U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTHEW HUDSON and U.S. POSTAL SERVICE,
MARTIN LUTHER KING STATION, Miami, FL

Docket No. 98-109; Submitted on the Record;
Issued July 21, 1999

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 to establish that he sustained an injury in the performance of duty on July 24, 1996, as alleged.

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 failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on July 24, 1996, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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, and that the claim was filed within the applicable time limitations of the Act.[2] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[3] that the injury was sustained while in the performance of duty,[4] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[5] 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.[6]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Robert A. Gregory*, 40 ECAB 478 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Steven R. Piper*, 39 ECAB 312 (1987).

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

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits, and that the incident occurred as alleged. Appellant, a custodian, claimed that on July 24, 1996 he was operating a weed eater with the strap across his back, moving the machine in a left to right motion, when he felt a light pain in his back. He went on to say that he did not think anything of the pain at the time, but later that day and throughout the following day the pain intensified and on July 26, 1996 he sought medical assistance. Appellant was initially diagnosed with sciatica and later was diagnosed with a fragmented disc at L4-5. In a decision dated September 30, 1996, the Office found the medical evidence insufficient to establish that an injury resulted from appellant's employment duties. Appellant requested an oral hearing, and in a decision issued June 17, 1997, an Office hearing representative affirmed the Office's September 30, 1996 decision. On reconsideration, in a decision dated September 4, 1997, the Office again found the medical evidence of record insufficient to establish that an injury had resulted from appellant's employment activities and, therefore, insufficient to warrant modification of the prior decision.

The Board finds that appellant has not established that he sustained an employment-related injury on July 24, 1996. To support his claim, appellant submitted several reports from his treating physician, Dr. William R. Campbell, a Board-certified internist. In an August 4, 1996 report and accompanying Form CA-16, Dr. Campbell reported that appellant presented with a three-day history of severe pain radiating from his left hip to his foot and that a magnetic resonance imaging (MRI) scan revealed a disc fragment at the L4-5 level. He concluded that the injury "may have occurred at work as stated by patient" but did not otherwise discuss the history of the injury or its relationship to appellant's employment duties.

In a letter dated February 17, 1997, Dr. Campbell stated that appellant had developed sciatica while using a weed eater on July 24, 1996, and that an MRI scan revealed an extruded free disc fragment at L4-5. Dr. Campbell concluded that he was "unable to determine when the fragmentation of the disc occurred," but that it was "certainly possible that it occurred on [July 24, 1996] when the initial symptoms of sciatica occurred."

In his final report of record, dated July 25, 1997, Dr. Campbell again stated that appellant had developed sciatica on July 24, 1996 while using a weed eater, and that the MRI scan revealed an extruded free disc fragment at the L4-5 level on the left. Dr. Campbell explained that the fragmented disc at this level is consistent with the pain described by appellant and "may have occurred while [appellant] was operating the weed eater."

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[7] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[8] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused

[7] *Norman E. Underwood*, 43 ECAB 719 (1992).

[8] *Id.*

or aggravated his condition is sufficient to establish causal relationship.[9] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal.[10] The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[11] In each of his reports, Dr. Campbell failed to provide a rationalized opinion supporting a causal relationship between appellant's employment and his diagnosed condition of extruded free fragmented disc at L4-5. Dr. Campbell does not explain how the operation of a weed eater could have caused the diagnosed injury, and his opinion, that appellant's diagnosed condition "may" have occurred while operating the weed eater, and that this is "certainly possible" is too speculative to establish that appellant's claimed condition is causally related to his employment duties.[12] In addition, while the record contains evidence that appellant was involved in an automobile accident on June 5, 1992 and suffered acute cervical, dorsal and lumbosacral sprains, Dr. Campbell did not indicate an awareness of these prior injuries and therefore did not address the relationship, if any, between this prior accident and appellant's current diagnosed condition.[13] By letters dated August 27, 1996 and September 4, 1997, and at the oral hearing held on February 10, 1997, the Office advised appellant of the type of evidence needed to establish his claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

[9] *Id.*

[10] *Ern Reynolds,* 45 ECAB 690 (1994).

[11] *Connie Johns,* 44 ECAB 560 (1993).

[12] *Ern Reynolds, supra* note 10.

[13] The medical opinion of the physician must be based on a complete history of work factors 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 claimant. *George V. Lambert,* 44 ECAB 870 (1993).

The decisions of the Office of Workers' Compensation Programs dated September 4 and June 17, 1997 are affirmed.

Dated, Washington, D.C.
July 21, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member