

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THANH K. BUI and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Palo Alto, CA

*Docket No. 02-2119; Submitted on the Record;
Issued January 24, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury on April 16, 2001 causally related to factors of her federal employment.

On September 24, 2001 appellant, then a 56-year-old nursing assistant, filed a traumatic injury claim alleging that, on April 16, 2001, she injured her lower back while helping escort a patient on a gurney. She did not stop work. By letter dated October 9, 2001, the Office of Workers' Compensation Programs informed appellant of the evidence needed to support her claim. By letter dated October 22, 2001, appellant explained that she had not provided notice of injury within 30 days because her supervisor was on maternity leave. She stated that she reported the injury to the charge nurse who suggested that she wait until the supervisor returned and indicated that she went to her doctor the next day. Appellant also submitted a medical report from Dr. Michael S. Denenberg, her treating Board-certified orthopedic surgeon.

In a decision dated November 9, 2001, the Office denied the claim, finding the medical evidence insufficient to establish that appellant sustained an employment-related injury. On December 1, 2001 appellant requested a review of the written record and submitted additional reports from Dr. Denenberg. By decision dated March 28, 2002, an Office hearing representative found insufficient medical evidence to establish causal relationship. He further noted that there was no medical evidence contemporaneous with the claimed date of injury. On May 2, 2002 appellant requested reconsideration and submitted an April 22, 2002 report from Dr. Denenberg. In a decision dated May 13, 2002, the Office denied modification of the prior decision. The Office noted that, while Dr. Denenberg stated that he had seen appellant on April 17, 2001, he did not describe the claimed work incident of April 16, 2001.¹ The Office

¹ The Office further noted that Dr. Denenberg's April 22, 2002 report was supportive of an occupational disease claim and stated that appellant had an open and accepted occupational disease claim, adjudicated by the Office under file number 13-2045800. The instant claim was adjudicated by the Office under file number 13-2037784.

concluded that the medical evidence submitted by appellant was insufficient to establish that she sustained a traumatic injury on April 16, 2001.

The Board finds that appellant failed to establish that she sustained a work-related injury on April 16, 2001.

An employee seeking benefits under the Federal Employees' Compensation 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 However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁸

Causal relationship is a medical issue,⁹ 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.¹⁰ Moreover, 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.¹¹

² 5 U.S.C. §§ 8101-8193.

³ See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

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 See *Robert A. Gregory*, 40 ECAB 478 (1989).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹⁰ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 7.

¹¹ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

Appellant's treating Board-certified orthopedic surgeon, Dr. Denenberg,¹² submitted a form report dated July 11, 2001 in which he circled a response that indicated that appellant's condition was work related and advised that she could return to work with lifting, pushing and pulling restrictions. In reports dated October 12 and November 2, 2001, Dr. Denenberg diagnosed lumbar strain with disc disease and noted appellant's complaint of increased back pain. In a report dated April 22, 2002, Dr. Denenberg stated that he had seen appellant on April 17, 2001 at which time she "noted [that] she injured her back with an increase in lumbar pain." He noted findings on examination and x-ray findings of mild arthritic changes with L4-5 disc space narrowing and stated this was a "recent reinjury to her back." He diagnosed lumbar disc disease with spondylosis and strain and sprain and noted that he was not given workers' compensation forms until October. Dr. Denenberg concluded:

"I feel that the patient has had ongoing back problems for a long period of time related to her work at [the employing establishment] and as an industrial injury. This, however, was a reinjury of her previous injury and was taken care of as such. I do believe that this back problem and reinjury should be accepted by the hospital and workers' compensation insurance."

The Board finds that appellant did not establish that she sustained an employment-related traumatic injury on April 16, 2001 as the record contains insufficient rationalized medical evidence that relates her back condition to the work incident of April 16, 2001. The Board notes that appellant has an accepted occupational disease claim for an employment-related back condition,¹³ and the medical evidence in the instant case is more relevant to such a condition as it does not contain an explanation of how the incident on April 16, 2001 caused her back condition. As appellant did not provide the necessary medical evidence to establish that the April 16, 2001 work incident caused her back condition, the Office properly denied the instant claim.

¹² Dr. Denenberg also submitted reports that contained little discussion regarding appellant's condition.

¹³ *Supra* note 1.

The decisions of the Office of Workers' Compensation Programs dated May 13 and March 28, 2002 and November 9, 2001 are hereby affirmed.

Dated, Washington, DC
January 24, 2003

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member