

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. ARVIZU and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 98-940; Submitted on the Record;
Issued October 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained an injury on October 15, 1993 causally related to factors of his federal employment.

On June 29, 1995 appellant, then a 35-year-old window clerk, filed a traumatic injury claim alleging that on October 15, 1993 he sustained a "recurrent umbilical hernia" in the performance of duty. Appellant stopped work on October 29, 1993 and returned to work on December 27, 1993.

In an accompanying statement, appellant related that on October 15, 1993 he experienced "a pulling sensation" followed by "the onset of acute pain" after he lifted a 25 to 30 pound parcel off a utility cart. Appellant also submitted the statement of a coworker who related that he saw appellant "wincing in pain" while lifting the parcel and that appellant informed him that he thought he "pulled something in my groin when I lifted that parcel."¹

By decision dated July 20, 1995, the Office determined that appellant was not entitled to continuation of pay. In a decision dated September 14, 1995, the Office denied appellant's claim on the grounds that he did not establish fact of injury.

¹ The record indicates that appellant sustained a prior traumatic injury on December 30, 1987 which the Office accepted for a pulled abdomen muscle. Appellant also filed a claim for an injury on April 7, 1988 which the Office accepted for an umbilical hernia. The record indicates that appellant initially filed his current claim as a claim for a recurrence of disability on October 15, 1993 causally related to his April 7, 1988 employment injury. On the Form CA-2a, appellant related that his "current injury is the result of a return of the same symptoms [pain in the umbilical area] of the previous injury [umbilical hernia -- having not been surgically repaired originally] without intervening cause. Hernia is residual of previous condition." In a decision dated May 24, 1994, the Office denied appellant's claim for a recurrence of his April 7, 1988 employment injury. In a decision dated April 11, 1995 and finalized April 12, 1995, an Office hearing representative affirmed the Office's May 24, 1994 decision. The hearing representative noted that, at the hearing, appellant attributed his hernia to a lifting incident on October 15, 1993 and suggested that he file a traumatic injury claim.

In a letter postmarked October 12, 1995, appellant requested a hearing before an Office hearing representative.

By decision dated January 30, 1997, the hearing representative affirmed the Office's September 14, 1995 decision after finding that appellant had failed to submit rationalized medical opinion evidence establishing a causal relationship between his diagnosed umbilical hernia and the October 15, 1993 employment incident.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on October 15, 1993 causally related to factors of his federal employment.

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 timely filed within the applicable time limitation period of the Act³ and that an injury was sustained in the performance of duty.⁴ These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In the instant case, the Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace incident occurred as alleged. The question therefore becomes whether this incident or exposure caused an injury.

In support of his claim, appellant submitted several medical reports from Dr. Nick Morrison, a Board-certified surgeon and his attending physician. In a report dated June 20, 1994, Dr. Morrison diagnosed a "recurrence of the original umbilical hernia" and, in response to a question posed regarding the cause of the condition, attributed it to "the usual [f]actors." As Dr. Morrison did not relate the hernia to the October 15, 1993 lifting incident, his opinion is of little probative value.

In a report dated February 14, 1995, Dr. Morrison indicated that the hernia that he repaired in 1993 was the same hernia that recurred in 1988. In a report dated September 20, 1995, Dr. Morrison related that he "saw [appellant] on October 18, 1993 with a recurren[t] umbilical hernia, which had been primarily repaired in 1982" and that he told appellant "to avoid vigorous activity from the time I saw him on October 18, 1993 until the time I repaired the hernia on October 29, 1993." In these reports, Dr. Morrison did not state how the diagnosed condition was causally related to the October 15, 1993 employment incident and, in fact, made no reference to the October 15, 1993 employment incident. Thus, Dr. Morrison's reports are insufficient to meet appellant's burden of proof.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

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

⁵ *Delores C. Ellyet*, 41 ECAB 992 (1990).

In a report dated October 10, 1996, Dr. Morrison indicated that he had read appellant's statement and the statement of the witness describing the October 15, 1993 employment incident. He noted that he saw appellant on October 18, 1993 at which time he diagnosed a recurrent umbilical hernia. He stated, "it is my opinion that there is a causal relationship between the employee and witness statements and my diagnosis on October 18, 1993." Dr. Morrison, however, did not provide any medical rationale explaining how the incident caused a recurrence of appellant's umbilical hernia. To be of probative value a physician must address the specific facts and medical condition applicable to appellant's case and support his or her findings with sound medical reasoning.⁶

The remaining reports of record, from Dr. Harry R. Burger, an osteopath, and Dr. L.D. Arnold, an osteopath, discuss appellant's history of recurrent umbilical hernias but do not relate any condition to the October 15, 1993 employment incident and thus are insufficient to meet appellant's burden of proof.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁷ To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated the diagnosed condition.⁸ Appellant failed to submit such evidence and therefore failed to discharge his burden of proof.

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *William S. Wright*, 45 ECAB 498 (1993).

⁸ *Id.*

The decision of the Office of Workers' Compensation Programs dated January 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 20, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member