

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD D. HEMPHILL and U.S. POSTAL SERVICE,
POST OFFICE, Santa Clarita, CA

*Docket No. 02-1048; Submitted on the Record;
Issued October 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury to his back or legs causally related to his employment.

On September 7, 2001 appellant, then a 57-year-old custodian, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a lower back sprain and pain in his legs causally related to factors of his federal employment. On his claim form, appellant noted that he injured his back on August 30, 1993 and that it has been an ongoing injury. The employing establishment controverted the claim.

By letter dated September 24, 2001, the Office of Workers' Compensation Programs requested that appellant submit further evidence. In response thereto, he submitted medical reports from Dr. Jeffrey Ballard, a Board-certified surgeon, dated August 30, September 18 and November 6, 2001, wherein Dr. Ballard indicated that he was treating appellant for lumbar degenerative disc disease. Appellant had previously submitted a note by Dr. Ballard, dated August 30, 2001, wherein Dr. Ballard released appellant to work as of September 4, 2001 with no lifting over 20 pounds and no excessive bending or twisting. Appellant also submitted his answers to various questions propounded by the Office.

In a decision dated November 28, 2001, the Office denied appellant's claim, finding that he failed to show that a medical condition existed for which compensation was claimed.¹

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury to his back or legs due to factors of his employment.

¹ Appellant submitted additional evidence after the Office's November 28, 2001 decision which was addressed by the Office in an advisory letter dated February 6, 2002. The Board cannot consider such evidence as it was issued after the final decision of the Office. *See* 20 C.F.R. § 501.2(c).

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 the 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.⁵ 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 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 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.⁶

In the instant case, the reports from Dr. Ballard show that appellant was undergoing treatment for lumbar degenerative disc disease. However, these reports do not link appellant's condition to his federal employment. As no other medical evidence was timely submitted and these reports do not meet appellant's burden of proof to establish that he sustained a condition as a result of his federal employment, the Office properly denied benefits. An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁷

² 5 U.S.C. §§ 8101-8193.

³ *Thomas L. Hogan*, 47 ECAB 323 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁶ *Id.*

⁷ *Bertha J. Soule*, 48 ECAB 314, 319 (1997).

The decision of the Office of Workers' Compensation Programs dated November 28, 2001 is hereby affirmed.

Dated, Washington, DC
October 17, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member