven to nine hours per day. Appellant also stated that he was having leg, calf and ankle problems. Appellant stopped work on July 21, 1995.² Appellant's claim was accompanied by the employing establishment's November 25, 1995 letter controverting appellant's claim, the employing establishment's August 3, 1995 notice of removal, appellant's narrative statement regarding the factors of employment that caused his leg conditions, a position description and medical evidence.

By letter dated December 21, 1995, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office advised appellant to submit factual evidence regarding the time period that he worked for the employing establishment as a letter carrier in Salem, Oregon and Reno, Nevada. The Office also

¹ Previously, appellant filed a claim assigned number A13-1044818 for varicose veins on July 21, 1994 which was denied by the Office on October 11, 1994.

² Appellant was placed on administrative leave effective July 21, 1995. Appellant was terminated from the employing establishment effective September 9, 1995.

advised appellant to submit a comprehensive medical report from his treating physician describing his symptoms, results of examinations and tests, diagnosis, treatment provided, the effect of the treatment and his physician's opinion explaining the cause of his condition. The Office further advised appellant that if his treating physician believed that factors of his employment caused his condition, then the treating physician should specifically identify these factors of employment and explain how they contributed to his condition.

By decision dated January 24, 1996, the Office found the evidence of record insufficient to establish fact of injury. Specifically, the Office found the evidence of record insufficient to establish that a specific event, incident or exposure occurred at the time, place and in the manner alleged. The Office also found the evidence of record insufficient to establish that a medical condition was proximately caused by the accepted trauma or factors. Accordingly, the Office denied appellant's claim for varicose veins.

In response to the Office's December 21, 1995 letter, appellant submitted a January 23, 1996 letter indicating that he had returned to work at the employing establishment as a full-time employee on December 21, 1995. Appellant also indicated that he worked for the employing establishment from June 1980 until July 1992 in Salem, Oregon and from July 1992 to the present in Reno, Nevada. By letter dated February 13, 1996, the Office advised appellant that the information submitted was insufficient to alter the January 24, 1996 decision. The Office then advised appellant to exercise his appeal rights.

In a February 13, 1996 letter, appellant stated that he filed his 1994 claim assigned number A13-1044818 in July 1994 for a left pulled calf or strained muscle which was possibly aggravated by his varicose veins that were caused by standing on his legs three to four hours per day casing mail and daily walking as a letter carrier. Appellant stated that he never indicated in his July 1994 claim that he had leg cramps. He further stated that in his 1995 claim assigned A13-1094084 he indicated that his calf strain was not healing, that his calf hurt most of the time and that the pain never went away. Appellant also stated that he only added varicose veins because he believed that they were contributing to his discomfort. He then stated that he received the Office's January 24, 1996 decision prior to January 31, 1996, the date that the Office advised appellant to respond to its December 1995 letter. He concluded that the Office misunderstood and mishandled his claim. Appellant requested a hearing, reconsideration or an appeal of the Office's decision.

By decision dated February 29, 1996, the Office modified in part and affirmed in part the January 24, 1996 decision. In an accompanying memorandum, the Office found that appellant's claim for varicose veins was properly denied, but modified the January 24, 1996 decision to include the denial of appellant's right and left leg conditions. The Office also found appellant's argument that the January 24, 1996 decision was issued eight days prior to the advised date to respond to its December 21, 1995 letter was moot because appellant still had not submitted evidence responsive to its request.

In a February 8, 1996 letter, appellant advised the Office that he was not filing claims for varicose veins, but that the 1994 and 1995 claims were for leg and calf problems. Appellant's letter was accompanied by medical evidence and the Office's January 24, 1996 decision.

By letter dated March 6, 1996, the Office advised appellant that his February 8, 1996 letter was insufficient to alter the January 24, 1996 decision. The Office further advised appellant to exercise his appeal rights.

By letter dated May 28, 1996, appellant requested reconsideration of the Office's February 29, 1996 decision accompanied by medical evidence. By decision dated July 15, 1996, the Office denied appellant's request for reconsideration, without a review of the merits of the claim, on the grounds that the evidence submitted was irrelevant and immaterial.

