

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERANE C. CAYETANO and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 99-1639; Submitted on the Record;
Issued August 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty on March 6, 1998.

On April 7, 1995 appellant, then a 39-year-old mail carrier, filed a traumatic injury claim for injuries resulting from an April 4, 1995 motor vehicle accident. The Office of Workers' Compensation Programs accepted appellant's claim for a right lower rib contusion, lumbar strain, cervical strain and multiple abrasions. Appellant returned to limited-duty employment on June 13, 1995. By decision dated May 8, 1996, the Office terminated appellant's compensation on the grounds that he had no further condition or disability causally related to his April 4, 1995 employment injury.

On March 10, 1998 appellant filed a notice of recurrence of disability causally related to his April 4, 1995 employment injury. Appellant described the circumstances of his recurrence of disability as follows:

"I worked all day March 6, 1998. I came home that evening experiencing pressure and pain on [the] lower back. I went to bed early that night, I woke up the next morning with intense pain on my lower back. I believe this to be related to the original injury of April 4, 1995."

By letter dated July 27, 1998, the Office informed appellant that it had converted his claim for a recurrence of disability to a claim for a traumatic injury occurring on March 6, 1998 and requested additional information.

By decision dated November 5, 1998, the Office denied appellant's claim on the grounds that he did not establish fact of injury. In a letter dated November 29, 1998, appellant requested reconsideration of his claim and stated, "I do not believe that this is a new occurrence because, like what I have already said before in my letter, the pain is in the same area in my lower back."

In a letter dated December 8, 1998, the Office informed appellant that the relevant issue in his case was why his pain increased on March 6, 1998 such that he was disabled from employment and requested a medical report from his attending physician addressing the cause of his back pain.

By decision dated January 5, 1999, the Office denied modification of its prior decision.

The Board has duly reviewed the case record in the present appeal and finds that appellant has not established that he sustained an injury in the performance of duty on March 6, 1998.

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 Act² and that an injury was sustained in the performance of duty.³ These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 duty status reports (Form CA-17) dated April 3, July 21 and August 7, 1998 from Dr. Jeffrey A. Mandel, his attending physician who is Board-certified in family practice. Dr. Mandel diagnosed lumbar radiculopathy and checked "yes" that the history given by appellant corresponded with the history provided on the form. He further listed work limitations. The Board has held, however, that when a physician's opinion on causal relation consists only of checking "yes" to a form question, that opinion has little probative value without further detail and explanation.⁵

In a chart note dated April 7, 1998, Dr. Mandel discussed appellant's complaints of radiating low back pain and his history of a bulging disc at L4-5 in 1996. He diagnosed lumbar strain and radiculopathy. In a narrative report dated November 24, 1998, Dr. Mandel related that on March 7, 1998 he treated appellant for "acute back pain beginning that morning at work" and noted that he had "a history of back pain dating back to 1995." Dr. Mandel listed findings on physical examination, diagnosed "acute lumbar strain and chronic lumbar strain" and recommended a magnetic resonance imaging (MRI) study. However, Dr. Mandel did not

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyet*, 41 ECAB 992 (1990).

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

provide any opinion regarding the cause of the diagnosed conditions and thus his reports are insufficient to meet appellant's burden of proof.

In a report dated December 21, 1998, Dr. Mandel related:

“[R]egarding the cause of back pain on the date in question, March 6, 1998, there was no event of a traumatic nature that would cause a new injury. He did [not] lift something or move in an unusual way causing pain. Rather, pain gradually increased during the day in exactly the same manner as previous episodes of back pain.

“I have reviewed his past records and he has a history of lumbar radiculopathy with an abnormal MRI scan at L4-5 [on] November 30, 1995. Since this seems to be an exacerbation of the same problem I am requesting a new MRI scan. I believe the cause of his pain at this time was an inflammation of his bulging lumbar disc.”

As Dr. Mandel did not attribute appellant's injury to anything, which occurred at work on March 6, 1998, his report is insufficient to meet appellant's burden of proof. Further, the Board notes that the Office did not accept that appellant sustained a bulging lumbar disc causally related to his April 4, 1995 motor vehicle accident. It is, therefore, appellant's burden to establish a causal relationship between his bulging lumbar disc and his prior employment injury through the submission of rationalized medical opinion evidence.⁶ In the instant case, Dr. Mandel did not address the cause of appellant's bulging lumbar disc and thus his opinion is insufficient to establish that the condition is employment related.

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 appellant's diagnosed condition.⁸ Appellant failed to submit such evidence and, therefore, failed to discharge his burden of proof.

⁶ See *Gary L. Whitmore*, 43 ECAB 441 (1992).

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

⁸ *Id.*

The decisions of the Office of Workers' Compensation Programs dated January 5, 1999 and November 5, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 2, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member