

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK A. BSHARA and DEPARTMENT OF THE ARMY,
ARMY DEPOT, Tobyhanna, PA

*Docket No. 00-768; Submitted on the Record;
Issued June 18, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant had any disability after October 24, 1991 causally related to his July 31, 1991 employment-related back injury.

This case was previously before the Board,¹ which found that appellant had met his burden of proof to establish that he sustained a back strain in the performance of duty on July 31, 1991. The Board remanded the case to the Office of Workers' Compensation Programs for further medical development. The facts of this case are set forth in the Board's May 5, 1995 decision and are incorporated herein by reference.

By decision dated September 9, 1996, an Office hearing representative remanded the case for further development.

By decision dated December 4, 1997, the Office denied appellant's claim for compensation on the grounds that the evidence of record did not establish that his disability after October 24, 1991 was causally related to his July 31, 1991 employment injury.

By letter dated November 17, 1998, appellant requested reconsideration.

By decision dated February 18, 1999, the Office denied modification of its December 4, 1997 decision.

By letter dated June 18, 1999, appellant requested reconsideration and alleged a conflict in the medical evidence between Drs. Frank Graf, his attending Board-certified orthopedic surgeon and Roger Southall, a Board-certified orthopedic surgeon and Office referral physician.

¹ Docket No. 93-1860 (issued May 5, 1995). On August 7, 1991 appellant, then a 25-year-old equipment cleaner, filed a traumatic injury claim alleging that on July 31, 1991 he sustained a low back strain after having to twist and turn while working underneath a van.

He also alleged that the statement of accepted facts contained inaccurate statements, which affected the probative value of Dr. Southall's report.

By decision dated September 15, 1999, the Office denied modification of its February 18, 1999 decision.

The Board finds that appellant failed to meet his burden of proof to establish that he had any disability on and after October 24, 1991 causally related to his July 31, 1991 employment-related back injury.

An award of compensation may not be predicated on surmise, conjecture, speculation or upon a claimant's belief of causal relationship. A claimant has the burden of establishing by reliable, probative and substantial evidence that the disability was causally related to a specific employment incident or to specified conditions of employment and, as part of such burden of proof, rationalized medical evidence must be submitted.² 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 and accurate 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.³

In a report dated February 2, 1997, Dr. Southall provided a history of appellant's condition, a review of the medical records and findings on examination. He opined that appellant did not have any specific injury on July 31, 1991 and his symptoms were not directly related to the work activity on July 31, 1991. In a supplementary report dated July 27, 1997, Dr. Southall indicated that any periods of disability after October 1991 were not related to the work incident on July 31, 1991. Dr. Southall did not find that appellant had any disability on or after October 24, 1991 causally related to his July 31, 1991 employment injury.

In a report dated November 11, 1998, Dr. Graf provided a history of appellant's condition and findings on examination and stated:

“[Appellant] has continued residuals of his work-related injury of July 31, 1991, with previously documented subligamentous intervertebral disc herniation and continuing evidence of abnormal function of the L5 and S1 peripheral spinal nerve root on the right with motor weakness and hypesthesia in the distribution of those peripheral nerves. There is a direct causal connection between the twisting and torsional exertional activities producing this injury in 1991 and his present condition.”

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

³ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

While, Dr. Graf noted that appellant had residuals of the accepted injury, he did not address whether appellant had any disability for work on or after October 24, 1991 and, therefore, his report does not discharge appellant's burden of proof.

On appeal, appellant alleged a conflict in the medical evidence between Drs. Graf and Southall. However, Dr. Graf did not address the issue of disability on and after October 24, 1991 and, therefore, his opinion is not sufficient to create a conflict in the medical evidence on this issue. Appellant also alleged that the statement of accepted facts contained inaccurate statements, which affected the probative value of Dr. Southall's February 2, 1997 report. However, a review of Dr. Southall's report does not support appellant's allegation that his report was affected by any alleged inaccuracies in the statement of accepted facts. The record shows that Dr. Southall obtained the history of appellant's condition directly from appellant. There is no indication in Dr. Southall's report that he based his conclusions and opinions on anything other than appellant's own accurate description of events and the medical evidence of record.

The September 15 and February 18, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 18, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member