

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED F. FOSTER and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 00-2458; Submitted on the Record;
Issued August 23, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

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

On September 22, 1999 appellant, then a 58-year-old electronic technician, filed a claim alleging that his herniated disc condition was aggravated by his employment duties during the period of September 13 to 16, 1999. Appellant stated that he first became aware of his neck condition on November 29, 1996.¹

Accompanying appellant's claim was an office visit note from Dr. David J. Schickner, a Board-certified orthopedic surgeon, dated September 21, 1999. Dr. Schickner diagnosed appellant with radicular syndrome of the upper limbs.

The employing establishment submitted a limited-duty assignment dated June 13, 1997 and two notices of new job assignments dated March 30, 1998 and September 8, 1999. The limited-duty assignment of June 13, 1997 provided a description of the position of "electronic technician -- modified limited duty" and indicated that this position was in compliance with appellant's medical restrictions. The March 30, 1998 notice of new assignment indicated that appellant was transferred to a new position effective April 2, 1998. The September 8, 1999 notice indicated that appellant would be transferred back to his position of electronic technician effective September 11, 1999. Both notices indicated that the positions were in compliance with appellant's limited-duty assignment of June 13, 1997.

In a letter dated December 16, 1999, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence.

¹ Appellant previously filed a claim alleging on November 29, 1996 he sustained a work-related injury to his neck. The Office of Workers' Compensation Programs accepted appellant's claim for a herniated disc at level C5-6 and C6-7. However, this claim is not before the Board.

The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In response to the Office's request, appellant submitted a duty status report dated December 11, 1999, prepared by Dr. Schickner and a narrative statement. The duty status report indicated a diagnosis of right cervical pain and noted that appellant was able to return to work with restrictions on lifting, carrying, sitting and standing. Appellant's statement noted that he was transferred back to his original job as an electronic technician on September 13, 1999. He noted that his job duties of lifting and closing the bar code sorter lids caused a reinjury to his neck. Appellant indicated that he performed this job for four days and on September 17, 1999 he experienced severe pain in his neck and called into work sick. Appellant subsequently sought medical treatment.

On January 31, 2000 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.² The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

By letter dated April 25, 2000, appellant requested reconsideration of the January 31, 2000 decision of the Office. Appellant submitted additional medical evidence. The medical evidence included a history and physical examination dated December 18, 1996, a functional capacity evaluation dated February 6, 1998, an impairment rating dated April 21, 1998, progress notes from Dr. Schickner dated February 17, 1997 to March 28, 2000 and a letter from him dated March 28, 2000. The history and physical examination performed December 18, 1996 indicated that appellant was experiencing cervical spine pain since his original injury on November 29, 1996. Dr. Schickner diagnosed appellant with double level displaced disc at C5-6 and C6-7. The functional capacity evaluation and impairment rating indicated that appellant sustained a 16 percent impairment of the whole person as a result of the accepted work-related injury of November 29, 1996. The progress notes from Dr. Schickner documented appellant's progress and noted that overall appellant was doing well. The letter from Dr. Schickner dated March 28, 2000 indicated that appellant was injured September 16, 1999 while performing repetitive activities of lifting his arms above his shoulders. He noted that the injury exacerbated appellant's prior cervical spine condition.

By merit decision dated July 13, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or his 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 the injury was sustained in the performance of duty as alleged

² 5 U.S.C. §§ 8101-8193.

and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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) 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 claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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 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.⁵

In this case, it is not disputed that appellant performed repetitive duties in the course of his job. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged aggravation of a herniated disc condition is causally related to the employment factors or conditions. On December 16, 1999 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated his neck.

Appellant's treating physician, Dr. Schickner, prepared a duty status report dated December 11, 1999, which diagnosed right cervical pain and noted that appellant was able to return to work with restrictions on lifting, carrying, sitting and standing. However, he did not indicate a history of the injury or the employment factors believed to have caused or contributed to appellant's right neck condition.⁶ Thus, this report is insufficient to meet appellant's burden of proof.

Appellant submitted a history and physical examination dated December 18, 1996, a functional capacity evaluation dated February 6, 1998, an impairment rating dated April 21, 1998

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁵ *Id.*

⁶ *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

and progress notes from Dr. Schickner dated February 17, 1997 to June 15, 1999. However, these medical records are of no value in establishing the claimed injury of September 17, 1999 to the neck since they predate the time of the claimed injury. Furthermore, the only medical records submitted after the alleged September 17, 1999 neck injury are progress notes from Dr. Schickner dated September 21 and December 14, 1999 and March 28, 2000 and a letter dated March 28, 2000. Dr. Schickner's notes from September 21, 1999 to March 28, 2000 indicated that appellant was still experiencing neck discomfort but was presently able to work. The medical records submitted most contemporaneously with the date of the alleged injury, specifically, the note from September 21, 1999 indicated that appellant was being evaluated for neck pain but did not mention a work-related injury.⁷ Dr. Schickner did not note a history of the injury or the employment factors believed to have caused or contributed to appellant's neck condition.⁸

In Dr. Schickner's letter of March 28, 2000, he indicated that "[I]t appears that an injury occurred to appellant on or about [September 16, 1999]." He noted that appellant was engaged in repetitive activity of lifting his arms above his shoulders, which exacerbated appellant's prior cervical spine condition. Dr. Schickner indicated that appellant could return to work and recommended that he not perform similar-type activity and limited his lifting to 20 pounds. However, he did not, in this letter or other notes, specifically address the causal relationship between appellant's condition and his factors of employment. Additionally, Dr. Schickner's notes did not include a rationalized opinion regarding the causal relationship between appellant's neck condition and the factors of employment believed to have caused or contributed to such condition.⁹ For example, Dr. Schickner did not explain how the act of lifting his arms above his shoulders would cause or aggravate appellant's condition nor did he explain how appellant's preexisting neck condition may have affected his condition. Even though Dr. Schickner noted that appellant was experiencing symptoms of his neck condition, which was exacerbated by his work duties, without any further explanation or rationale, such report is insufficient to establish a causal relationship.¹⁰ Therefore, these documents are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is

⁷ The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

⁸ *Supra* note 6.

⁹ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

¹⁰ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

sufficient to establish causal relationship.¹¹ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The July 13 and January 31, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 23, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹¹ See *Victor J. Woodhams, supra* note 4.