

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAYNARD D. COUNTS and DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Norton, VA

*Docket No. 02-2320; Submitted on the Record;
Issued April 2, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has met his burden of proof to establish that his arthritis was caused or aggravated by factors of his federal employment.

On June 4, 2001 appellant, then a 50-year-old mine safety and health specialist, filed an occupational disease claim alleging that on May 7, 2001 he first realized his arthritis was employment related.¹

In a letter dated August 9, 2001, the Office of Workers' Compensation Programs requested that appellant submit additional medical and factual information to support his claim.

By letter dated August 22, 2001, appellant submitted a description of the work factors he believed to have caused his condition, reports dated June 16, July 17 and July 31, 2001 from Dr. Richard W. Duncan, an attending Board-certified orthopedic surgeon, which diagnosed degenerative disc disease in the lumbar spine.

By decision dated September 27, 2001, the Office denied appellant's claim on the basis that the evidence failed to establish a condition that had been diagnosed in connection with the accepted employment factor.²

On October 20, 2001 appellant requested a review of the written record and submitted the attending physician's supplemental forms (CA-20) dated June 1 and 15, 1992, a May 14, 1992 report, a September 1, 1993 report, September 12, 2001 treatment notes and an October 10, 2001

¹ On the back of the form, the employing establishment noted that appellant had been accommodated with a permanent light-duty job due to an employment injury sustained on January 13, 1997.

² The Office advised appellant that the laminectomy decompression surgery performed by Dr. Dwight L. Bailey, an attending Board-certified family practitioner, would be covered under claim number 11-0154209 as the physician related the need for surgery to appellant's accepted back injury.

letter from Dr. Bailey, an October 2, 2001 treatment note by Dr. Duncan, an attending Board-certified orthopedic surgeon, and an October 17, 2001 x-ray interpretation. Dr. Bailey diagnosed osteoarthritis in the lumbar spine and noted that it had been present since 1992 in an October 10, 2001 letter. Dr. Bailey, in a September 12, 2001 treatment note, diagnosed lumbar disc disease while Dr. Duncan, in an October 2, 2001 treatment note, diagnosed degenerative disc disease in the lumbar spine. In both the June 1 and 15, 1992 CA-20 forms, Dr. Bailey diagnosed herniated disc with sciatica, low back strain and osteoarthritis of facet joints. In his May 14, 1992 report, Dr. Bailey stated that appellant had been temporarily totally disabled due to a herniated disc and osteoarthritis of his facet joints.

By decision dated May 23, 2002, the hearing representative affirmed the denial of appellant's claim on the basis that he failed to establish that he sustained an injury as alleged.

Appellant requested reconsideration and submitted a July 11, 2002 functional capacity evaluation, reports dated June 1, 1998, February 27 and July 7, 1999, April 27, 2000, October 10, 2001 and February 8, 2002, and letters dated March 26 and June 19, 2002 from Dr. Bailey regarding disability retirement, a magnetic resonance imaging test dated December 3, 2001 and an x-ray interpretation dated February 21, 2001.

The only medical reports diagnosing arthritis were reports dated April 27 and October 10, 2001 in which Dr. Bailey diagnosed lumbar osteoarthritis. Dr. Bailey, in his June 19, 2002 letter, stated that he thought that the chronic trauma appellant received exacerbated his severe facet arthrosis with canal stenosis and "contributed to the facet arthrosis of both the cervical arthritis and lumbar arthritis." He stated that he believed that appellant's arthritis was "partially compensation related."

In a March 26, 2000 letter, Dr. Bailey opined that appellant was totally disabled due to a variety of medical conditions including osteoarthritis.

By decision dated September 9, 2002, the Office denied appellant's request for modification.

The Board finds that appellant has not met his burden of proof to establish that the arthritis in his back was caused or aggravated by factors of his federal employment.

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.³

³ *Donna L. Mims*, 53 ECAB ____ (Docket No. 01-1835, issued August 13, 2002); *Vicky L. Hannis*, 48 ECAB 538 (1997).

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁴ 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.⁵

To support his claim, appellant submitted various reports from his attending physicians, Drs. Bailey and Duncan. The reports by Dr. Duncan are insufficient to support appellant's claim as the physician diagnosed degenerative disc disease of the lumbar spine without any diagnosis of arthritis. As Dr. Duncan's reports fail to contain a diagnosis of arthritis, they are not relevant to the issue at hand, *i.e.*, whether appellant's arthritis is causally related to employment factors. Similarly, Dr. Bailey's reports are also insufficient to support appellant's burden. Dr. Bailey diagnosed osteoarthritis in the lumbar spine and stated that he thought appellant's arthritis was due to the chronic trauma appellant received and opined that he believed this condition was "partially compensation related." However, Dr. Bailey's statement that he believed appellant's condition was "partially compensation related" is speculative and thus of little probative value.⁶ Further, Dr. Bailey did not discuss how specific factors of appellant's federal employment caused or aggravated his condition or provide sufficient rationale for his opinion.⁷

As appellant did not submit any rationalized medical opinion evidence causally relating his diagnosed arthritic conditions to work factors, he did not meet his burden of proof.

⁴ *Manuel Gill*, 52 ECAB ___ (Docket No. 99-915, issued March 2, 2001).

⁵ *Claudio Vazquez*, 52 ECAB ___ (Docket No. 01-416, issued August 30, 2001).

⁶ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

⁷ *Carolyn F. Allen*, 47 ECAB 240 (1995) (medical reports not containing rationale on causal relationship are entitled to little probative value.)

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

Dated, Washington, DC
April 2, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member