

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. BLACK and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 98-1436; Submitted on the Record;
Issued December 16, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that his herniated disc is causally related to factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant did not meet his burden of proof in establishing that his herniated disc is causally related to factors of his federal employment.

On January 5, 1996 appellant, then a 47-year-old housekeeping aide, filed a claim for an occupational disease, Form CA-2a, stating that, on December 19, 1995, after his treating physician reviewed x-rays and a magnetic resonance imaging (MRI) scan showing disc fragments pressing against nerves, his disc broke from the build-up of the pressure and he had three discs removed. Appellant stopped working on December 19, 1995. On December 29, 1995 Dr. James H. Uselman, a neurological surgeon, performed a right L4-5 and L5-S1 microlumbar laminectomy and discectomy on appellant. On April 30, 1996 appellant was assigned light-duty work in the library.

Appellant submitted evidence to support his claim. In an attending physician's report dated January 17, 1996, Dr. Uselman reviewed an MRI scan showing a free fragment which migrated inferiorly on the right L4-5 and L5-S1 and diagnosed a herniated lumbar disc with a free fragment. He checked the "no" box that the condition was not work related. A progress note dated December 12, 1995 showed that appellant was treated for a herniated disc and a duty status report dated January 17, 1996 documented that appellant was totally disabled due to his herniated disc.

By letter dated March 27, 1996, the Office requested additional information from appellant including a narrative report from his treating physician stating the specific work factors that contributed to his condition.

In an undated statement received by the Office on April 26, 1996, appellant stated that the work of a service chief which was added to his usual responsibilities contributed to his back condition. He stated that his usual work was strenuous in that it involved heavy lifting, pushing, pulling, bending, stooping and mopping. As a service chief, appellant had several additional areas to clean. He stated his back pain came and went but it was at its worse when he did lifting and mopping.

By decision dated May 28, 1996, the Office denied the claim, stating that the evidence of record failed to establish that the claimed medical condition or disability was causally related to the employment injury.

By letter dated October 9, 1996, appellant requested reconsideration of the Office's decision and submitted a report dated August 12, 1996 from Dr. Uselman. In his report, Dr. Uselman stated that appellant ruptured a disc at L4-5 and L5-S1 "since he had a sneeze in early December 1995." He stated that appellant had a partial foot drop and ultimately required two-level lumbar disc surgery at L4-5 and L5-S1. Dr. Uselman stated:

"The question of work relatedness is somewhat unclear. Certainly, work as a laborer can contribute to degenerative disc disease; and certainly, degenerative disc disease can lead to disc herniations. Anything beyond that I am really not able to say."

By decision dated January 8, 1997, the Office denied appellant's request for modification.

By letter dated December 9, 1997, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of a certificate of medical examination from the United States Civil Service Commission dated June 10, 1997 and a functional capacity evaluation dated June 25, 1997. These documents show that appellant underwent back surgery and requires light-duty work.

By decision dated March 12, 1998, the Office denied appellant's request for modification.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 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 appellant'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 appellant.¹

In the present case, appellant has not submitted any medical evidence containing a rationalized medical opinion establishing that his herniated disc at L4-5 and L5-S1 and resulting back surgery is causally related to factors of his federal employment. In the attending physician's report dated January 17, 1996, Dr. Uselman checked the "no" box that appellant's herniated lumbar disc was not work related. In his October 9, 1996 report, Dr. Uselman stated that appellant had a ruptured disc at L4-5 and L5-S1 since he had a sneeze in early December 1995. He stated that it was unclear whether appellant's herniated disc was work related, that the work or a labor could contribute to degenerative disc disease and degenerative disease could lead to disc herniations. Dr. Uselman's opinion is not probative because he did not relate appellant's herniated disc to his employment. Further, his opinion is speculative and equivocal as to whether the herniated disc arose from appellant's employment.² The December 12, 1995 progress note, the January 17, 1996 duty status report, the certificate of medical examination dated June 10, 1997 and the functional capacity evaluation dated June 25, 1997 document that appellant underwent surgery for a herniated disc, was temporarily totally disabled and then able to resume light-duty work but they do not address causation and therefore are not probative. Although the Office advised appellant of the necessary evidence to submit to establish his claim, appellant did not comply. Appellant has therefore failed to meet his burden that his herniated disc is causally related to factors of his federal employment.

The decision of the Office of Workers' Compensation Programs dated March 12, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 16, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

² See *Ern Reynolds*, 45 ECAB 690, 695 (1994).