

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGUERITE KISSINGER and U.S. POSTAL SERVICE,
GOLDSBORO MAIN POST OFFICE, RURAL CARRIER UNIT,
Goldsboro, N.C.

*Docket No. 97-1951; Submitted on the Record;
Issued July 8, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she developed a left thigh lipoma in the performance of duty as alleged.

On October 18, 1996 appellant, then a 52-year-old rural letter carrier, filed a notice of occupational disease alleging that she sustained localized left thigh pain and an abnormality of the subcutaneous fat layer of the upper lateral aspect of the left thigh on or before April 1, 1996, which she attributed to driving with her left leg “extended across the car to work gas and brake pedals” for approximately four-and-a-half hours, five days per week while delivering mail.

She submitted medical evidence in support of her claim.

A June 14, 1996 magnetic resonance imaging (MRI) scan showed a “[f]ocal disturbance in the subcutaneous fat over the upper lateral aspect of the left thigh ... either varices or focal fat necrosis.”¹

In a July 1, 1996 report, Dr. L. Davis Frederick, an attending orthopedic surgeon, noted appellant’s postal employment, and that she had “just changed cars recently. Since changing cars, she has had left hip and leg pain. It could possibly be related.” On examination, Dr. Frederick noted focal tenderness over the upper lateral aspect of the left thigh, the area of focal disturbance on the June 14, 1996 MRI scan. Dr. Frederick explained that “because of the way [appellant] holds her leg across the seats as a mail carrier, this change in cars may have a big effect on what has happened to her.” Dr. Frederick submitted progress notes through October 16, 1996 noting continued left thigh pain, prescribing physical therapy and an “ace bandage around her thigh when she drives,” and that appellant be issued a right hand drive vehicle.

¹ An August 26, 1996 bone scan of the lower extremities was negative.

In an October 18, 1996 report, Dr. Frederick stated there was a “possibility” of the left thigh condition “being related to the way she holds her leg while in the car that she drives for the” employing establishment, and that her condition improved while held off driving. Dr. Frederick stated that “it was clear to say that this is related to the position that she holds her leg in the car while driving.” He recommended a right hand drive vehicle” to help with this.”²

Drs. Frederick and Sean P. Scully, an attending Board-certified orthopedic surgeon and cytobiologist of professorial rank, held appellant off driving, with no standing over 30 minutes at a time, through November 7, 1996. On November 7, 1996 Dr. Scully performed surgical excision of a left thigh mass, entailing removal of a 4 by 10 centimeter area of subcutaneous tissue.³

In a January 14, 1997 report, Dr. Scully stated that while the excised “lesion [was] unlikely to have been caused as a result of her employment, certainly the symptoms associated with it could have been exacerbated by her draping her left thigh over the seat in order to drive an automobile on the contra-lateral side.”⁴ He held appellant off work through January 27, 1997 to be followed by three weeks light duty.⁵

By decision dated February 12, 1997, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office found that the medical evidence was both equivocal on the issue of causal relationship, yet “definitive” of a nonoccupational injury.

The Board finds that appellant has not established that she developed a left thigh lipoma in the performance of duty as alleged.

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ and (3) medical evidence establishing that

² In an October 24, 1996 letter, the employing establishment stated it would not provide appellant with a right hand drive, “long life” vehicle as Dr. Frederick recommended, but would give appellant \$500.00 toward the purchase of such a vehicle. In November 18 and December 31, 1996 letters, the employing establishment generally controverted appellant’s claim, noting that it was appellant’s responsibility as a rural carrier to provide a suitable delivery vehicle.

³ A post-surgical pathology report showed “mature fat and fragments of dense fibrous and fibrovascular tissue” without evidence of malignancy.

⁴ Dr. Scully provided identical rationale in a December 18, 1996 report.

⁵ In a January 20, 1997 letter, appellant declined an offered light-duty position as it required her to report to work between midnight and 3:00 a.m. She requested a position closer to her regular duty hours.

⁶ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁷ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979). The Office, as part of its adjudicatory function, must make findings of fact and a determination as to whether the implicated working conditions constitute employment factors prior to submitting the case record to a medical expert; see *John A. Snowberger*, 34 ECAB 1262, 1271

the diagnosed condition is causally related to the employment factors identified by the claimant.⁸ The medical opinion must be one of reasonable medical certainty,⁹ 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.¹⁰

Appellant has submitted sufficient evidence to establish the presence of a left thigh condition, together with a description of the employment factors alleged to have caused the condition. What remains is for appellant to establish causal relationship. In support of her claim, appellant submitted reports from Dr. Frederick, an attending orthopedic surgeon, and Dr. Scully, an attending Board-certified orthopedic surgeon and cytobiologist of professorial rank.

In a July 1, 1996 report, Dr. Frederick explained that “because of the way [appellant] holds her leg across the seats,” a recent change in delivery cars may have had “a big effect” on the left thigh condition. This report is vague and speculative, and therefore of diminished probative value.¹¹ In an October 18, 1996 report, Dr. Frederick stated that “it was clear” that appellant’s left thigh condition was “related to the position that she holds her leg in the car while driving,” and recommended appellant use a right hand drive vehicle to alleviate the condition by altering her driving position. While this opinion on causal relationship is more definite, it is not supported by sufficient medical rationale explaining the pathophysiologic causal relationship between appellant’s left leg position while driving and the lipoma. Thus, it is of diminished probative value, and insufficient to establish appellant’s claim.¹²

In a January 14, 1997 report, Dr. Scully stated that “draping her left thigh over the seat” exacerbated appellant’s symptoms but was “unlikely to have” caused the excised lesion. Dr. Scully thus negates causal relationship.

Consequently, appellant has failed to meet her burden of proof as the medical evidence is insufficient to establish by the weight of reliable, substantial and probative evidence that appellant’s condition was causally related to factors of her federal employment.

The decision of the Office of Workers’ Compensation Programs dated February 12, 1997 is hereby affirmed.

Dated, Washington, D.C.

(1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁸ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁹ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ See *William E. Enright*, 31 ECAB 426, 430 (1980).

¹¹ See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹² *Lucrecia M. Nielsen*, 42 ECAB 583 (1981).

July 8, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member