

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GUNTHER K. McCONNELL and DEPARTMENT OF JUSTICE,
FEDERAL PRISON SYSTEMS, Leavenworth, KS

*Docket No. 98-1967; Submitted on the Record;
Issued January 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on November 6, 1996, as alleged.

On December 6, 1996 appellant, then a 49-year-old food service assistant administrator, filed a notice of traumatic injury and claim for pay/compensation (Form CA-1) alleging that on November 6, 1996 he sustained an injury to the right side of his upper back below the shoulder blade when he was struck by a door being open. Appellant did not stop work.

In a letter dated December 31, 1997, the Office of Workers' Compensation Programs requested that appellant submit factual and medical evidence in support of his claim, including a physician's well-rationalized opinion regarding the causal relationship between his claimed condition and factors of his employment.

By decision dated January 31, 1998, the Office denied appellant's claim on the basis that there was insufficient evidence to establish a diagnosed medical condition as being caused by the November 6, 1996 incident.

Appellant requested reconsideration and submitted additional evidence. This included a copy of his position description, a factual statement, an undated recurrence claim form alleging that his back pain never healed and a January 14, 1998 medical report from Dr. Mark D. Strehlow, a Board-certified family practitioner.

By decision dated May 8, 1998, the Office denied modification of its prior decision finding that the evidence submitted was insufficient to support the claim.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on November 6, 1996, as alleged.¹

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 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 are causally related to the employment injury.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

There is no dispute that appellant is a federal employee, that he timely filed his claim for compensation benefits and that the workplace incidents or exposure occurred, as alleged. However, the medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on November 6, 1996.⁵ The only medical evidence in the record consists of the January 14, 1998 report from Dr. Strehlow. Dr. Strehlow stated that appellant was evaluated on November 24, 1997 for the injury which occurred at work on November 6, 1996. He noted that, since the time of injury, appellant had sought out chiropractic treatment for intermittent pain in that area, but the pain kept coming back. Examination findings revealed some tenderness in the paraspinous muscle musculature in the mid thoracic region, right side. X-ray of the thoracic spine showed kyphotic changes with degenerative changes primarily in the anterior distribution with bridging and osteophytes noted. Dr. Strehlow diagnosed thoracic pain probably secondary to the November 6, 1996 work injury. A magnetic resonance imaging scan of the cervical and thoracic spine was recommended.

Dr. Strehlow's statement that the thoracic pain was "probably secondary" to the accepted incident is speculative. The Board has long held that a speculative opinion is of limited medical probative value and is also insufficient to meet appellant's burden on the critical issue of causal relationship, if any, between appellant's current disability and the accepted employment injury. Although Dr. Strehlow indicated that appellant had thoracic pain and had some objective findings reflecting kyphotic and degenerative changes. In addition, Dr. Strehlow did not provide any medical rationale to explain whether those changes were caused or aggravated by the November 6, 1996 incident. The record also indicates that appellant was under chiropractic care

¹ On appeal appellant forwarded a June 2, 1998 report from Dr. Strehlow. However, the Board does not have jurisdiction to review evidence not previously before the Office; *see* 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

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

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

⁵ Part of a claimant's burden of proof includes the submission of rationalized medical evidence based upon a complete factual and medical background showing causal relationship between the claimed injury and employment factors. *See Mary J. Briggs*, 37 ECAB 578 (1986); *Joseph T. Gulla*, 36 ECAB 516 (1985).

prior to the November 6, 1996 incident. Therefore, as the medical evidence does not contain a clear rationalized medical opinion supporting causal relationship between appellant's medical condition and the November 6, 1996 employment accident, appellant failed to meet his burden of proof.⁶

The May 8 and January 31, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 11, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Juanita H. Christoph*, 40 ECAB 354 (1988).