

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. VARA and SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS & APPEALS, San Diego, CA

*Docket No. 02-2342; Submitted on the Record;
Issued February 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury causally related to factors of employment.

On February 27, 2002 appellant, then a 64-year-old senior case technician, filed an occupational disease claim, alleging that factors of employment caused left thoracic outlet syndrome, cervical disc degeneration, cervical facet imbrication, lumbosacral sprain/strain, right rotator cuff syndrome and carpal tunnel syndrome. He did not stop work. In support of his claim, appellant submitted medical reports from Dr. John S. Krage, a chiropractor, and carpal tunnel studies. The employing establishment submitted a job description.

By letter dated April 12, 2002, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support his claim. The Office informed appellant of the statutory definition of a chiropractor under the Federal Employees' Compensation Act and advised him that he needed to provide a comprehensive medical report which explained how his work activities caused or contributed to his condition.

In response, appellant submitted another report from Dr. Krage, a report of a magnetic resonance imaging (MRI) scan of the right shoulder and electromyography (EMG) and nerve conduction studies. He also advised that he had previously been employed by the Veterans Administration and described his work duties there.

By decision dated June 14, 2002, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish a causal relationship between

claimed employment factors and his medical condition. In a letter dated August 1, 2002, appellant requested a hearing. The instant appeal follows.¹

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an employment-related condition.

An employee seeking benefits under the Act² has the burden of establishing the essential elements of his or her claim³ including the fact that the individual is an “employee of the United States” within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ 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.⁶ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

Causal relationship is a medical issue,⁸ 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.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

¹ The Board notes that concurrently with his appeal to the Board, appellant requested reconsideration with the Office and requested a hearing with the Branch of Hearings and Review of the Office. By decision dated September 16, 2002, the Office denied appellant’s request for a hearing on the grounds that his request was untimely filed. The Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed, such as the September 16, 2002 decision in the instant case, is null and void; *see Noe L. Flores*, 49 ECAB 344 (1998).

² 5 U.S.C. §§ 8101-8193.

³ *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

⁴ *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ *See Melinda C. Epperly*, 45 ECAB 196 (1993).

⁷ *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 7.

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

The medical evidence in the instant case contains a number of reports from appellant's treating chiropractor, Dr. Krage, whose reports, however, do not contain a diagnosis of subluxation by x-ray, and section 8101(2) of the Act defines the term "physician" to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹¹ The record also includes an MRI report and carpal tunnel, EMG and nerve conduction studies that do not contain an opinion regarding causal relationship.¹² The Board therefore finds that, as the record does not contain rationalized medical evidence that relates appellant's multiple conditions to employment factors, he did not establish that he sustained an employment-related injury.

The decision of the Office of Workers' Compensation Programs dated June 14, 2002 is hereby affirmed.

Dated, Washington, DC
February 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

¹¹ *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

¹² The carpal tunnel studies, dated January 18, 2002, demonstrated normal left ulnar and bilateral thumb and index finger measures and abnormal right ulnar measures. The March 15, 2002 EMG and nerve conduction studies demonstrated bilateral carpal tunnel syndrome and the April 7, 2002 MRI demonstrated a full thickness rotator cuff tear on the right.