

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR E. OSTERGARD and U.S. POSTAL SERVICE,
WESTERN AREA OFFICE, Federal Way, WA

*Docket No. 01-727; Submitted on the Record;
Issued October 22, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant's spinal stenosis was aggravated by factors of his employment.

On October 22, 1999 appellant, then a 52-year-old administrative physician, filed a traumatic injury claim alleging that his existing lumbar back condition was aggravated by being forced to sit in an airplane seat during a two-hour delay on the tarmac on October 26, 1999. In an addendum dated November 22, 1999, appellant alleged that the injury initially occurred approximately two and one-half years prior, during his return from a business trip.

In treatment notes dated October 27, 1999, Dr. John Krehlik diagnosed an exacerbation of a lumbar condition and noted appellant's statement that he noticed symptoms after a two-hour take-off delay. Dr. Krehlik, in a medical report form dated October 27, 1999, diagnosed spinal stenosis and lower back pain and checked "yes" that the injury was job related.

In a Form CA-16 dated November 11, 1999, Dr. Joseph J. Mandiberg diagnosed spinal stenosis and checked "yes" to the question of whether this condition was aggravated by employment factors. Dr. Mandiberg also indicated that "airplane seats do not provide adequate lumbar support" in support of his opinion that appellant's condition was due to his employment.

In a November 16, 1999 report, Dr. Thomas Jay Rosenbaum diagnosed radiculopathy.

By letter dated December 2, 1999, the Office of Workers' Compensation Programs informed appellant that the evidence was insufficient to establish his claim and advised him as to the type of medical information required to support his claim.

In a treatment note dated December 9, 1999, Dr. Robert S. Brown diagnosed history of back pain which began approximately two and one-half years ago. Dr. Brown noted appellant related that his pain was "usually instigated by prolonged sitting while on airplanes" and prolonged standing and sitting while at work.

In a decision dated January 6, 2000, the Office denied appellant's claim on the basis that he failed to provide a rationalized medical opinion supporting a causal relationship between his condition and factors of his employment.

By letter dated October 12, 2000, appellant requested reconsideration and submitted a magnetic resonance imaging (MRI) scan, a January 21, 2000 discharge summary, a January 20, 2000 report, a January 20, 2000 operative report, a January 4, 2000 lumbar MRI scan and a January 30, 2000 report by Dr. Rosenbaum.

In a January 4, 2000 MRI test, Dr. Anna S. Gail diagnosed "severe spinal stenosis, secondary to hypertrophy of the posterior elements and degenerative arthrolisthesis." Dr. Gail concluded that the spinal stenosis had progressed since August 1997.

Dr. Rosenbaum, in a January 20, 2000 report, diagnosed spinal stenosis with radiculopathy and noted that appellant's pain was exacerbated by prolonged sitting such as occurs in riding on an air plane.

In a January 30, 2000 report, Dr. Rosenbaum concluded that appellant's condition was employment related and in support of this conclusion stated:

"[Appellant's] symptoms occurred during his work activity on each occasion when he was riding in an airplane. It is clear that his pathophysiologic process of spinal stenosis was not caused by his work activity. His subjective symptoms, however, occurred on each occasion with a plane flight. I presume that the postural component of sitting in a specified position over a prolonged period of time caused irritation of the nerve roots with subsequent radiculopathy. It is conceivable that this radiculopathy began with the initial plane flight, and because of swelling of the nerves was not able to resolve by conservative care and ultimately required surgical intervention."

Dr. Rosenbaum also concluded that it was impossible to determine whether appellant's postural activities "caused a true pathologic worsening or only caused subjective symptoms which would have developed over time without the forced postural component."

In a merit decision dated December 6, 2000, the Office denied modification of the prior decision.¹

The Board finds that appellant has not established that his spinal stenosis was aggravated by factors of his employment.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was

¹ The Office advised appellant of his right to file an occupational disease claim (Form-CA-2) since it appeared appellant was contending that airplane flights over a period of time contributed to his condition rather than the sole October 26, 1999 incident.

timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

In the instant case, the Office accepted that appellant was a federal employee, that he timely filed his claim for compensation benefits and that the workplace incident occurred as alleged. The question, therefore, becomes whether this incident or exposure caused an injury.

