

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN M. BRENNAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY

*Docket No. 98-1883; Submitted on the Record;
Issued November 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that her cervical and lumbar spondylosis and degenerative disc disease were causally related to her November 20, 1997 employment injury.

On November 20, 1997 appellant, then a 58-year-old licensed practical nurse, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her right hand and right buttocks when she tripped on a crack in the cement pavement.¹

In a disability note dated December 2, 1997, Dr. Margaret M. Burns, an attending Board-certified internist, stated that appellant was disabled on November 25 and 26, 1997 due to her severe low back pain which was due to her November 20, 1997 fall.

In a report dated December 2, 1997, Dr. Frank P. Cammisa, Jr., an attending Board-certified orthopedic surgeon, under history of present illness noted that appellant had prior employment injuries in 1996 and October 1997. Dr. Cammisa diagnosed degenerative disc disease, L5-S1 with foraminal stenosis and recommended that appellant continue on light duty.

In attending physician's Forms CA-20 dated January 15 and February 10, 1998, Dr. Cammisa indicated that appellant has had a history of multiple back injuries and that range of motion in her lower back caused pain. He diagnosed degenerative disc disease, L5-S1 with significant foraminal stenosis and that appellant's condition was caused or aggravated by her multiple lifting injuries. Dr. Cammisa indicated that appellant was totally disabled from December 20, 1997 to February 28, 1998.

¹ This was assigned claim number A2-738896.

In a note dated January 27, 1998, Dr. Burns stated that appellant was disabled to work on various dates in December due to the severe pain caused by her fall on November 20, 1997.

In a letter dated January 29, 1997,² Dr. Cammisa stated that appellant had been referred “for spinal surgical opinion following a fall she sustained on November 20, 1997.” He indicated that she suffered from degenerative disc disease of the lumbar spine as well as cervical and lumbar spondylosis.

On February 25, 1998 the Office of Workers’ Compensation Programs accepted appellant’s claim for contusion of the buttocks and right hand. The Office requested that appellant submit medical evidence to support a causal relationship between her cervical and lumbar spondylosis and degenerative disc disease of the lumbar spine and her November 20, 1997 employment injury.

By decision dated April 8, 1998, the Office rejected appellant’s claim finding that she failed to establish causal relationship between employment factors and her medical condition. The Office also noted that the record contained no evidence that appellant had filed a claim for injuries sustained in 1996 and October 1997.³ The Office noted that the medical evidence did not provide a physician’s opinion on causal relation specifically addressing what work factors were involved.

The Board finds that appellant failed to meet her burden of proof in establishing that her cervical and lumbar spondylosis and degenerative disc disease were causally related to her November 20, 1997 employment injury.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient factual evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ 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

² This appears to be a typographical error and that the year should be 1998.

³ The Board notes that appellant on appeal has submitted evidence supporting that she filed claims for these injuries. In a letter dated March 17, 1998, the Office noted that appellant had filed a claim for a recurrence of disability on October 10, 1997 causally related to a back injury sustained on February 16, 1996. The Office advised appellant that her October 10, 1997 recurrence claim did not qualify as a recurrence and would be treated as a new traumatic injury. The February 16, 1996 injury was assigned file number 020711446.

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

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

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In support of her claim, appellant submitted disability slips from Dr. Burns and reports from Dr. Cammisa. Dr. Burns' disability slips are insufficient as she opined that appellant's back pain was due to her fall without providing any medical rationale to support this opinion. In addition, she did not opine that appellant's cervical and lumbar spondylosis and degenerative disc disease were causally related to her accepted November 20, 1997 employment injury. Similarly, Dr. Cammisa's reports are insufficient as he failed to attribute her disability to her accepted November 20, 1997 employment injury, but instead opined that it was related to other prior employment injuries. These reports are not sufficient to meet appellant's burden of proof as he did not provide an opinion on the causal relationship between appellant's accepted employment incident and her diagnosed condition.

The decision of the Office of Workers' Compensation Programs dated April 8, 1998 is affirmed.

Dated, Washington, D.C.
November 5, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁶ *James Mack*, 43 ECAB 321 (1991).