

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES E. BLACK and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 00-2373; Submitted on the Record;
Issued June 5, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that his herniated disc is causally related to factors of his federal employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not establish that his herniated disc is causally related to factors of his federal employment.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 appellant'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 appellant.¹

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

This case is on appeal to the Board for the second time.² On the first appeal, the Board reviewed a March 12, 1998 decision, by which the Office of Workers' Compensation Programs found that the evidence appellant submitted in support of his request for modification consisting of a certificate of medical examination from the Civil Service Commission dated June 10, 1997 and a functional capacity evaluation dated June 25, 1997 did not establish that his disc herniation was causally related to his federal employment. The Board found that appellant did not present any medical evidence containing medical rationale which established that his herniated disc was work related and therefore the Office properly denied the claim.

By letter dated May 12, 2000, appellant requested reconsideration and submitted additional evidence consisting of a medical report from Dr. Howard J. Senter, a Board-certified neurological surgeon, dated December 26, 1995 and eight medical reports from his treating physician, Dr. James H. Uselman, a neurological surgeon, dated from January 19, 1995 through April 10, 2000. In his December 26, 1995 report, Dr. Senter stated that appellant had a partial foot drop due to extruded free fragment on the right at L4-5 and had an S1 root compressive lesion due to a simple focal disc herniation. He recommended microlumbar discectomy to prevent permanent foot drop. With the exception of his August 12, 1996 report, which the Board considered in its prior decision and his July 1, 1996 report, Dr. Uselman's reports document the progress of appellant's back condition but do not address causation. In his July 1, 1996 report, Dr. Uselman noted appellant's disc herniation and stated that "as near as [he could] tell, [he did] not see this as a work-related injury." As previously noted, in his August 12, 1996 report, Dr. Uselman stated that the question of the work relatedness of appellant's disc herniation was "somewhat unclear," that work as a laborer could contribute to degenerative disc disease and degenerative disc disease could lead to disc herniations but "[a]nything beyond that [he was] really not able to say."

By decision dated June 23, 2000, the Office denied appellant's request for modification.

In this case, the only new report appellant submitted which addresses causation is Dr. Uselman's July 1, 1996 report in which Dr. Uselman opined that he did not see appellant's herniated disc as a work-related injury. This report does not establish that appellant's herniated disc is work related. Dr. Senter's report in which he stated, in part, that appellant's partial foot drop was due to an extruded free fragment on the right at L4-5 and a right S1 root compressive lesion due to a simple focal disc herniation does not address whether appellant's disc herniation is work related and therefore is not probative.³ Appellant has therefore presented insufficient evidence to establish his claim.

² Docket No. 98-1436 (issued December 16, 1999). The facts and history surrounding the prior appeal are set forth in the initial decision and are incorporated herein by reference.

³ See *Victor J. Woodhams, supra* note 1.

The decision of the Office of Workers' Compensation Programs dated June 23, 2000 is hereby affirmed.

Dated, Washington, DC
June 5, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member