

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLARENCE THOMPSON and DEPARTMENT OF VETERANS AFFAIRS,
DORN VETERANS ADMINISTRATION HOSPITAL, Columbia, SC

*Docket No. 00-2160; Submitted on the Record;
Issued May 11, 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 to establish that he sustained a neck condition causally related to factors of his employment.

The Board has duly reviewed the case record and finds that appellant has failed to meet his burden of proof to establish that he sustained a neck condition causally related to factors of his employment.

On March 23, 1999 appellant, then a 52-year-old physician, filed a claim for an occupational disease (Form CA-2), alleging that on July 1, 1998 he first realized that using a computer at the employing establishment caused his neck symptoms. Appellant's claim was accompanied by factual and medical evidence.

By letter dated May 7, 1999, the Office of Workers' Compensation Programs advised appellant that the medical evidence submitted was insufficient to establish his claim. The Office also advised appellant to submit medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

By letter dated June 3, 1999, the employing establishment submitted factual evidence in response to the Office's letter.

In a June 9, 1999 decision, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed event, but insufficient to establish that appellant suffered from a condition caused by the event.¹

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. The medical evidence required to establish a causal relationship is 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.²

In the present case, appellant has failed to submit rationalized medical evidence establishing that his neck condition was causally related to factors of his federal employment. Appellant submitted a September 29, 1998 report of Dr. Burke H. Dial, a Board-certified neurosurgeon, revealing his complaints of neck pain and Dr. Dial's findings on physical examination. Dr. Dial stated that there was no evidence of myelopathy or radiculopathy. Appellant also submitted a September 16, 1998 report of Dr. Suzanne M. Thigphen, an employing establishment Board-certified radiologist, providing the results of magnetic resonance imaging scan of the cervical spine. Dr. Thigphen's report revealed multiple areas of mild neuroforaminal stenosis and minimal disc prominence, displacement of the cord and loss of anterior and posterior cerebro-spinal fluid signal at C6-7 with bilateral neuroforaminal stenosis, and a two centimeter area of abnormal signal within the left thyroid that most probably represented a cyst. Neither Drs. Dial nor Thigphen's reports addressed whether appellant had a condition causally related to factors of his federal employment.

¹ The Board notes that subsequent to the Office's June 9, 1999 decision, the Office received additional evidence submitted by the employing establishment. Further, on appeal, appellant has submitted additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and any legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

² *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

Appellant submitted undated and unsigned progress notes regarding his lower back, foot and knee conditions. The Board has held that treatment notes which are unsigned or which lack proper identification cannot be considered as probative evidence.³

Treatment notes dated June 29 through January 20, 1999 from a nurse practitioner, kinesiotherapist, purchasing agent and radiology technician regarding appellant's lower back and neck conditions do not constitute probative medical evidence. Lay individuals are not competent to render a medical opinion or conclusion under the Federal Employees' Compensation Act.⁴

The June 29, 1998 progress notes of Dr. Charles H. Davis, a Board-certified internist, provided a history of appellant's low back pain, degenerative joint disease of the right knee and degenerative changes of both hips. He also provided his findings on physical examination and diagnosed "possible" acute herniation of the disc on the right. Dr. Davis' report is speculative as to a diagnosis and, therefore, it is of diminished probative value.⁵

Inasmuch as appellant has failed to submit any rationalized medical evidence establishing that his neck condition was caused by factors of his federal employment, the Board finds that appellant has failed to satisfy his burden of proof.

The June 9, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 11, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Merton J. Sills*, 39 ECAB 572 (1988).

⁴ *See, e.g., Barbara J. Williams*, 40 ECAB 649 (1989).

⁵ *See Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).