

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES E. REED and DEPARTMENT OF VETERANS AFFAIRS,  
COATESVILLE VETERANS HOSPITAL, Coatesville, Pa.

*Docket No. 97-588; Submitted on the Record;  
Issued November 24, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an L4-5 disc injury or spinal stenosis on March 15, 1996 in the performance of duty, causally related to factors of his federal employment.

On March 18, 1996 appellant, then a 45-year-old housekeeper, filed a claim alleging that on March 15, 1996 after lifting trash he was stricken with sharp, jabbing lower back pain as he was washing his hands. In support of his claim appellant submitted a March 22, 1996 return to work certificate from Dr. Alexander J. Klufas, a Board-certified general practitioner, which noted the nature of appellant's injury as "worsening low back pain [without] sciatica." After referral to a Board-certified orthopedic surgeon, by report dated April 11, 1996, Dr. Christopher J. Lyons noted date of injury as March 15, 1996, diagnosed low back pain, opined by checking "no" that the condition found was not caused or aggravated by an employment activity and opined that appellant was totally disabled from March 18, 1996 through the present. By attending physician's report dated July 2, 1996, Dr. Jeffrey S. Yablon, a Board-certified neurosurgeon, noted the date of injury as March 15, 1996, diagnosed "L4-5 spinal stenosis and significant herniated disc at L4-5," opined by checking "yes" that the condition found was caused or aggravated by an employment activity and noted that appellant was being scheduled for surgery.

In an accompanying narrative report dated May 16, 1996, Dr. Yablon noted that appellant had a long history of low back and bilateral leg pain dating back at least five years. He noted that appellant also was in a motor vehicle accident on September 28, 1995 when he was getting out of a car that was rear-ended. Dr. Yablon noted that appellant was out of work with back pain until March 1, 1996, but "has significant pain and stopped working." Dr. Yablon noted that appellant stated that his pain was getting progressively worse and worse in the left leg than the right and that it radiated down both legs bilaterally to the dorsum of the feet. He noted that appellant's symptoms were increased with prolonged standing and walking and that electromyography (EMG) testing suggested a chronic L5 radiculopathy. Dr. Yablon noted that

he reviewed a recent computerized tomography (CT) scan from April 1996, which showed “a bulge or herniated disc at L4-5, it is unclear,” and reviewed the magnetic resonance imaging (MRI) films from September 1995 which “actually showed a bulge versus herniated disc at L4-5 causing significant spinal stenosis at that level.” Dr. Yablon noted moderate back tenderness and paraspinal spasm, negative straight leg raising and Lasegue’s maneuvers and opined that he was concerned appellant had L4-5 spinal stenosis which “is the cause of his symptoms.”

In a June 3, 1996 report, Dr. Yablon stated: “To a reasonable degree of medical certainty [appellant’s] spinal stenosis has worsened in the last three years based upon my review of the CT scans. Additionally there appears to be a more significant central herniated disc or subligamentous herniated disc at L4-5 worsening the spinal stenosis. As I have no other reason to contradict this fact, it is my opinion to a reasonable degree of medical certainty that his work injury precipitated these symptoms and have [sic] now ... required the [need for surgery].”

Another June 3, 1996 report from Dr. Yablon stated that, the April 29, 1996 CT scan showed “moderate to severe spinal stenosis at L4-5 [which] appears to be due to both a combination of bony hypertrophy and a large central bulging disc versus subligamentous herniated disc [which was] slightly eccentric to the right.” He noted that he “compared this film to the films of 1993 and 1991 and compared to those previous CT scans, it appears that the stenosis has gotten progressively worse.” He also noted some medial facet hypertrophy at the L4-5 midbody at the level of the pedicle. Dr. Yablon recommended a bilateral L4-5 decompressive laminectomy and left-sided partial medial facetectomy with exploration of the disc and again noted that appellant’s condition had progressively worsened over the last three years.

By letter dated July 22, 1996, the Office of Workers’ Compensation Programs advised appellant that his claim was accepted for lumbar strain with a March 22, 1996 return to restricted duty as per Dr. Klufas, that the medical evidence of record indicated a five-year history of back problems including a Veterans Administration monthly disability payment of \$380.00 for “lumbar sprain,” and that Dr. Yablon’s report clearly indicated a preexisting history of spinal stenosis and herniated disc, aggravated by the September 1995 automobile accident back injuries and it afforded appellant 30 days within which to present evidence which identified disability associated with the March 15, 1996 work incident.

By decision dated August 12, 1996, the Office rejected appellant’s claim finding that the medical evidence of record failed to establish that his claimed conditions were causally related to the March 15, 1996 employment incident. The Office found that although Dr. Yablon checked “yes” to the question of causal relation, he did not provide sufficient explanation or rationale as to why appellant’s spinal stenosis and L4-5 herniated disc was related to the March 15, 1996 incident, particularly in light of the fact that he stated that appellant had a five-year history of back pain, that his spinal stenosis had worsened over the preceding three years and that the MRI of September 1995 demonstrated that the spinal stenosis and herniated L4-5 disc preexisted appellant’s employment injury and was reported in 1995 in the same terms that the CT scan results of April 1996 were reported.

