

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDRE R. BROWN and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 98-689; Submitted on the Record;
Issued November 10, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs, by its December 5, 1997 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a).

On August 19, 1996 appellant, then a 42-year-old mailhandler, filed an occupational disease claim alleging that sitting in his chair at work caused the left side of his back to hurt with pain into his hip and lower back. He stated that he first became aware of his back problem and realized the condition was caused or aggravated by his employment on May 10, 1995. On the reverse side of the form the employing establishment stated that appellant did not stop work. The employment establishment also stated that "Employee has been working limited duty for the last three years."

Accompanying the claim form, the employing establishment submitted various documents, including personnel papers, a November 5, 1985 preemployment medical examination report, which noted under significant finding, "Knee injury in past," "Both knees injured in 1982, 1983" and "10 percent disability for knees;" an October 17, 1985 veterans administration notification that appellant is receiving disability compensation for a service-connected disability; employing establishment health unit records covering the period January 4 through December 21, 1995, which noted various medical problems mainly with his knees; an August 22, 1996 report by Dr. John R. McCarroll, a Board-certified orthopedic surgeon, stating that appellant's knees are the same, that he has low back pain, that x-rays of the back were normal and he recommended an exercise program and "back chair" at work; and a September 13, 1996 letter, from the employing establishment controverting appellant's claim.

By letter dated October 7, 1996, the Office requested detailed factual and medical information from appellant concerning his claimed back condition. Appellant was requested to

provide a detailed description of the employment-related activities, which he believed contributed to his condition, how often he performed the activities, to describe all outside activities, to describe the development of his claimed condition, to describe all previous orthopedic injuries and whether he had ever been diagnosed with arthritis, or degenerative joint or disc disease and to provide a comprehensive medical report which included symptoms, test and examination results, diagnosis, treatment provided and the doctor's rationalized medical opinion on the cause of his condition. Appellant was specially asked if sitting in his chair was the only work activity that he felt contributed to his condition.

The record was supplemented to include various medical forms and reports completed by Dr. Carroll which relate to other OWCP claims filed for knee conditions.¹

On October 28, 1996 the record was supplemented to include various documents, all relating to appellant's knees.

On November 8, 1996 the record was supplemented with a November 8, 1996 statement from appellant.

By decision dated December 10, 1996, the Office denied appellant's claim finding that the evidence of record failed to establish that he sustained an injury in the performance of duty causally related to factors of his employment.

By letter dated January 2, 1997, appellant requested an oral hearing before an Office hearing representative, which was held on August 27, 1997. Appellant submitted a medical form from Dr. Jon M. Sieber, a Board-certified orthopedic surgeon, diagnosing rheumatoid factor, systemic arthritis.

By decision dated September 15, 1997, an Office hearing representative affirmed the Office's December 10, 1996 decision. The hearing representative found that the evidence of record failed to establish that appellant's back condition was causally related to factors of his federal employment.

By letter dated November 1, 1997, appellant requested reconsideration of the September 15, 1997 decision and submitted an October 22, 1997 report, by Dr. McCarroll and an October 7, 1997 magnetic resonance imaging (MRI) of the lumbar spine interrupted by Dr. Benjamin B. Kuzma, a Board-certified radiologist.

By decision dated December 5, 1997, the Office denied appellant's reconsideration request. The Office found that the evidence submitted in support of the request was irrelevant and insufficient to warrant review of the prior decision.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty as alleged.

¹ The record does not indicate when this material was received by the Office.

An employee seeking benefits under the Federal Employees' Compensation Act² 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 filed within the applicable time limitations 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 is 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 occupational disease.⁴

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition, for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 condition and the specific employment factors identified by the claimant.⁵

In the instant case, appellant claimed a back condition causally related to factors of his federal employment. However, most of the medical evidence submitted was related to conditions other than appellant's back. The Office adjudicated these conditions under separate claims.⁶ The evidence submitted which relates to appellant's back consists of September 14, 1994, July 5 and June 30, 1995, August 22 and October 24, 1996 reports by Dr. McCarroll; and an August 21, 1997 medical form by Dr. Sieber, a Board-certified orthopedic surgeon.

In the September 14, 1994 report, Dr. McCarroll stated, "[Appellant] is having some back problems with the way he is working." He recommended back exercises. The report failed to establish the presence or existence of a back condition, failed to provide a firm diagnosis and failed to address a causal relationship between a diagnosed condition and the factors of

² 5 U.S.C. § 8101.

³ *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

⁶ A09-388095 and A09-9376717.

employment to which appellant attributes his claimed condition. Therefore, the September 14, 1994 report, is insufficient to establish appellant's claim for a back condition.

In a June 30, 1995 report, Dr. McCarroll stated that appellant needed to sit in a chair that moves up and down to help his knees. As in the September 14, 1994 report, this report also failed to establish the presence or existence of a back condition, for which compensation is claimed, failed to provide a diagnosis and failed to address a causal relationship between a diagnosed condition and the factors of employment identified by appellant. Therefore, the June 30, 1995 report, is insufficient to establish appellant's claim for a back condition.

