

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN M. PEPIN and DEPARTMENT OF AGRICULTURE,
RURAL ECONOMIC & COMMUNITY DEVELOPMENT,
Augusta, Maine

*Docket No. 97-1344; Submitted on the Record;
Issued March 16, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant established that she sustained injuries to her neck, back and arms causally related to factors of her federal employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to establish that her medical condition is causally related to factors of her federal employment.

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 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. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

Causal relationship is a medical issue,³ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant'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

¹ 5 U.S.C. §§ 8101-8193.

² *Claudia A. Dixon*, 47 ECAB 168 (1995).

³ *Ronald M. Cokes*, 46 ECAB 967 (1995).

condition and the specific employment factors identified by the claimant.⁴ Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁵ Nonetheless, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁶

On May 1, 1995 appellant, then a 39-year-old county program technician, filed a claim alleging that she injured her back, neck and wrist while in the performance of duty. On September 5, 1995 the Office, in a decision, denied appellant's claim on the grounds that the medical evidence of record failed to establish that an injury was sustained as alleged. On September 7, 1995 appellant filed a request for reconsideration. In a merit decision dated November 21, 1995, the Office denied appellant's request for reconsideration on the grounds that there was no basis for modification. On February 8, 1996 appellant requested reconsideration of the Office's November 21, 1995 decision denying her previous request for reconsideration. On May 6, 1996 the Office, in a merit decision, denied appellant's request for reconsideration.⁷

In support of her claim appellant submitted an August 15, 1995 medical report from Dr. Richard N. Southiere, a chiropractor, who stated that x-rays revealed osseous manifestations of the subluxation complex consisting of flattening of the cervical curve, anterior weight, a break in the George's line as well as a decrease in the Jackson's angle. Dr. Southiere opined that appellant's condition was causally related to an overuse syndrome at work. However, the Office, on June 20 and August 2, 1995 notified appellant that she was required to submit medical records including copies of any x-ray reports to support her chiropractor's diagnosis of subluxation as demonstrated by x-ray to exist. Although a chiropractor may interpret his or her own x-rays, for the Office to determine whether a subluxation is actually demonstrated by x-ray to exist, such radiographic film evidence must be submitted to the Office when requested for evaluation by an Office medical adviser or other physician trained in the reading of x-rays to confirm such a diagnosis.⁸ A review of the record fails to reveal that appellant submitted a copy of the x-ray reports relied on by Dr. Southiere in his diagnosis. Therefore, to the extent that the record does not contain the requested radiographic evidence of subluxation to support Dr. Southiere's diagnosis, he cannot be considered a physician under the Act and his report has no probative value.⁹

⁴ *Charles E. Burke*, 47 ECAB 185 (1995).

⁵ *Alberta S. Williamson*, 47 ECAB 569 (1996).

⁶ *John Watkins*, 47 ECAB 597 (1996).

⁷ The Office incorporated by reference its September 5 and November 21, 1995 merit decisions.

⁸ *Carol A. Dixon*, 43 ECAB 1065, 1068 (1992) (The Office referred x-rays to a Board-certified diagnostic radiologist and nuclear medicine specialist to determine if a subluxation was present on the x-rays); see 20 C.F.R. § 10.400(e).

⁹ *Cheryl L. Veal*, 47 ECAB 607 (1996).

In an August 24, 1995 medical report, Dr. Douglas M. Pavlak, Board-certified in physical medicine and rehabilitation, reported appellant's symptoms of midline neck pain radiating to both shoulders through the arms and hands, tenderness throughout the trapezius muscles and thoracic paraspinals and periscapular tissue, upper and lower arms, thumb extensor compartment on both sides with mildly positive Finkelstein's test on the left. Dr. Pavlak diagnosed myofascial pain syndrome of the shoulder girdles and trauma disorder in the upper extremities. He stated that "it does appear that her job is playing a significant role in the production of her symptoms."¹⁰ However, Dr. Pavlak's opinion that appellant's job played a significant role in causing her medical condition is vague and speculative in that the doctor did not explain how appellant's employment factors would have caused her neck, back and arm injuries. Without medical rationale supporting causal relationship, his opinion is merely surmise and conjecture. The Board has held that an award of compensation may not be based on a physician's speculative opinion regarding causal relationship.¹¹

The medical evidence of record therefore does not support, with rationalized medical evidence, a finding that appellant's medical condition was causally related to factors of her federal employment.

The decision of the Office of Workers' Compensation Programs dated May 6, 1996 is affirmed.

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ The Board also notes that Dr. John Garofalo, appellant's family physician and Board-certified in family practice, noted in an April 11, 1995 medical report that appellant was symptomatic with pain in the left hand and recommended that her work station be evaluated by an occupational specialist.

¹¹ *Supra* note 5.