

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL STEVENS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 02-1423; Submitted on the Record;
Issued October 8, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On September 9, 1999 appellant, then a 46-year-old housekeeping aid, filed a notice of traumatic injury alleging that on September 8, 1999 an "elevator struck his upper torso" and he injured his lower back. Appellant was previously diagnosed with herniated disc in 1992 and a magnetic resonance imaging (MRI) scan from the same year showed a small mid-line herniation at L5-S1 and a disc bulge at L4-5. He filed a work-related claim in 1992, which was accepted for lumbar strain.

This case has previously been before the Board. By decision dated September 18, 2001, the Board found a conflict in medical opinion between Dr. Richard B. Kasdan, a Board-certified psychiatrist and neurologist and Dr. Stephen R. Bailey, a Board-certified orthopedic surgeon and remanded the case to the Office of Workers' Compensation Programs for further development of the medical evidence.

Appellant's treating physician, Dr. Kasdan, stated that although appellant had similar back and leg problems in 1993, he had fully recovered from that injury and had worked without a disability until September 8, 1999. He opined that appellant's current lumbar radiculopathy was a direct result of the September 8, 1999 work incident and that appellant was totally disabled. He later stated that he believed the September 8, 1999, work incident exacerbated his previous injury. Dr. Bailey, the second opinion physician, concluded that appellant had sustained a soft tissue sprain or contusion on September 8, 1999 but that the condition had since resolved. He opined that the impact from the elevator door was insufficient to cause spine trauma or aggravation of a preexisting spine condition. Dr. Bailey stated that appellant was capable of returning to his full-time duties with no restrictions.

Appellant was referred to Dr. Jack P. Failla, a Board-certified orthopedic surgeon, for an independent medical examination. By report dated December 6, 2001, Dr. Failla stated:

“With a reasonable degree of medical certainty, I believe that this [appellant’s] symptoms and physical findings were somewhat exaggerated, considering his physical examination and evaluation of all of his medical records, [physicians] reports and radiographic, MRI and [computerized tomography scan] studies. While there is no question that this [appellant] has some degenerative disc disease in his back and may occasionally have some radiculopathy associated with intermittent pressure of his right S1 nerve root, that there was no significant change in his MRI [scan] findings, to my evaluation, from 1992 until 2001. As of early 2001, as noted by the February 8th report of Dr. [David] Engle, after the patient’s retirement, he was feeling very well and, in fact, had no evidence of neurological impairment that would require any further treatment, let alone surgery. My feeling is that the situation that existed in this man’s spine after the alleged incident of September of 1999 was present since 1992. It does not make sense to me that being struck on the right side by an elevator door would exacerbate this man’s problems and certainly not create any further structural defect. The most it could cause would be sudden back spasms, which should be relieved in relatively short order with physical therapy and rest. Therefore, I do not feel that the injury of 1999 was significant and that if the patient had any exacerbation of symptoms and any current symptoms are considered to be ongoing natural course history of degenerative disc disease over essentially a 10-year period.”

He also stated that appellant was capable of working light duty and was not totally disabled.

By decision dated January 9, 2002, the Office denied appellant’s claim.¹

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 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

¹ The Board notes that by decision dated September 27, 2000, the Office stated that it terminated appellant’s compensation benefits. The Office indicated that appellant’s claim was accepted for thoracic strain and contusion, however, there is no evidence of this in the record.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.⁵ 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.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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

In this case, appellant has the burden of introducing rationalized medical opinion evidence establishing that the September 8, 1999, work incident caused his lower back condition or aggravated his previous work-related injury from 1992.

The Board finds that the weight of the medical evidence in this case rests with Dr. Failla, the impartial medical examiner appointed by the Office to resolve a conflict of medical opinion between Drs. Kasdan and Bailey. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁸

In this case, Dr. Failla opined that appellant suffered from degenerative disc disease in his lower back, which has been present since 1992. He stated that the most an accident of this nature, (being struck by an elevator door) would cause is sudden back spasms, a condition which would resolve in a short period of time. Dr. Failla opined that the September 8, 1999, injury was not significant and that if appellant had any exacerbation of symptoms, they would be due to the natural progression of his degenerative disc disease that he has suffered from since 1992. Dr. Failla’s opinion is sufficiently rationalized and based on a complete and accurate medical

⁴ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁷ *Supra* note 4.

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990).

and factual history and is, therefore, entitled to represent the weight of the medical evidence in this case.

The January 9, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 8, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member