

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD A. SCOTT and GENERAL SERVICES ADMINISTRATION,  
PUBLIC BUILDINGS SERVICE, New York, N.Y.

*Docket No. 97-212; Submitted on the Record;  
Issued October 27, 1998*

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DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty.

On February 29, 1996 appellant filed an occupational disease claim (Form CA-2) alleging that due to constant bending and stooping, lifting boxes and climbing, he suffered a separation of a vertebrae at L5.<sup>1</sup> On the reverse side of the form, the employing establishment indicated that appellant stopped work at the end of his shift on March 11, 1996 and returned to work on March 18, 1996.

Accompanying the claim form, the employing establishment submitted a March 8, 1996 attending physician's report by Dr. James Croce, on which he indicated that he first examined appellant on July 10, 1992. Dr. Croce diagnosed a moderate herniation on the right at L5-S1 which he treated with pain medication; a March 18, 1996 medical certificate by Dr. Paul G. Kleinman, a Board-certified orthopedic surgeon, indicating that appellant was unable to work from March 12 to March 14, 1996 due to back pain; a medical report of duty status by Dr. Croce indicating "[Patient] has herniated disc L5-S1, No heavy lifting"; and a March 21, 1996 statement by appellant.

By letter dated April 2, 1996, the Office of Workers' Compensation Programs requested detailed information from appellant to support his claim, specifically, a detailed description of employment-related activities which he believed contributed to his condition, how often he performed the activities, a description of outside activities, a description of previous orthopedic injuries and a comprehensive medical report from his treating physician.

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<sup>1</sup> The employing establishment indicated that the CA-2 form was returned to appellant for completion and was returned back on March 21, 1996.

In response to the Office's request for information, appellant submitted an April 18, 1996 report by Dr. Kleinman; an employing establishment health unit record covering the period August 9, 1995 through March 21, 1996; progress notes by a Dr. Dolin, Dr. Croce's colleague; an undated memorandum by Dr. Croce;<sup>2</sup> and an April 11, 1996 statement by appellant.

In the April 10, 1996 report, Dr. Kleinman stated that appellant "has had back pain since 1992." Dr. Kleinman stated that notes from appellant's previous physician revealed a disc herniation at L5-S1. He further stated that, "[Appellant] did not have any visits for his back following 1993, however, until seeing me on March 18, 1996." Dr. Kleinman stated that his examination of appellant was essentially negative, but appellant's history was consistent with sciatica, for which the doctor recommended exercise. Dr. Kleinman diagnosed a disc herniation at L5-S1 stating that "It is difficult to determine the exact cause of [appellant's] condition. He feels that his job activities in the late 1980's and early 1990's led to his back condition, but it would be difficult for me to say with any certainty what the exact cause is."

The employing establishment's progress notes initialed by a nurse, included March 20 and 21, 1996 entries indicating complaints of low back pain, with no recollection of specific injury, but has history of back pain.

In Dr. Dolin's progress notes covering the period July 20, 1992 through January 25, 1993, he noted on July 20, 1992 appellant's complaints of low back pain radiating down his right leg. On November 25, 1992 Dr. Dolin noted, "[appellant] has been having problems off and on for several months. X-rays of the lumbar spine taken in July show marked narrowing at the L5-S1 level." Dr. Dolin referred appellant for a CAT (computerized axial tomography) scan. On January 25, 1996 Dr. Dolin noted that appellant's CAT scan was positive for a disc herniation at L5-S1.

In his memorandum, Dr. Croce stated that appellant was feeling fine until late June 1992, at which time he felt pain in his right leg and right side of lower back for which he was given medication. Dr. Croce further stated that appellant's job required him to bend and stoop frequently and "these movements created severe exacerbation of back pain and leg pain." Dr. Croce stated that on examination by an orthopedic surgeon who had a CAT scan done, appellant was positive for a L5-S1 disc herniation which was until recently controlled by medication.

By decision dated June 21, 1996, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that the claimed medical condition or disability was causally related to factors of his federal employment.

By letter dated July 6, 1996, appellant requested a review of the written record.

By decision dated October 22, 1996, a hearing representative of the Office affirmed the Office's June 21, 1996 decision, finding that the medical evidence failed to establish a causal relationship between appellant's condition and his federal employment.

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<sup>2</sup> The employing establishment indicated that Dr. Croce's memorandum was prepared on April 8, 1996.

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing 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 filed within the applicable time limitations 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.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>5</sup>

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 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.<sup>6</sup>

In the instant case, it is not disputed that appellant has back problems. However, there is no rationalized medical opinion evidence to support a causal relationship between appellant's employment and his diagnosed condition of disc herniation. The medical evidence submitted, a March 8, 1996 attending physician's report (CA-20) by Dr. Croce, included a diagnosis of disc herniation, but failed to address the issue of causal relationship between the condition and appellant's identified factors of employment. Therefore, the report is insufficient to establish appellant's claim.

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<sup>3</sup> 5 U.S.C. § 8101.

<sup>4</sup> *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

In his April 18, 1996 report, Dr. Kleinman, a Board-certified orthopedic surgeon, noted a history of climbing, and diagnosed a herniated disc at L5-S1. However, on the issue of causal relationship Dr. Kleinman clearly stated that he could not say with any certainty that appellant's employment factors caused his condition. Dr. Kleinman's report is also insufficient to establish appellant's claim.

Dr. Dolin's progress notes included a diagnosis of herniated disc L5-S1 but he like Dr. Croce, failed to address a causal relationship between appellant's diagnosed condition and his identified factors of employment. Dr. Dolin's progress notes are insufficient to establish appellant's claim.

In his memorandum, Dr. Croce does not specifically state a diagnosis of his own, but refers to a disc herniation revealed by a CAT scan performed for appellant's orthopedic surgeon. Dr. Croce stated that appellant's job required bending and stooping which exacerbated appellant's back pain and leg pain. However, pain is only a symptom. Dr. Croce failed to address the issue of causal relationship between a specific condition diagnosed by him to appellant's identified factors of employment. Therefore, Dr. Croce's memorandum is also insufficient to establish appellant's claim.

The Board has held that 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 that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship. Causal relationship must be substantiated by reasoned medical opinion evidence which is the claimant's responsibility to submit.<sup>7</sup> Although the Office advised appellant of the specific type of evidence needed to establish his claim, such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

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<sup>7</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Joe T. Williams*, 44 ECAB 518 (1993).

The decisions of the Office of Workers' Compensation Programs dated October 22 and June 21, 1996 are affirmed.

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

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member