

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN T. BAILEY and DEPARTMENT OF THE NAVY,
NORFOLK SHIPYARD, Portsmouth, VA

*Docket No. 97-1717; Submitted on the Record;
Issued November 17, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on or about August 1, 1992.

In a claim form dated August 4, 1995 and received by the Office of Workers' Compensation Programs on June 4, 1996, appellant, then a 45-year-old ship surveyor, filed a claim for compensation alleging that he was initially aware that he had a back condition on August 1, 1992, and that he was initially aware that it was caused by his employment on December 1, 1994. Appellant noted that he had filled out a claim form on December 1, 1994 but that he "was n[o]t instructed to fill out [F]orm CA-2 until July of 1995." In support of his claim, appellant submitted a narrative report in which he stated that his "back pain increased in 1992 with nerve pain in right leg. Needed medical care in 1994 with lower back operation in January 1995."

In a December 1, 1994 attached medical report, Dr. Isabelle L. Richmond, appellant's treating physician, Board-certified in neurological surgery, stated that appellant had a "progressively severe right sciatica," that he related doing well "until approximately two years ago when he began to note episodic low back pain radiating to his right buttock," and that for the past two months after frequent ladder climbing his condition had worsened. Dr. Richmond noted that a November 26, 1994 magnetic resonance imaging (MRI) scan revealed degenerative changes at L5-S1, including an enlargement of the descending right S1 nerve root, and "fairly prominent posterior and foraminal osteophytes ... producing relative central and lateral recess stenosis."

In an attending physician's report dated December 7, 1994, Dr. Richmond stated that appellant's recurrent right sciatica injury resulted from frequent ladder climbing and that appellant had a preexisting back injury dated June 3, 1985.

In a January 9, 1995 medical report, Dr. Richmond stated that appellant had recurrent right sciatica, medially intractable and acquired lumbar stenosis. Upon examination she noted that appellant had “[D]iminished sensation to pinprick in the distal right S1 greater than L5 distribution,” and noted “knee jerk absent on the right.” Dr. Richmond noted that appellant’s symptoms persisted “despite marked limitation in his activity and the controlled use of Naprosyn at full therapeutic dosage.” She stated that appellant “will not tolerate return to his occupational activities despite the use of Naprosyn and continuation of his flexibility and reconditioning program.”

In a medical report dated the same day, Dr. Richmond stated that appellant originally sustained a right-sided sciatica on June 3, 1985 and that he was unable to work from December 1, 1994 to April 1, 1995.

By letter dated July 11, 1996, the Office advised appellant that he needed to submit additional information regarding his claim for compensation, including a detailed narrative medical report from his treating physician describing symptoms, results of examinations and tests, diagnosis, treatment and the doctor’s opinion, with medical reasons, on the cause of his condition. The Office noted that if the doctor believed that appellant’s condition was caused by his federal employment, he or she should explain how exposure or incidents in his federal employment contributed to his condition.

Appellant subsequently submitted multiple medical reports from Dr. Richmond dated January 20, February 23, March 9 and October 30, 1995, and July 1, 1996. In the January 20, 1995 report, Dr. Richmond stated that she had performed a “decompression lumbar laminectomy and foraminotomies L5 and S1 bilateral” on that date. In the February 23, 1995 report, Dr. Richmond stated that appellant noted “significant improvement,” and that he “will return to work in approximately four weeks.” On March 9, 1995 she stated that appellant had right sciatica, improved and noted that he “will return to modified occupational activities on March 20, 1995.” In the October 30, 1995 medical report, Dr. Richmond stated that appellant related “exacerbation of his low back pain with attempts to increase his lifting activities at the end of the work hardening,” but that after discontinuing these activities he reported “dramatic improvement in his back pain.” Dr. Richmond noted appellant had right sciatica, improved and increasing exogenous obesity. On July 1, 1996 Dr. Richmond stated that appellant “is tolerating all of his normal occupational activities well,” and that he was released to full occupational activities on that date. She noted right sciatica, improved and exogenous obesity, improved.

In a decision dated August 22, 1996, the Office denied appellant’s claim because fact of injury was not established. In an accompanying memorandum, the Office stated that a medical condition resulting from the alleged work incidents or exposures was not supported by the evidence of file.