To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.³ 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. Such an opinion of the physician 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.⁴

In support of his claim, appellant submitted reports by Drs. Brown, Krehlik, Mandiberg and Rosenbaum and MRI reports. In his November 11, 1999 report, Dr. Mandiberg diagnosed spinal stenosis and checked "yes" that appellant's condition was aggravated by employment factors. In addition, he stated that seats in airplanes fail to provide adequate lumbar support. The Board has held, however, that when a physician's opinion on causal relation consists only of checking "yes" to a form question, that opinion has little probative value without further detail and explanation.⁵ Thus, Dr. Mandiberg's report is insufficient to support appellant's burden.

The Board finds Dr. Krehlik's October 27, 1999 report insufficient to support appellant's burden. As noted previously, a physician's opinion on causal relation consists only of checking "yes" to a form question, that opinion has little probative value without further detail and explanation.

The Board finds that none of Dr. Rosenbaum's opinions are sufficient to meet appellant's burden of proof. In a November 16, 1999 report, Dr. Rosenbaum diagnosed radiculopathy with no opinion as to causation and in a January 20, 2000 report, he diagnosed spinal stenosis with radiculopathy which was aggravated by activities requiring prolonged sitting such as riding in an airplane seat. In a January 30, 2000 report, he noted that appellant's spinal stenosis was not caused by his employment, but that his subjective complaints of pain occurred with each flight. Dr. Rosenbaum noted that "[i]t was conceivable that this radiculopathy began with the initial

² *Gary J. Watling*, 52 ECAB ____ (Docket No. 00-634, issued March 1, 2001).

³ *Manuel Gill*, 52 ECAB ____ (Docket No. 99-915, issued March 2, 2001).

⁴ *Leslie C. Moore*, 52 ECAB ____ (Docket No. 00-126, issued November 1, 2000); *Gary J. Watling*, *supra* note 2.

⁵ *Alberta S. Williamson*, 47 ECAB 569 (1996).

plain flight and because of swelling of the nerves was not able to resolve by conservative care.” Lastly, he opined that it was impossible to determine whether the employment postural activities “caused a true pathologic worsening” or that this subjective complaints would have occurred over time. Dr. Rosenbaum’s opinion, contained in his January 30, 2000 report, that that it was impossible to determine whether the employment postural activities “caused a true pathologic worsening” or that this subjective complaints would have occurred over time is, without further explanation, speculative in nature and thus of little probative value. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can the opinion be speculative or equivocal.⁶ To be of probative value, the opinion of a physician on causal relationship must be supported by affirmative evidence, address the specific factual and medical evidence of record and be explained by medical rationale.⁷ Furthermore, neither Dr. Rosenbaum’s November 16, 1999 report nor his January 20, 2000 report are sufficient to meet appellant’s burden. The November 16, 1999 report contained no opinion as to the cause of appellant’s radiculopathy and does not mention the October 26, 1999 employment incident. In the January 20, 2000 report, he attributed appellant’s pain to prolonged sitting without any medical rationale explaining how prolonged sitting would exacerbated appellant’s condition. The Board notes that it has frequently explained that statements about an appellant’s pain, not corroborated by objective findings of disability being demonstrated, or a diagnosis of “pain” or “chronic pain syndrome,” do not constitute a basis for payment of compensation.⁸ Moreover, no medical reasoning or connection between appellant’s October 26, 1999 employment incident and the diagnosis of radiculopathy or aggravation of spinal stenosis was discussed. Due to these deficiencies, Dr. Rosenbaum’s reports are of diminished probative value and are insufficient to establish appellant’s claim of disability. In addition, the Board has held that medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.⁹

Dr. Brown noted a history of back pain for two and one-half years and indicated that appellant attributed his pain to prolonged sitting on airplanes as well as prolonged standing or sitting at work. As previously noted, pain is a subjective finding and does not equate to a diagnosable condition from the work injury itself. Therefore, Dr. Brown’s report is of diminished probative value and insufficient to establish causal relationship.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between his condition and his employment.¹⁰ To establish causal relationship, appellant must submit a physician’s report in which the physician reviews that factors of employment identified by appellant as causing his condition and taking these factors into consideration as well as findings upon examination of

⁶ *Roger Dingess*, 47 ECAB 123 (1995).

⁷ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁸ See *John L. Clark*, 32 ECAB 1618 (1981); *Huie Lee Goad*, 1 ECAB 180 (1948).

⁹ *Albert C. Brown*, 52 ECAB ____ (Docket No. 98-2320, issued November 29, 2000).

¹⁰ *William S. Wright*, 45 ECAB 498 (1993).

appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.¹¹ Appellant failed to submit such evidence and, therefore, failed to discharge his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated December 6 and January 6, 2000 are hereby affirmed.

Dated, Washington, DC
October 22, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Id.*