

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES H. HEDGE and TENNESSEE VALLEY AUTHORITY,  
JOHNSONVILLE STEAM PLANT, Chattanooga, TN

*Docket No. 02-1182; Submitted on the Record;  
Issued October 9, 2002*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a back injury on November 16, 1998.

On November 16, 1998 appellant, then a 47-year-old laborer, filed a traumatic injury claim alleging that, on November 6, 1998, he sustained "muscle strain to lower back, left shoulder strain and umbilical."

The Office of Workers' Compensation Programs accepted an umbilical hernia and left shoulder strain.

By decision dated October 27, 2000, the Office denied expanding appellant's claim to include a back condition.

Appellant, through counsel, requested an oral hearing. On March 29, 2001 a hearing was held. In a decision dated June 22, 2001 and finalized on June 25, 2001, the hearing representative affirmed the Office's October 27, 2000 decision denying appellant's claim that he sustained a back injury on November 6, 1998.

In a letter dated September 11, 2001, appellant, through counsel, requested reconsideration. In a decision dated October 17, 2001, the Office denied appellant's request for reconsideration. In a letter dated November 27, 2001, appellant, through counsel, again requested reconsideration. In a decision dated January 10, 2002, the Office denied modification of its prior decisions.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a low back condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim<sup>2</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>4</sup> 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.<sup>5</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

Causal relationship is a medical issue<sup>7</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.<sup>8</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>9</sup>

In a report dated November 10, 1998, Dr. Reynolds, an osteopath and appellant's attending physician, noted that he had examined appellant after the injury and listed lower back pain as a possible diagnosis and that he should be referred for an orthopedic evaluation. He also included an umbilical hernia and left shoulder strain as tentative diagnosed conditions and noted that he was prohibited from heavy lifting until the hernia was repaired. This report does not support a low back condition as causally related to the work-related injury as the doctor merely noted that pain as a tentative diagnosis.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

<sup>3</sup> See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>4</sup> 5 U.S.C. § 8122.

<sup>5</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>6</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Mary Briggs*, 37 ECAB 578 (1986).

<sup>8</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 6.

<sup>9</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

The next report is dated June 30, 1999, seven months after the accepted injury.<sup>10</sup> In his June 30, 1999 report, Dr. William Schooley, appellant's treating physician, Board-certified in neurology, stated that he treated appellant that day. He noted that appellant related that he "was disconnecting a river barge in November 1998 and felt a pop in his back. Appellant also had some abdominal pain secondary to an umbilical hernia that he suffered at that time." Dr. Schooley noted appellant's subjective complaints of continued severe leg pain and low back pain. He ordered a magnetic resonance imaging (MRI) scan of his back. This report does not establish that appellant sustained a low back injury at work in November 1998 in that it provides no diagnosis of appellant's condition and no attempt to explain a relationship between his subjective complaints of pain and the accepted incident.<sup>11</sup>

Appellant submitted a June 30, 1999 lumbar spine MRI scan which revealed an S1 transitional vertebra and a mild disc bulge at L3-4 and L4-5 and a December 14, 1999 cervical spine MRI scan which revealed mild stenosis and underlying mild disc protrusion at C3-4 and minimal annular bulges at C4-5 and C5-6. Neither of these reports established a causal relationship between appellant's back condition and his work-related injury.

In support of his requests for reconsideration, appellant submitted additional reports from Dr. Schooley. In a September 4, 2001 report, Dr. Schooley stated that appellant "was disconnecting a river barge in November 1998 and felt a pop in his back when he had a problem with being tugged down by a cable. In my opinion, his injury was and remains work related."<sup>12</sup> In a report dated November 13, 2001, Dr. Schooley stated that, "based on my complete factual medical background of [appellant]," that it was with "reasonable medical certainty" that appellant's current back condition was caused at the time of his injury. Neither of these reports provide a rationalized medical opinion explaining how the act of disconnecting a barge which caused low back pain as noted by Dr. Reynolds in his November 6, 1998 report, was causally related to symptoms made to Dr. Schooley in July 1999.<sup>13</sup>

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>14</sup> Causal relationship must be established by

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<sup>10</sup> The record includes a notice to appellant from the Office dated February 29, 2000 that he would need to submit medical documentation to support a work-related back injury.

<sup>11</sup> The record includes multiple treatment notes from Dr. Schooley from July 6, 1999 to October 24, 2000. Although he noted appellant's back pain and his prescription for cervical traction, he did not establish a causal relationship between the pain and appellant's work-related injury.

<sup>12</sup> Dr. Schooley previously related this information to the Office in his July 1999 report.

<sup>13</sup> Appellant stated that on November 12, 1999 he was not allowed to see a physician from November 23, 1998 to March 9, 1999. However, he signed an agency form on November 7, 1998, the day after the injury, indicating his responsibilities as a result of a work-related injury which included notifying his doctor and submitting medical evidence within 10 days of the accident. There is nothing in the record to support appellant's contention that he was prohibited from seeing a physician after November 23, 1998.

<sup>14</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

rationalized medical opinion evidence.<sup>15</sup> The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. Dr. Schooley's opinion on causal relationship is of limited probative value in that it did not establish that appellant's back pain was causally related to his employment.

The decisions of the Office of Workers' Compensation Programs dated January 10, 2002 and December 18, October 17 and June 25, 2001 are affirmed.

Dated, Washington, DC  
October 9, 2002

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>15</sup> *Charles E. Evans*, 48 ECAB 692 (1997); *Earl D. Smith*, 48 ECAB 615 (1997).