

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES D. JONES and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, FEDERAL PRISON CAMP, El Paso, TX

*Docket No. 98-2201; Submitted on the Record;
Issued March 8, 2000*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an injury in the performance of his duty, causally related to factors of his federal employment.

On February 18, 1998 appellant, then a 36-year-old correctional officer, filed a claim alleging that on February 13, 1998 while in the performance of duty he injured the nerves in his right leg "which causes the right leg to go without feeling."

In medical reports dated March 4 and 11, 1998, Dr. Robert A. Olivares, Board-certified in anesthesiology, stated that on March 2 and 9, 1998 he performed lumbar epidural steroid injections, L4-5, on appellant. In medical reports dated March 23 and 24, 1998, Dr. Dean E. Smith, an orthopedic surgeon, stated that appellant had disc displacement as a result of a February 13, 1998 injury, performed a third epidural block, and recommended physical therapy. In medical reports dated April 6 and 20, 1998, Dr. Smith stated that appellant had sprain lumbar region and disc displacement. In a medical report dated April 7, 1998, Dr. Smith stated that appellant sustained a herniated disc and required an orthopedic mattress.

On May 8, 1998 the Office of Workers' Compensation Programs advised appellant that it needed additional information in order to process his claim properly including a rationalized medical opinion explaining how the reported work incident caused the claimed injury.

In an April 17, 1998 physical therapist's report received by the Office on May 27, 1998, it was noted that appellant had been seen for five visits and had received moist pack, electrical stimulation and manual therapy. In a medical report dated May 7, 1998 and received by the Office on May 13, 1998, Dr. Smith stated that appellant had sprain lumbar region, recommended physical therapy and released him to return to regular duty.

The Office, in a decision dated June 24, 1998, denied appellant's claim on the grounds that the medical evidence of record failed to establish that his condition was caused by the February 13, 1998 incident.

The Board has duly reviewed the case record and concludes that appellant has not met his burden of proof in this case.

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.¹

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Federal Employees' Compensation Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.² The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.³

In support of his claim, appellant submitted multiple medical reports and an evaluation from a physical therapist. The evaluation by appellant's physical therapist is of no probative medical value as a physical therapist is not a physician under the Act and is not competent to give medical opinions.⁴ Further, although the medical reports included diagnoses of sprain lumbar region, disc displacement and herniated disc, and reported various therapies recommended to treat the condition including an orthopedic mattress, none of the medical reports contained a rationalized medical opinion establishing that his sprain lumbar region, disc displacement or herniated disc were causally related to his employment. For example, Dr. Olivares merely stated that he had performed several epidural injections without providing a rationalized medical opinion as to whether the treated condition was causally related to appellant's employment. Further, Dr. Smith, appellant's treating physician, made several diagnoses but in no instance did he provide a rationalized medical opinion describing the history

¹ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *See* 5 U.S.C. § 8101(2).

of injury appellant related to him on the initial visit, symptoms and his opinion of whether the reported incident resulted in any of the diagnosed conditions such as disc displacement or herniated disc. Nor did Dr. Smith or any of appellant's physician describe the mechanism of injury for the diagnosed conditions.

The decision of the Office of Workers' Compensation Programs dated June 24, 1998 is hereby affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member