

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES LYNCH and DEPARTMENT OF THE ARMY,
ASF CONROE, Conroe, TX

*Docket No. 01-2265; Submitted on the Record;
Issued April 25, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on September 29, 2000; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for review of the written record as untimely.

On October 3, 2000 appellant, then a 33-year-old instructor pilot, filed a notice of traumatic injury, claiming that, while flying in a helicopter on September 29, 2000, there was a rapid change in pressure and altitude, and he had right ear pain, pressure and bleeding. He went to the emergency room on October 5, 2000, where he was seen by Dr. Jay Kovar for ear pain and discharge and diagnosed with "0 sympanic membrane injury and allergic rhinitis." Dr. Kovar checked "no" on the form question of whether the condition was caused or aggravated by the employment activity.

By letter dated November 6, 2000, the Office requested that appellant submit additional information to support his claim and answer specific questions set forth by the Office regarding his injury. Appellant submitted additional emergency room reports but did not respond to the Office's questions.

By decision dated December 7, 2000, the Office denied appellant's claim, finding the medical evidence was not sufficient to establish fact of injury. The Office received a letter from appellant on June 4, 2001, postmarked May 29, 2001, requesting a review of the written record. In support of his request, appellant submitted a May 10, 2001 patient note from Dr. Kovar stating: "I testify that the condition for which [appellant] was treated was worsened and made problematic due to occupational duties." By decision dated July 10, 2001, the Office denied appellant's request for a review of the written record as untimely.

The Board finds that appellant has not established that he sustained an injury in the performance of duty on September 29, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁶

In this case, the Board finds that there is sufficient evidence to establish that an incident occurred as alleged, however, finds that the medical evidence is insufficient to establish causal relationship.

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.⁷

In this case, appellant did not submit a physician's rationalized opinion stating that his right ear pain was caused by factors of his federal employment. Dr. Kovar stated that he

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁷ *Delores C. Ellyett*, *supra* note 3; *Ruthie M. Evans*, *supra* note 3.

believed that appellant's condition was worsened and made problematic by his occupational duties, but did not provide any medical rationale to support his conclusion, nor did he discuss the specific duties of appellant's employment. His statement that appellant's condition was worsened by his duties is conclusory in nature and without supporting rationale, is of little probative value.⁸ The other medical reports of record are emergency room documents and do not contain a physician's rationalized opinion on the cause of appellant's condition. A diagnosis of ear pain alone and a conclusory statement regarding appellant's employment duties in general is insufficient to establish causal relationship. As appellant did not submit a rationalized medical report establishing causal relationship between his condition and his employment, he did not meet his burden of proof.

The Board further finds that the Office properly denied appellant's request for a review of the written record as untimely.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu, thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.⁹ The Office has discretion, however, to grant or deny a request that is made after this 30-day period.¹⁰ In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹¹

As appellant's request for a review was postmarked May 29, 2001 and was received on June 4, 2001, more than 30 days after the Office's December 7, 2000 decision, appellant was not entitled to a hearing as a matter of right. The Office further considered appellant's request for a review and determined that the issue of causal relationship could be equally well resolved through a request for reconsideration. Accordingly, the Board finds that the Office did not abuse its discretion in its denial of appellant's request for a review of the written record.

⁸ *Marilyn D. Polk*, 44 ECAB 673 (1993).

⁹ 20 C.F.R. § 10.616(a) (1999).

¹⁰ *Herbert C. Holley*, 33 ECAB 140 (1981).

¹¹ *Rudolph Bermann*, 26 ECAB 354 (1975).

The July 10, 2001 and December 7, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 25, 2002

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member