

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD J. MURRAY and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Vicksburg, MS

*Docket No. 02-1714; Submitted on the Record;
Issued February 25, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of his federal duties.¹

On July 25, 1997 appellant, then a 41-year-old equipment operator, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that he injured his back on May 13, 1997 while removing heavy grates to gain access to machinery.

In support of his claim, appellant submitted a July 18, 1997 note from Dr. Robert Po, an orthopedic surgeon, that diagnosed a "HNP [herniated nucleus pulposus] L5-S1" and indicated that appellant was to be off work indefinitely.

In a July 31, 1997 letter, appellant's coworker at the time of the alleged incident, wrote that appellant gave no indication to him on May 13, 1997 that he had injured his back.

In an October 7, 1997 letter to appellant, the Office notified appellant of the additional information needed to process his claim.

Appellant did not respond. In an October 27, 1997 decision, the Office denied appellant's claim.

In a November 25, 1997 letter, appellant requested an oral hearing. In support of his claim, he submitted unsigned treatment notes dated between July 18 and August 29, 1997. The notes indicated that a magnetic resonance imaging scan revealed a lumbosacral sprain and mild

¹ The Board notes this claim has been before the Board on two prior occasions. In a November 29, 2000 decision, (Docket No. 99-2516) the Board affirmed the Office of Workers' Compensation Programs' decision denying the claim. In an April 12, 2002 decision, (Docket No. 01-1959) the Board reversed the Office's finding that appellant's request for reconsideration was untimely.

degenerative disc disease, that on July 23, 1997 appellant underwent angioplasty surgery and was also seeing a psychiatrist for depression.²

At the November 17, 1998 hearing, appellant testified that he did not file his claim or notify his supervisor of his May 13, 1997 work-related injury until July 25, 1997 because he was recovering from his heart attack. He said that he was seeing his psychiatrist to control his anger and that he had taken disability retirement on February 2, 1998.

In a March 2, 1999 decision, the hearing representative denied appellant's claim finding the medical evidence insufficient.

On March 10, 1999 appellant requested reconsideration. He submitted no new evidence.

In a June 6, 1999 decision, the Office denied reconsideration.

In a June 30, 1999 letter, appellant requested reconsideration and submitted a medical report from Dr. Po.

In his June 22, 1999 report, Dr. Po wrote that he had initially treated appellant for back problems in 1991 and that appellant reinjured his back on May 13, 1997. He indicated that he last treated appellant on December 17, 1997 when he released appellant for restricted light duty. Dr. Po diagnosed chronic low back strain with residual right femoral cutaneous neuritis.

In an August 3, 1999 decision, the Office denied modification of its previous decisions.

In a September 10, 1999 decision, the Branch of Hearings and Review denied appellant's request for a second hearing.

In a November 29, 2000 decision, the Board affirmed the Office decisions.

In a December 28, 2000 letter, appellant requested reconsideration. In support of his request, he submitted a December 22, 2000 report from Dr. Po.

In his report, Dr. Po reiterated appellant's medical history and diagnosed a low back strain with right leg radiculitis aggravating a previously existing degenerative disc disease lumbar spine and stenosis at L4-5. He further wrote that appellant's back condition was causally related to his May 13, 1997 work incident.

In a March 6, 2001 decision, the Office denied appellant's request as untimely.

In an April 12, 2002 decision, the Board reversed the Office's March 6, 2001 decision, which found that the December 28, 2000 request for reconsideration was untimely filed.

In a May 16, 2002 decision, the Office denied modification of its previous decisions finding appellant's medical evidence insufficient.

² The record indicates that appellant filed a claim for his heart condition that was denied by the Office and is not the subject of this appeal.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of his federal duties.

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 The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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

In the present case, appellant did not submit rationalized medical evidence that established, how being struck by a moving gate on May 13, 1997, caused his alleged conditions. Dr. Po's December 22, 2000 report indicates that appellant's back injury was causally related to the May 13, 1997 incident at work, but he does not explain how the work activities resulted in a low back strain and an aggravation of a previously existing condition. This explanation is critical because appellant had a previous back injury in 1991 and already was suffering from degenerative disc disease.

Absent this rationalized medical evidence appellant has not met his burden of proof to establish an employment-related injury.

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

The decision of the Office of Workers' Compensation Programs dated May 16 2002 is affirmed.

Dated, Washington, DC
February 25, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member