In a July 5, 1995 report, Dr. McCarroll stated:

“[Appellant] has been having back problems secondary to lifting and sitting in a funny position at work. The pain is over the left [sacroiliac] joint There is no straight leg raising, motor or sensory loss, mainly pain in the back. I feel he needs a different type of chair to sit on and some exercises as well as anti-inflammatories.”

The July 5, 1995 report, failed to establish the presence or existence of a back condition, failed to provide a diagnosis, and failed to address a causal relationship between a diagnosed condition and the factors of employment identified by appellant. Therefore, the report is insufficient to establish appellant's claim.

In an August 22, 1996 report, Dr. McCarroll stated that “[Appellant's] back is bothering him. He stated that x-rays taken revealed a normal back.” Dr. McCarroll mentions appellant's low back pain and recommended an exercise program. The report failed to establish the existence or presence of a condition for which compensation is claimed. Pain is only a symptom, not a condition. He failed to provide a diagnosis and failed to address a causal relationship between a diagnosed condition and the identified factors of employment. Therefore, the August 22, 1996 report is insufficient to establish appellant's claim for a back condition.

In an October 24, 1996 report, Dr. McCarroll referred to previous forms completed on appellant's behalf. The report failed to establish the presence or existence of a back condition, for which compensation is claimed, failed to provide a diagnosis and failed to address a causal relationship between a diagnosed condition and factors of employment identified by appellant as having caused or aggravated his claimed condition. Therefore, Dr. McCarroll's October 24, 1996 report is insufficient to establish appellant's claim for a back condition.

On an August 21, 1997 form from the Indiana Orthopedic Center, Dr. Sieber, a Board-certified orthopedic surgeon, diagnosed “rheumatoid factor; systemic arthritis.” The form was accompanied by several bills, which indicated that x-rays of the spine were taken on July 31, 1997. However, Dr. Sieber failed to explain how he arrived at his diagnosis, such as reporting his finding on examination or explaining what the x-rays of the spine revealed. Prior x-rays of the spine taken on August 22, 1996 for Dr. McCarroll revealed that appellant's spine was normal. Therefore, the form does not establish the presence or existence of a condition for which compensation is claimed. In addition, while a diagnosis was provided, Dr. Sieber failed to address a causal relationship between the diagnosed condition and factors of employment

identified by appellant. Therefore, Dr. Sieber's form is insufficient to establish appellant's claim for a back condition.

In summary, none of the medical evidence provided a rationalized opinion, which addressed a causal relationship between a diagnosed condition and the factor of employment to which appellant attributed his claimed back condition. The Board finds that appellant has established that he experienced the employment factor of sitting in a chair at work. However, the evidence of record is not sufficient to establish that the identified factor of employment caused an injury.

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 sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. By letter dated October 7, 1996, the Office advised appellant of the specific evidence needed to establish his claim for a back condition, but such evidence was not submitted. Therefore, the Office properly denied appellant's claim for compensation.

The Board also finds that in its decision dated December 5, 1997, the Office did not abuse its discretion in refusing to reopen appellant's case for further consideration of his claim on the merits under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or a fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁷ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸

In his November 1, 1997 request for reconsideration, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law or a fact not previously considered by the Office. In support of his reconsideration request, appellant submitted an October 7, 1997 report of an MRI of the lumbar spine interrupted by Dr. Benjamin B. Kuzma, a Board-certified radiologist and an October 22, 1997 report by Dr. McCarroll.

Dr. Kuzma, a Board-certified radiologist, interpreted the October 7, 1997 MRI as revealing "No disc herniation. Marrow changes in the right L5 pedicle suggestive of occult spondylosis."⁹ He did not address the relevant issue of whether a diagnosed condition was

⁷ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128.

⁸ 20 C.F.R. § 10.138(b)(2).

⁹ The Board notes that the Office stated that the MRI provided only uninterpreted findings.

causal related to the employment factors identified by appellant has having caused or aggravated his claimed condition. Therefore, the October 7, 1997 MRI is irrelevant and insufficient to warrant review of the prior decision.

In his October 22, 1997 report, Dr. McCarroll stated that x-rays and MRI results support a finding of arthritis of the back and mentioned that appellant had pain whenever he sat in a chair at work. However, he does not address the relevant issue of whether appellant's back condition is causally related to his employment factor, *i.e.*, Dr. McCarroll failed to explain how sitting in a chair caused arthritis in appellant's back. Therefore, his October 22, 1997 report is irrelevant and insufficient to warrant review of the prior decision.

As appellant's November 1, 1997 request, for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that that Office did not abuse its discretion in denying that request.

The decisions of the Office of Workers' Compensation Programs dated December 5 and September 15, 1997 are affirmed.

Dated, Washington, D.C.
November 10, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member