

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSALINDE LINDNER and DEPARTMENT OF AGRICULTURE, FOOD
SAFETY INSPECTION SERVICE, Long Prairie, MN

*Docket No. 01-535; Submitted on the Record;
Issued September 26, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a back injury while in the performance of duty.

On June 29, 2000 appellant, then a 63-year-old food inspector, filed an occupational disease claim alleging that her lower back pain was caused by her employment duties. She noted that she was aware initially of her condition on June 24, 1999.¹

By decision dated September 6, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence did not establish that an injury was sustained as alleged.

The Board has carefully reviewed the entire case record and finds that appellant has not met her burden of proof in establishing that she sustained a back injury while in the performance of duty.

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 (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;³ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

¹ By decision dated May 15, 2001, the Board set aside and remanded the Office's denial of her claim for recurrence of disability. The Office had previously accepted that appellant sustained a low back contusion on March 15, 1997. Docket No. 00-2028. In that decision the Board noted that appellant's record contained a yellow handwritten undated post-it indicating that the Office would accept a back contusion.

² See *Ronald K. White*, 37 ECAB 176 (1985).

³ See *Walter D. Morehead*, 31 ECAB 188 (1979).

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition was causally related to the employment factors identified by the claimant.⁴

The medical evidence required to establish a causal relationship, generally, 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 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,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific factors identified by the claimant.⁷

In a report dated July 1, 1999, Dr. Daniel D. Buss, a Board-certified orthopedic surgeon, noted that appellant had been seen in the emergency room on June 24, 1999 for interscapular pain on the left shoulder. Upon examination, he found that appellant had "interscapular tendinitis, the left, uncomfortable to direct palpation with good range of motion and no crepitus." However, this report is not sufficient to establish that the diagnosed condition was causally related to factors of appellant's federal employment since the doctor did explain his conclusion. In a report dated September 8, 1999, Dr. Buss stated that appellant related left posterior neck and upper back pain that began in June 1999, "gradually getting worse with repetitive activities, such as flipping over meat objects in her job as a meat packing inspector." However, Dr. Buss made no diagnosis and thus could not relate appellant's condition to her employment activities.⁸

In a report dated September 16, 1999, Dr. Timothy A. Garvey, a Board-certified orthopedic surgeon, noted that appellant's x-rays revealed "multi-level thoracic spondylosis with what appears to be a superior end plate compression fracture of the T8 vertebral body." Dr. Garvey stated that appellant had thoracic compression fracture and or thoracic spondylosis. He then concluded: "Provided the patient's history is accurate and true, that she has increasing symptoms with repetitive lifting activities, I do believe that this is a work-related injury." However, Dr. Garvey offered no rationale in support of his conclusion that the condition was work related.

In a report dated October 6, 1999, Dr. Garvey stated that appellant's magnetic resonance imaging (MRI) scan revealed a "fracture [that] appears to be old." In a report dated March 23, 2000, he stated that he treated appellant in a follow-up examination and repeated appellant's history of injury, including his finding of a superior end plate fracture at T8, a hemangioma at T9

⁴ See generally *Lloyd C. Wiggs*, 32 ECAB 1023 (1981).

⁵ *William Nimitz, Jr.*, 30 ECAB 567 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384 (1960).

⁷ See *William E. Enright*, 31 ECAB 426 (1980).

⁸ The record includes a report dated August 31, 1999 which notes a causal relationship between appellant's condition and her employment. This report is not signed and thus is of no probative value. *Merton J. Sills*, 39 ECAB 572 (1988).

and no acute fracture. He stated that appellant had multilevel thoracic spondylosis. Dr. Garvey then added:

“The question of whether or not this is work related, provided that patient’s history is accurate and true, that she had a previous thoracic injury in 1997 that was work related and has had heavy bending, twisting, lifting that places her at increased risk for degenerative changes in the thoracic spine, then this would appear to be a work-related injury.”

Although the Office accepted that appellant sustained an injury in 1984, it was for a low back contusion, not a thoracic injury as Dr. Garvey noted. Further, his March 23, 2000 report is not sufficient to meet appellant’s burden of proof because the doctor did not relate the diagnosed condition of multilevel thoracic spondylosis, a degenerative condition to the identified work exposure or incident. While appellant believes that her claimed condition is related to working conditions as a food inspector, none of the medical evidence presented provides a rationalized opinion relating the diagnosed condition to the identified work factors. Therefore, appellant has not met her burden of proof.

The September 6, 2000 decision of the Office of Workers’ Compensation Programs is affirmed.⁹

Dated, Washington, DC
September 26, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ The Board notes that this case record contains evidence which was submitted subsequent to the Office’s September 6, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).