

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY COBURN and DEPARTMENT OF THE ARMY,
NATIONAL GUARD, San Luis Obispo, CA

*Docket No. 02-224; Submitted on the Record;
Issued May 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether appellant established that he sustained a lower back condition causally related to factors of his federal employment.

On April 5, 2000 appellant, then a 50-year-old material handler, filed a notice of occupational disease alleging that he first became aware of his lower back pain on April 6, 1989 and first realized on May 19, 1997 that it was due to his federal employment.¹ Appellant submitted an April 3, 2000 report from Dr. Boris Pilch, a Board-certified anesthesiologist, indicating that appellant had pain in his lower back, radiating into his lower extremities, buttocks and hips. Dr. Pilch stated that a 1997 magnetic resonance imaging (MRI) scan revealed "disc at L3-4 and L4-5" but did not provide a current diagnosis. A second MRI scan performed on April 24, 2000 indicated that the abnormal findings at levels L3-4 and L4-5 had actually improved.

Appellant submitted a May 22, 2000 report from Dr. Kenneth S. Bradley, stating that appellant had been a patient of his for approximately three years and diagnosing him with lumbar degenerative disc disease with radiculopathy and severe pain. He recommended that appellant not lift over 20 pounds.

The Office of Workers' Compensation Programs requested in a September 3, 2000 letter that appellant clarify his 1989 occupational disease claim, whether it was attributed to the work injury in 1997 or his ongoing work duties.

¹ Appellant also filed two notices of traumatic injury on May 16, 1995 and July 24, 1997. He stated that he pulled a muscle around his waist on May 15, 1995 when he was bending over to put his lunch away. He also stated that on July 18, 1997 he was lifting boxes when he left a snap around his waist and hip that caused him great pain. Appellant submitted various medical reports from 1989 forward.

Dr. Dale Kiker, a Board-certified anesthesiologist, indicated in a September 18, 2000 report that appellant had a history of lumbar disc disease and noted that the April 24, 2000 MRI scan showed central protrusion with annular fissures at L3-4 and L4-5 with possible pars defect at L5.

By decision dated December 5, 2000, the Office denied appellant's claim for compensation finding that the medical evidence of record was insufficient to demonstrate that appellant's condition was causally related to his employment.

Appellant submitted a December 12, 2000 report from Dr. Donald A. Ramberg, a Board-certified neurological surgeon, in which he stated:

“[Appellant] has been a patient of mine since October 5, 2000. I evaluated him for progressive lumbar back pain during this period of time. As part of the evaluation, the information given to me is that he has worked for the National Guard in warehousing for a number of years and injured his back beginning in 1989 while working in warehousing. He has had intermittent back pain since that time, with recent increase in frequency and intensity of pain over the last three years. A major contributing factor to his back pain at this time is the recurrent back injuries that [appellant] has suffered while working in warehousing.”

A computerized tomography of the lumbar spine performed on November 17, 2000 indicated type IV protrusion, right side L5-S1 and internal disc disruption and protrusions at L3-4 and L4-5.

Appellant requested reconsideration on January 12, 2001 and submitted copies of medical reports already in the record. By decision dated January 24, 2001, the Office denied appellant's request for modification of the previous decision.

By letter dated April 11, 2001, appellant requested an oral hearing and submitted a March 9, 2001 report from Dr. Ramberg. He stated:

“[Appellant] has been a patient of mine since October 5, 2000. He is a 50-year-old male who works with the National Guard in warehousing. He states that in 1990 he injured his back acutely while lifting some boxes. He was off work for about two weeks and treated through Dr. Lotz, with some further evaluation by other physicians. In 1997 he began to have some increase in pain ... the pain disappeared for a while, then recurred last year.”

In a May 10, 2001 report, Dr. Ramberg stated:

“Evaluation of his previous records would indicate that [appellant] suffered an injury to the lumbar disc during his work in the National Guard warehousing and that this injury led to his need to have the lumbar surgery in January of 2001.”

By decision dated July 16, 2001, the Branch of Hearings and Review denied appellant's request for an oral hearing.

Appellant submitted an August 15, 2001 report from Dr. Ramberg, in which he reiterated his statements from earlier reports. He also indicated that appellant was totally disabled due to his recent back surgery.

By letter dated September 25, 2001, appellant requested reconsideration.² In a merit decision dated November 9, 2001, the Office denied modification of the January 24, 2001 decision.

The Board finds that appellant has not established that his lower back condition was causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act³ 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶

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

² The Office refers to the September 25, 2001 request in the November 9, 2001 decision; however, the request is not found in the record.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *Vicky L. Hannis*, 48 ECAB 538 (1997).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

The Board finds that the medical evidence submitted by appellant does not contain a well-rationalized medical opinion relating his lower back condition to factors of his employment. There are no narrative medical reports of record which address causal relationship or factors of appellant's employment that may have caused his condition. MRI scan reports from 1997 and 2000 indicate that appellant had abnormal findings at levels L3-4 and L4-5, yet were not supported by a medical report relating the findings to appellant's employment. Dr. Bradley diagnosed appellant with degenerative disc disease but did not opine that appellant's condition was caused by his employment. Only Dr. Ramberg briefly addressed appellant's employment duties, stating in his December 12, 2000 report:

"The information given to me is that he [appellant] has worked for the National Guard in warehousing for a number of years and injured his back beginning in 1989 while working in warehousing" and "A major contributing factor to his back pain at this time is the recurrent back injuries that [appellant] has suffered while working in warehousing."

Also in a May 10, 2001 report, Dr. Ramberg stated:

"Evaluation of [appellant's] previous records would indicate that [appellant] suffered an injury to the lumbar disc during his work in the National Guard warehousing and that this injury led to his need to have the lumbar surgery in January of 2001."

Dr. Ramberg's statements are insufficient to establish causal relationship between appellant's condition and his employment because they do not contain medical rationale. Dr. Ramberg does not describe how appellant's employment in the warehouse caused or attributed to his condition. His statement that appellant's recurrent back injuries at the warehouse contributed to his condition are also not supported by rationale. The Board has found that a conclusory statement without supporting rationale is of little probative value⁸ and is insufficient to discharge appellant's burden of proof. A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is claimed was caused or adversely affected by employment factors.⁹ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁰

⁷ *Supra* note 5.

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

⁹ *Ronald C. Hand*, 49 ECAB 215 (1997).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Since the medical evidence submitted does not establish a causal relationship between appellant's lower back condition and his employment, appellant has not met his burden of proof in establishing his case.

The November 9, July 16 and January 24, 2001 and December 5, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 17, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member