

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY K. PHILLIPS and DEPARTMENT OF VETERANS AFFAIRS,
SAM RAYBURN MEMORIAL VETERANS CENTER, Bonham, Tex.

*Docket No. 97-1611; Submitted on the Record;
Issued February 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

On July 6, 1994 appellant, then a 50-year-old driver, filed a notice of traumatic injury compensation (Form CA-1) alleging that on the same date, he sustained a back injury while lifting a patient from a bed to a litter.¹

Appellant submitted a statement in support of his claim dated October 9, 1996, medical records for the period June 5, 1991 to January 22, 1997, x-ray interpretations dated June 16, 1991, July 6, 1994, July 24, 1995 and February 5, 1997, an August 12, 1993 certificate of medical examination and magnetic resonance imaging tests dated July 24 and 25, 1995. Dr. Gita R. Devi, Board-certified in nuclear medicine and radiology, noted a clinical history of low back strain and diagnosed degenerative changes in the lumbar spine based on the July 6, 1994 x-ray interpretation. In a medical certificate dated January 25, 1995, it was noted that appellant had a history of a back injury while lifting a patient in June 1994.

By letter dated February 19, 1997, the Office of Workers' Compensation Programs advised appellant that, to establish his claim, he must submit additional medical evidence including a description of specific factors of employment believed responsible for his claimed condition and a rationalized medical opinion supporting a causal relationship between the condition diagnosed and specific factors of employment. Appellant was allotted 20 days within which to submit the requested evidence.

Appellant submitted medical evidence he had previously submitted.

¹ Appellant was a temporary employee whose appointment expired on September 30, 1994.

By decision dated March 25, 1997, the Office rejected the claim, finding that, due to insufficient medical evidence, he failed to meet his burden of proof in establishing his claim.

The Board finds that appellant has failed to establish that he sustained an injury to his back in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 period 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether a federal employee has sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ In this case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event, incident or exposure, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ In the instant case, there is no rationalized medical opinion evidence to support that appellant suffered an injury or disability causally related to any work factors. The medical evidence supports that appellant has low back strain and diagnosed degenerative changes in the lumbar spine, but gives no opinion as to the cause of his disability.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is

² 5 U.S.C. § 8101 *et seq.*

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value); 20 C.F.R. § 10.110(a).

sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case. The Office, therefore, properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated March 25, 1997 is hereby affirmed.

Dated, Washington, D.C.
February 18, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member