

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALLACE H. JONES and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Ogden, UT

*Docket No. 98-1681; Submitted on the Record;
Issued January 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a back injury in the performance of duty.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

Appellant, then a 58-year-old materials sorter, filed a claim alleging on October 1, 1994 he injured his low back, groin and leg unloading pallets of cardboard. The Office of Workers' Compensation Programs denied appellant's claim by decision dated November 14, 1996 finding that he had not established a causal relationship between his accepted employment incident and his current condition. Appellant requested an oral hearing and by decision dated January 18, 1998 and finalized February 19, 1998, the hearing representative affirmed the Office's November 14, 1996 decision.

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.¹ 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.² Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.³

In this case, appellant submitted several reports from his attending physician, Dr. Charles J. Berwald, a family practitioner. Dr. Berwald initially examined appellant on October 20, 1994 and diagnosed prostatitis and pulled back muscles. On December 18, 1995 he diagnosed ischial tendinitis and or strain of the left hamstring muscle and noted that he initially treated appellant for this condition on February 9, 1995. In an undated report, Dr. Berwald attributed appellant's symptoms of pain and decreased ankle jerk to the employment injury. In a January 23, 1996 report, Dr. Berwald noted appellant's history of injury and stated that magnetic resonance imaging (MRI) scan showed some degenerative disease of the L4-5 disc, subligamentous herniation of L4-5 and mild spinal stenosis. He stated that electromyograms were difficult to interpret due to peripheral neuropathy of unknown cause, but that L4-5 radiculopathy could not be excluded.

In a report dated December 4, 1997, Dr. Berwald stated that he treated appellant for hypertension and seizure disorder related to alcohol withdrawal. He noted appellant's history of injury and medical treatment. Dr. Berwald stated that the MRI scan demonstrated L4-5 herniated disc and corresponded with appellant's distribution of pain. He also noted that appellant demonstrated diffuse peripheral neuropathy of unknown cause. Although Dr. Berwald stated that the peripheral neuropathy made it difficult to assign primary etiology, he concluded that the October 1, 1994 employment incident caused appellant's current pain. He noted that appellant had no back complaints prior to October 1, 1994, that appellant's pain pattern was consistent from 1995 through 1997 and that the description of the incident was consistent with the pain and subsequent disc herniation. Dr. Berwald stated, "He was leaning forward at the waist and lifting and/or twisting without the ability to bend the knees. He was reaching into the back of a van. This maneuver certainly is the type to produce maximum stress on the discs of the spine and its associated paravertebral muscles and produce a radiculopathy and/or a chronic low back syndrome."

On December 11, 1997 Dr. Berwald noted appellant's history of injury and diagnosed peripheral neuropathy of both arms and legs and radiculopathy of the left lower leg which limited walking and climbing. He found that appellant was totally disabled.

These reports contain a history of injury, diagnosis and an opinion that appellant's back condition was caused by the employment incident. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment incident on October 1, 1994 and his diagnosed condition of

³ *James Mack*, 43 ECAB 321 (1991).

low back syndrome and are sufficient to require the Office to undertake further development of appellant's claim.⁴

On remand, the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate Board-certified physician to determine whether appellant's back condition is causally related to his October 1, 1994 employment incident. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated January 18, 1998 and finalized February 19, 1998 is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
January 7, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).