

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THADDEUS R. GEORGE and TENNESSEE VALLEY AUTHORITY,
Knoxville, TN

*Docket No. 00-2284; Submitted on the Record;
Issued January 3, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established that his claimed condition is causally related to his August 3, 1996 employment injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review.

On September 23, 1996 appellant, a 35-year-old laborer, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that he sustained a back injury while in the performance of duty on August 3, 1996. Appellant explained that he had been lifting and pushing furniture with the aid of a cart and after working a 12-hour shift, he experienced some back pain when he returned home that evening. He described the nature of his injury as herniated nucleus pulposus of the lumbar spine.

By decision dated December 20, 1996, the Office denied appellant's claim based upon his failure to establish fact of injury. Appellant subsequently requested a hearing and in a decision dated May 5, 1998, the Office hearing representative found that, while appellant established that the incident occurred, he failed to demonstrate a causal relationship between his claimed disc herniation at L5-S1 and his employment exposure on August 3, 1996. Accordingly, the Office hearing representative affirmed the prior denial on December 20, 1996, but modified the decision to reflect a denial based on appellant's failure to establish a causal relationship.

Appellant subsequently filed three requests for reconsideration. In response, the Office denied modification by decisions dated August 26, 1998 and August 19, 1999. In a decision dated March 30, 2000, the Office denied appellant's most recent request for reconsideration without addressing the merits of his claim.

The Board finds that appellant failed to establish that his claimed disc herniation at L5-S1 is causally related to his August 3, 1996 employment injury.

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.² An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.³

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is insufficient to establish a causal relationship.⁴ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁶ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.⁷

Dr. Robert G. Watkins, a Board-certified orthopedic surgeon, is the only physician of record who specifically attributed appellant's disc herniation at L5-S1 to his August 3, 1996 employment injury. He first examined appellant on March 5, 1997, more than seven months after his employment injury. Dr. Watkins diagnosed left herniated nucleus pulposus at L5-S1 and internal disc disruption at L4-5 and L5-S1. His initial report did not address the specifics of appellant's August 3, 1996 employment injury, but merely noted that his "symptoms began acutely on [August 3, 1996]." In a subsequent report dated July 15, 1998, Dr. Watkins stated that "[t]he activities [appellant] performed on August 3, 1996, which consisting (sic) of moving a lot of heavy material, caused his disc herniation and caused his medical problems." He

¹ 5 U.S.C. §§ 8101-8193.

² See *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996); *Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁴ *Robert G. Morris*, 48 ECAB 238, 239 (1996).

⁵ *Id.*

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

further indicated that the surgery performed in November 1997 was the direct result of those injuries.⁸

Dr. Watkins next examined appellant in February 1999, at which time he diagnosed psychogenic conversion type ataxia. He further stated that appellant's "back injury [was] 100 [percent] responsible" for his current psychiatric disability. In a report dated February 24, 1999, Dr. Watkins stated that appellant "very clearly said he was injured on the job August 3, 1996, he was hurt on the job, moved a lot of equipment one day and hurt his back." He further explained that appellant "moved a heavy object and that injured the disc in his back, produced an annular tear and a very large herniation." Lastly, Dr. Watkins stated "[t]he activities of work that day are compatible with the injury."⁹

Although Dr. Watkins attributed appellant's L5-S1 disc herniation, subsequent surgery and current psychiatric condition to his August 3, 1996 employment injury, he failed to provide sufficient rationale for his conclusion. Furthermore, Dr. Watkins did not provide a detailed and consistent description of the mechanism of injury. He variously noted that appellant was "moving a lot of heavy material," "moved a lot of equipment one day" and "moved a heavy object." Appellant stated on his Form CA-1 that he was "moving 60 [inch] round tables and pushing them 9 at a time on a storage cart." Thus, while Dr. Watkins stated that the "activities of work that day are compatible with [appellant's] injury," his opinion is based upon an incomplete factual background. Consequently, Dr. Watkins' opinion does not rise to the level of rationalized medical evidence. In the absence of such rationalized evidence, the Office properly determined that appellant failed to establish a causal relationship between his August 3, 1996 employment injury and his claimed disc herniation at L5-S1.

The Board further finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.¹⁰ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated

⁸ The record does not include an operative report regarding the surgical procedure appellant underwent in November 1997 and Dr. Watkins did not otherwise explain why appellant's August 3, 1996 employment injury required surgical intervention.

⁹ The quoted remarks from Dr. Watkins' February 24, 1999 report were offered in response to written questions posed by appellant's attorney in a letter dated January 21, 1999. However, counsel's specific questions are not set forth in Dr. Watkins report and the January 21, 1999 correspondence is not part of the record.

¹⁰ 20 C.F.R. § 10.606(b)(2) (1999).

under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

Appellant's November 17, 1999 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the Board notes that the vast majority of evidence accompanying appellant's November 17, 1999 request for reconsideration was already part of the record. Appellant's newly submitted evidence included a July 25, 1997 notice of reduction-in-force, a laborer's position description and a statement of account for medical services rendered on August 17, 1996. As this evidence does not address the issue of causal relationship, it is insufficient to warrant reopening the record for merit review.¹² Appellant also submitted a December 20, 1996 report from Dr. John R. Huffman. While this report noted an August 3, 1996 date of injury and identified appellant's physical limitations, it did not otherwise address the issue of causal relationship. Consequently, Dr. Huffman's December 20, 1996 report is similarly insufficient to warrant merit review of the claim.¹³ Lastly, appellant submitted a September 8, 1999 decision from the Social Security Administration (SSA) awarding disability benefits effective August 3, 1996. The Office correctly advised appellant that the SSA's finding was not determinative with respect to entitlement under the Federal Employees' Compensation Act.¹⁴ Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's November 17, 1999 request for reconsideration.¹⁵

¹¹ 20 C.F.R. § 10.608(b) (1999).

¹² Evidence that does not address the particular issue involved does not constitute a basis for reopening the claim. *Richard L. Ballard*, 44 ECAB 146, 150 (1992).

¹³ *Id.* Furthermore, Dr. Huffman's December 20, 1996 report is identical to his earlier report dated December 13, 1996, which the Office received on December 26, 1996.

¹⁴ See *Daniel Deparini*, 44 ECAB 657, 659-60 (1993).

¹⁵ The record on appeals includes evidence that was not previously submitted to the Office. The Board's review is limited to the evidence of record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated March 30, 2000 and August 19, 1999 are hereby affirmed.

Dated, Washington, DC
January 3, 2002

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member