On August 13, 1996 the Office received an August 9, 1996 letter from appellant’s representative arguing that it was only necessary to prove that appellant’s work-related incident

was one of the material causes of his injury. He argued that on June 3, 1996 Dr. Yablon stated that appellant's work injury "precipitated these symptoms" requiring surgical intervention. In support, appellant's representative submitted duplicates of reports already of file and reports from appellant's July 1996 hospitalization and laminectomy surgery. Appellant's representative also submitted an August 1, 1996 attending physician's supplemental report, on which Dr. Yablon had checked "yes" to the question of whether appellant's present condition, noted as herniated nucleus pulposus and spinal claudication, was due to the injury for which compensation was claimed.

On August 15, 1996 the Office received an August 13, 1996 request for reconsideration of the August 12, 1996 decision and in support appellant's representative submitted duplicates of reports previously submitted to the record as well as postoperative Office visit reports which did not address causal relation.

By decision dated November 13, 1996, the Office rejected appellant's request for modification of the prior decision finding that the evidence submitted in support of the request was insufficient to warrant modification. The Office noted, although Dr. Yablon checked "yes" to the question of causal relation, he did not provide any explanation or rationale as to why appellant's spinal stenosis and L4-5 herniated disc was related to the March 15, 1996 incident, particularly in light of the fact that he stated that appellant had a five-year history of back pain, that his spinal stenosis had worsened over the preceding three years and that the MRI of September 1995 demonstrated that the spinal stenosis and herniated L4-5 disc preexisted appellant's employment injury and was reported in 1995 in the same terms that the CT scan results of April 1996 were reported.

The Board finds that appellant has failed to establish that he sustained L4-5 disc injury or spinal stenosis on March 15, 1996 in the performance of duty, causally related to factors of his federal employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>1</sup> A person who claims benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his claim.<sup>3</sup> Appellant must establish that he sustained an injury in the performance of duty and that his disability resulted from such injury.<sup>4</sup> As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

<sup>2</sup> 5 U.S.C. §§ 8101-8193 (1974).

<sup>3</sup> *Nathaniel Milton*, 37 ECAB 712, 722 (1986); *Paul D. Weiss*, 36 ECAB 720, 721 (1985).

<sup>4</sup> *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

relationship.<sup>5</sup> The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>6</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>7</sup>

In this case, Dr. Yablon supported causal relationship by checking a box on a form indicating that appellant's condition was work related. However, the Board has held that such a report has little probative value where there is no explanation or rationale supporting the opinion on causal relationship between the diagnosed condition and the employment-related injury.<sup>8</sup> Dr. Yablon also stated that appellant's "work injury precipitated these symptoms," yet he failed to provide any explanation or rationale as to how or why, particularly in light of light of the fact that he stated that appellant had a five-year history of back pain, that his spinal stenosis had worsened over the preceding three years and that the MRI of September 1995 demonstrated that the spinal stenosis and herniated L4-5 disc preexisted appellant's employment injury and were reported in 1995 in the same technical clinical terms, "bulge or herniation," "bulge versus herniation," as the CT scan results of April 1996 were reported, which would argue against any worsening of the condition from September 1995 until April 1996. As Dr. Yablon's opinion was stated in a conclusory fashion without any accompanying explanation or medical rationale it is of diminished probative value.<sup>9</sup> There is evidence demonstrating that the spinal stenosis and bulging/herniated L4-5 disc preexisted appellant's March 15, 1996 employment incident to the same extent that it was objectively determined to exist following the March 15, 1996 incident. Dr. Yablon's opinion is not sufficient to establish that appellant's spinal stenosis and L4-5 herniated disc are in any way related to or worsened by his March 15, 1996 employment incident.<sup>10</sup>

Consequently, appellant has failed to submit medical evidence sufficient to establish his claim.

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<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>6</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>7</sup> *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192-93 (1952).

<sup>8</sup> See *Lillian M. Jones*, 34 ECAB 379, 381 (1982) (checking "yes" to a form question on causal relation, without any explanation or rationale, has little probative value and is insufficient to establish causal relation). See also *Robert J. Krstyen*, 44 ECAB 227 (1993).

<sup>9</sup> *William C. Thomas*, 45 ECAB 591 (1994); *Marilyn D. Polk*, 44 ECAB 673 (1993).

<sup>10</sup> See, e.g., *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Connie Johns*, 44 ECAB 560 (1993); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 13 and August 12, 1996 are hereby affirmed.

Dated, Washington, D.C.  
November 24, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member