

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANK P. FARIELLO and DEPARTMENT OF THE NAVY,  
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION, Lakehurst, NJ

*Docket No. 99-546; Submitted on the Record;  
Issued June 8, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a back condition in the course of his federal employment.

On May 26, 1998 appellant, then a 50-year-old aircraft mechanic, filed a claim for a recurrence of disability (Form CA-2a) and submitted medical and factual evidence. In a supplemental narrative statement accompanying his claim, appellant stated that on April 28, 1998, shortly after arriving at work, his back began to hurt and within two hours he left work due to the intense pain. He stated that he returned to work on May 5, 1998 and worked until May 14, 1998, when his back pain returned and he again stopped work. It is not clear from the record when appellant returned to work following the May 14, 1998 back pain episode. Appellant explained that his back pain was an ongoing problem which he experienced for approximately six years and he related his current condition to a prior April 1992 employment-related back injury. Due to the fact that on his Form CA-2a appellant indicated that his original injury had occurred on April 27, 1998 and that his back pain returned in May 1998, the Office adjudicated this claim as a new claim for occupational disease, rather than as a recurrence of disability causally related to a prior employment-related condition.

By letter dated July 18, 1998, the Office notified appellant that the information he had submitted was insufficient to establish that he developed a medical condition in the performance of duty and requested that appellant submit additional factual information, as well as a comprehensive medical report from his treating physician describing his symptoms, the results of tests and examinations, the treatment provided, the effect of treatment and the physician's explanation, in medical terms, as to the causal relationship between the cited work factors and the diagnosed conditions.

In a decision issued on September 23, 1998, the Office denied appellant's claim for compensation on the grounds that the evidence of file failed to establish a causal relationship between his diagnosed back condition and factors of his federal employment.

The Board finds that appellant has failed to establish that his back condition on or after April 28, 1998 is causally related to the performance of his federal employment duties.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 is causally related to the employment injury. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup> The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.<sup>4</sup> 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 factor. 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.<sup>5</sup>

The relevant medical evidence of record consists of copies of magnetic resonance imaging (MRI) reports from August 1993 and May 1998, each showing the presence of a herniated disc at L3-4 and medical progress notes from his treating physician, Dr. Cary Skolnick. In treatment notes dated May 1, 1992 through May 22, 1998, Dr. Skolnick a Board-certified orthopedic surgeon, noted that appellant had suffered from lumbar spine pain for years and sustained an acute exacerbation on April 27, 1998, when he sneezed.<sup>6</sup> He further noted that a

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Charles E. Evans*, 48 ECAB 692 (1997); *Richard F. Kastan*, 48 ECAB 651 (1997).

<sup>3</sup> *Charles E. Evans*, *supra* note 2.

<sup>4</sup> *See Judith J. Montage*, 48 ECAB 292 (1997).

<sup>5</sup> *Charles E. Evans*, *supra* note 2; *Earl D. Smith*, 48 ECAB 615 (1997).

<sup>6</sup> Dr. Skolnick initially stated that the exacerbation had occurred on April 26, 1998, but subsequently amended his report to reflect the correct history of injury.

1993 MRI scan revealed a herniated disc, minimal, at L3-4 and that a follow-up MRI scan performed on May 22, 1998 revealed the same. Dr. Skolnick prescribed medication and chiropractic treatment and stated that appellant was disabled for work from May 14 to 26, 1998. While the record contains evidence indicating that appellant's job duties include lifting, pushing, bending and stooping, the medical evidence is insufficient to establish a claim for occupational disease as it does not contain a complete medical report which contains a physician's explanation as to how appellant's diagnosed back condition was caused or aggravated by these, or any other, factors of appellant's employment.

As appellant did not submit sufficient medical evidence which establishes a causal relationship between his 1998 back condition and factors of his federal employment, appellant has not met his burden of proof to establish an occupational disease and the Office properly denied his claim on these grounds.

In its September 23, 1998 decision, although the Office noted that appellant had filed a Form CA-2a notice of recurrence and had referenced prior claims from 1992 and 1996, the Office nevertheless treated appellant's claim as a new claim for occupational disease based on the fact that appellant had mistakenly indicated on his Form CA-2a that his original injury occurred on April 27, 1998. It is well established that a claim need not be filed on any particular form; an informal claim in writing is sufficient, so long as it contains words which reasonably may be construed or accepted as a claim.<sup>7</sup> Letters and statements in amplification and expansion of a claim are as much a part of a claim as the claim form itself.<sup>8</sup> In the instant claim, it is clear from appellant's statements in the record that while appellant may have incorrectly filled out the dates requested on the Form CA-2a claim for a recurrence of disability, indicating that the original injury was sustained on April 27, 1998, he was in fact claiming that on April 28, 1998 he suffered his first recurrence of a prior employment-related injury. In a narrative statement accompanying his claim form, appellant explained that he was actually claiming that on April 27, 1998 and again on May 14, 1998 he suffered a recurrence of a prior employment-related back injury, which he believed to be already on record with the Office. In a letter dated May 15, 1998, appellant again stated that his back injury was a recurring injury and listed the claim numbers of his prior claims. Moreover, the record contains evidence that appellant filed several prior claims for a lumbar spine condition, at least one of which, an April 1992 claim, was accepted by the Office.<sup>9</sup> Upon return of the case record, the Office should double this case file with appellant's previous injury claims for his low back and then adjudicate the recurrence of disability aspect of the claim.

The decision of the Office of Workers' Compensation Programs dated September 23, 1998, is affirmed.<sup>10</sup>

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<sup>7</sup> *Barbara A. Weber*, 47 ECAB 163 (1995).

<sup>8</sup> *Id.*

<sup>9</sup> It is unclear from the record whether any additional claims were accepted by the Office.

<sup>10</sup> The Board notes that on appeal, appellant submitted additional evidence in support of his claim. However, the Board cannot consider evidence submitted subsequent to the Office's September 23, 1998 decision as its review of

Dated, Washington, D.C.  
June 8, 2000

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office for consideration on remand.