On August 28, 1996 appellant requested reconsideration.

In a nonmerit decision letter dated September 5, 1996, the Office denied appellant’s request for reconsideration on the grounds that he failed to submit substantive legal questions or included new and relevant evidence.

In a facsimile transmission dated October 16, 1996, appellant requested reconsideration. In support of his request appellant submitted a September 26, 1996 medical report from Dr. Richmond. In that report, Dr. Richmond stated that she had first examined appellant on June 10, 1985 at the request of Dr. Thomas Royer, appellant's personal physician. She then related appellant's history of injury including appellant's initial back injury sustained while in the Republic of Viet Nam in 1969 and a subsequent history of recurrences. Appellant then related that on June 3, 1985 he twisted his back while at work and although Dr. Richmond noted no "evidence of significant numbness or weakness," he was placed on anti-inflammatory medication. She noted that she followed him conservatively until March 1986 when she noted acute exacerbation and severe right sciatic symptoms, weakness of right gastrosoleous (sic) group and hamstrings, and diminished sensation to pinprick in the distal right distribution and positive straight leg raising. Dr. Richmond related appellant's March 31, 1986 lumbar discectomy and his subsequent remission, including his release to full duty on October 21, 1986. She then noted that appellant related on December 21, 1987 a six-month history of recurrent back and leg pain, which subsided when he stopped jogging. Dr. Richmond then related appellant's December 1, 1994 evaluation of "recurrent, progressively severe, right sciatic symptoms" which appellant related to his ladder climbing. Appellant's MRI scan revealed degenerative changes at L5-S1 and prominent foraminal osteophytes which produced lateral recess stenosis at L5-S1. Inasmuch as appellant's condition did not improve, Dr. Richmond performed a decompression at L5-S1 on January 20, 1995 and appellant returned to modified work on March 20, 1995. She noted further that, after reviewing appellant's temporary duty activities from May to August 1992, she believed "to a reasonable degree of medical certainty that given (appellant's) preexisting condition and prior surgery that performance of these duties as described would have a high probability of exacerbating his condition resulting in the development of further degenerative changes producing the spinal stenosis which was the condition treated in his second operation of January 20, 1995."

In a decision dated February 11, 1997, the Office denied modification on the grounds that no medical evidence was submitted indicating that he was treated during 1992 or 1993 for his claimed condition until December 1994.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty.

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 limitations 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.² These are the

¹ 5 U.S.C. §§ 8101-8193.

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

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually 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.⁴ In this case, the Office accepted that the incident occurred at the time, place and in the manner alleged. The Board finds that the evidence of record supports this incident.

The second component 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 or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵

In the instant case, appellant has submitted no rationalized medical evidence establishing that he sustained a medical condition causally related to climbing ladders on or about August 1992. Although his treating physician, Dr. Richmond, stated that she believed that appellant's condition was caused by his use of ladders in 1994, the record contains no medical evidence covering 1992 or 1993 noting appellant's complaint of back injury.⁶ Indeed, Dr. Richmond's initial medical report subsequent to the time when appellant noted his condition in August 1992 was in December 1994, approximately 28 months after the alleged incidents. Further, although Dr. Richmond noted that "to a reasonable degree of medical certainty" appellant's preexisting condition, prior surgery and climbing ladders would have a high probability of exacerbating his back condition resulting in spinal stenosis, she did not support her opinion with a rationalized medical opinion establishing a causal relationship between his alleged injury of August 1992 and her diagnosis in December 1994. Indeed, although Dr. Richmond reported appellant's condition from December 1994 as a right-sided sciatica, she was unable to relate that condition to his alleged activities leading up to that examination based on a rationalized medical opinion. The Board has held that an opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to establish causal relation.⁷ Dr. Richmond failed to provide any medical rationale explaining how or why appellant's condition was caused by his employment.

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

⁶ Appellant alleged that he hurt his back in August, 1992. However in her December 1, 1994 report, Dr. Richmond noted that appellant related in December 1994 that for the prior two months after frequent ladder climbing his condition had worsened.

⁷ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

Inasmuch as appellant has failed to submit medical evidence establishing that he sustained an injury while in the performance of duty, the Board finds that he has failed to meet his burden of proof.

The February 11, 1997, September 5 and August 22, 1996 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
November 17, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member