

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SALVATORE GIABERE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, North Port, N.Y.

*Docket No. 97-1487; Submitted on the Record;
Issued April 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of establishing that he sustained a traumatic injury in the performance of duty.

On March 11, 1996 appellant then a 63-year-old housekeeper's aide, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that on March 6, 1996 while tossing garbage into the dumpster at work, he felt a sharp stinging pain on the back of the right side of his head. Appellant was treated that same day at the employing establishment health facility and was released to regular duties on March 8, 1996.

In a March 6, 1996 duty status report, Dr. Melanie Joannow, a Board-certified internist and employing establishment physician, noted that appellant got pains in his head when putting trash in the dumpster. The physician reported normal clinical findings and opined that appellant could return to full-time work.

Appellant submitted a March 8, 1996 report from Dr. Ira Casson, a Board-certified neurologist, to whom he was referred by his treating physician. The doctor indicated that appellant presented with complaints of sudden and severe headaches on the back of the right side of the head, first beginning when appellant lifted heavy garbage on March 6, 1996. Dr. Casson noted that appellant's pain reoccurred during the next few hours after the employment incident whenever appellant attempted to pick anything up. Although the physician noted that appellant had no prior history of head trauma, he indicated that appellant had experienced a sudden onset of confusion along with weakness in both arms and legs while at work a few years ago. Dr. Casson described the results of his physical examination, noted that appellant showed bilateral babinski signs and recommended additional diagnostic testing to rule out temporal arthritis. According to Dr. Casson, appellant did not appear to be acutely ill. He specifically stated that it was not clear whether or not appellant's problem was work related or just something that happened at work. Dr. Casson's final diagnosis was sudden onset of moderately severe headaches. He opined that appellant could return to work on March 11, 1996.

Subsequent diagnostic testing included a normal electroencephalogram, a magnetic resonance imaging (MRI) scan of the brain which showed mild cerebral atrophy and an x-ray of the cervical spine which showed moderate degenerative arthritis at C4-7.

By letter dated March 28, 1996, the Office of Workers' Compensation Programs requested that appellant submit rationalized medical evidence explaining how his reported employment incident caused or aggravated the claimed injury.

In a May 3, 1996 decision, the Office denied appellant's claim for compensation on the grounds that fact of injury was not established. In an attached memorandum, the Office accepted that the employment incident occurred at the time, place and in the manner alleged by appellant. The Office, however, found the medical evidence to be insufficient to establish that appellant suffered a medical condition causally related to the employment incident.

By letter dated May 28, 1996, appellant requested a hearing.

A hearing was held on December 19, 1996. Additional evidence was submitted by appellant prior to and at the hearing.

In a March 6, 1996 treatment note, Dr. Joannow noted appellant's complaint of head pain while disposing of trash. She noted negative findings on examination and advised appellant to follow-up with his primary care physician.

In a May 16, 1996 report, Dr. Jamil M. Abraham, a Board-certified family practitioner and appellant's treating physician, noted that he had examined appellant on May 10, 1996 for sharp pain in the head sustained when appellant tossed garbage into the dumpster. Dr. Abraham stated that "although Dr. Casson does not commit himself to the fact there is a causal relationship, the circumstantial evidence is strongly suggestive of a causal relationship as [appellant] had no history of pain in the head prior to this incident."

In a duty status report dated May 16, 1996, Dr. Abraham noted the March 6, 1996 incident and clinical findings of bilateral babinski signs. He diagnosed head trauma. Dr. Abraham approved appellant for full-time work on May 13, 1998. Appellant was referred for chiropractic treatment including spinal manipulation and other therapy.

In a report dated May 22, 1996, Dr. Daniel J. Feuer, a Board-certified neurologist, indicated that he had treated appellant on May 17, 1996 for complaints related to a head injury on March 6, 1996. He stated that "[appellant's] headache pain syndrome which resulted from lifting a heavy object during his course of employment is directly causally related to this injury. This should qualify as a [w]orkers' [c]ompensation related syndrome which has now been resolved."

In a report dated October 28, 1996, Dr. Abraham noted that appellant was first seen on March 7, 1996 when he gave a history of sudden onset of pain in the right side of the head after picking up and tossing trash in a dumpster. He noted that a March 7, 1996 physical examination was essentially negative except for tenderness of the neck muscles and restricted range of motion. Dr. Abraham indicated that a cervical spine x-ray showed encroachment on inter-

vertebral foramina C4-7. He diagnosed “neck sprain, r/o intracranial pathology.” Dr. Abraham concluded his report by stating that appellant’s injuries were job related.

In a decision dated February 18, 1997 and finalized on February 19, 1997, the Office hearing representative reviewed all of the evidence. He determined that the medical evidence was insufficient to establish a causal relationship between the March 6, 1993 employment incident and appellant’s alleged medical condition. He, therefore, affirmed the Office’s May 3, 1996 decision.

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

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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 timely filed within the applicable time limitation 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a “fact of injury” has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁵ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between his condition and his employment.⁶ To establish causal relationship, appellant must submit a physician’s report, in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Id.*

⁶ *See Woodhams*, *supra* note 3.

appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁷

In the instant case, the Office properly found that appellant provided no rationalized medical opinion evidence supporting any causal relationship between his diagnosed condition and the March 6, 1996 employment incident. In support of his claim, appellant submitted medical reports from Drs. Casson, Abraham and Feuer.⁸ Dr. Casson's opinion does not aid appellant in establishing causal relationship because the physician was unable to reach a definitive diagnosis as to appellant's medical condition. Dr. Casson merely noted that appellant had a sudden onset of headaches and recommended additional testing to rule out a neurological disorder or arthritis. Dr. Casson also specifically stated that it was unclear whether appellant's "problem" was work related or just something that happened at work.

In a May 16, 1996 report, Dr. Abraham diagnosed head trauma and sharp head pain sustained when appellant tossed garbage into a dumpster. His opinion is not a rationalized opinion as he provides no explanation as to how the act of tossing trash into a dumpster caused appellant to suffer a head trauma or head pain. Moreover, although Dr. Abraham opined that appellant's medical condition was causally related to the employment incident, he based that conclusion solely on appellant's statement that he had no head pain prior to March 6, 1996. As previously noted, the mere fact that a medical condition manifests itself while a claimant is at work does not establish causal relationship.

Furthermore, Dr. Feuer's opinion is not rationalized as to the issue of causation. He opined that appellant suffered from headache pain syndrome, which he related to appellant having lifted a heavy object on March 6, 1996. Dr. Feuer, however, does not discuss with any detail the specific lifting activity performed by appellant or how the lifting activity resulted in appellant having headache pain syndrome. He also failed to reference clinical findings to support his diagnosis.

Because neither Dr. Abraham nor Dr. Feuer explained with medical reasoning why specific employment factors on March 6, 1996 would cause or aggravate appellant's claimed medical condition, their opinions are insufficient to discharge appellant's burden proof. The Office, therefore, properly denied the claim.

⁷ *Id.*

⁸ Appellant also submitted an April 4, 1996 report from Dr. Robert P. Ceglie, a chiropractor, which diagnosed cervical sprain with radiculitis. Section 8102(2) of the Act provides that the term "physician" 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 demonstrated by x-ray to exist. *Samuel Theriault*, 45 ECAB 586 (1994). Because Dr. Ceglie did not diagnose a spinal subluxation by x-ray he is not considered a "physician" under the Act and his opinion is of no probative value.

The decision of the Office of Workers' Compensation Programs, dated February 18, 1997, and finalized on February 19, 1997, is affirmed.

Dated, Washington, D.C.
April 5, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member