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 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. 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.³

In the present case, there is no rationalized medical evidence of record establishing that appellant's right and left leg conditions were caused by factors of his federal employment. Appellant submitted a November 10, 1995 physician's progress report and treatment plan from Dr. Jay E. Betz, indicating a diagnosis of left calf pain and varicosities, and that appellant could return to work on that date with no physical restrictions. Appellant also submitted Dr. Betz' January 29, 1996 medical report revealing that appellant had bilateral calf pain, which was greater in the left calf and possibly secondary to varicosities, his findings on physical examination, appellant's prognosis and medical treatment. Further, appellant submitted Dr. Betz' January 29, 1996 physician's progress report and treatment plan revealing the above diagnosis and possible cause, and that appellant could return to full duty with no restrictions on that date. The Board finds that Dr. Betz' medical reports are insufficient to establish appellant's burden inasmuch as they failed to address whether appellant's leg conditions were caused by factors of his federal employment.

Additionally, appellant submitted a May 6, 1996 medical note from Dr. Mujahid Rasul indicating that appellant was unable to handle any type of confrontation at this time. Appellant submitted Dr. Rasul's medical note of the same date revealing that appellant could not return to work until June 1, 1996, and Dr. Rasul's May 28, 1996 medical note providing that appellant

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

could not return to work until July 1, 1996. Dr. Rasul's medical notes are insufficient to establish appellant's burden because they fail to address whether appellant has a condition caused by factors of his federal employment.

The Office received the December 18, 1995 medical report of Dr. Sherwood Dixon, a Board-certified surgeon. In this report, Dr. Dixon noted a history of appellant's leg injuries, medical treatment, and social and family life. Dr. Dixon further noted his findings on physical examination. He stated that appellant's chief complaint was bilateral leg pain, which was apparently worse on the left leg. Dr. Dixon also stated that appellant described pain in the posterior calf region from the knee down to the ankle, and calf muscle, ankle and knee pain. He further stated that appellant had possible right carpal tunnel, but that it was not evaluated on the date of appellant's examination. In addition, Dr. Dixon stated that appellant had mild varicosities, no obvious venous stasis disease, and no history of arthritic disease, but that arthritis should be ruled out because there were some symptoms suggesting that appellant had arthritis. He then stated that the pain down the backside of both legs and possibly into the bottom of the feet partly sounded like sciatica and concluded that appellant's back should be evaluated. Dr. Dixon diagnosed significant depression which was suggested by appellant's history, although no details were obtained. He ruled out Baker's cyst as the cause of appellant's pain. Dr. Dixon opined that he could not identify any physical findings that would indicate any reason for disability. He further opined that by history, appellant had leg pain that was aggravated by prolonged standing and that appellant had significant job depression. Dr. Dixon concluded that further testing was necessary to determine whether appellant had any disability. His report is insufficient to establish appellant's burden inasmuch as he failed to provide any rationale explaining how appellant's leg pain was aggravated by prolonged standing.

The Office also received Dr. Dixon's December 18, 1995 disability certificate indicating that appellant had mild varicose veins, that further diagnostic studies were necessary and that appellant was released to full duty with no restrictions on December 19, 1995. The Board finds that Dr. Betz' disability certificate is insufficient to establish appellant's burden because it failed to discuss whether or how the diagnosed condition was caused by factors of appellant's federal employment.⁴

In addition, the Office received a December 20, 1995 computed axial tomography scan report from Dr. K. Lynn Learey, a Board-certified radiologist, providing that there was a normal scan of the lumbar spine with reformations and recommending that magnetic resonance imaging may be valuable.

Although the Office advised appellant of the type of medical evidence needed to establish his claim, appellant failed to submit medical evidence responsive to the request. Consequently, appellant has not established that his leg conditions were caused by factors of his federal employment.

The July 15, February 29 and January 26, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

⁴ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member