

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT W. COLLINS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Tomah, WI

*Docket No. 03-1454; Submitted on the Record;
Issued November 21, 2001*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an occupational disease in the performance of his federal duties.

On May 2, 2002 appellant, then a 51-year-old plumber, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he contracted hepatitis C in the course of his federal duties. Appellant wrote that he has been a housekeeper, nursing aid and plumber at the employing establishment for several years and has been exposed to body fluids in crawl spaces and inpatient care areas. Appellant added that he protects himself but he is still exposed with open cuts and sores. Appellant also said that his work is the only place he is exposed to body fluids as he is never stuck with needles and does not abuse drugs.

In a May 16, 2002 letter, the Office of Workers' Compensation Programs requested more information. In an letter from the employing establishment, received on June 10, 2002 Patrick Mulrain from the employing establishment's safety office, wrote that it is highly unlikely appellant contracted hepatitis C during the course of his employment as a plumber. He noted that his office anticipates plumbers have potential exposure to hepatitis A and B and they take precautionary measures such as providing gloves, vaccines and emphasizing hand washing. Mr. Mulrain added that hepatitis C is expected to be transmitted through blood to blood contact and there is not a lot of blood found in the waste water system to infect plumbers. Further, he added that waste water systems are hostile to hepatitis C and the virus would not be expected to survive long enough to be infective. Mr. Mulrain noted that there are many factors that increase a person's potential for contracting the disease, including being a Vietnam veteran and having tattoos. But he wrote that plumbers are not considered to be at high risk, probably because of the minimal potential for sufficient quantities of the hepatitis C blood to be in waste water system, the unlikelihood that hepatitis C could survive in the waste water for any length of time and the difficult route of exposure in this occupation.

The record contains several medical reports that discuss appellant's back pain and depression. In a November 26, 2001 report, Dr. Christopher Winslow, a psychiatrist, noted that

appellant was diagnosed with hepatitis B last year. In a May 30, 2002 report, Karen Ming, a nurse practitioner in a gastroenterology clinic, noted that appellant tested positive for hepatitis C on December 21, 2001 and he had elevated liver enzymes. Ms. Ming noted that appellant mentioned as risk factors that he has one tattoo, though he is confident that the conditions were sterile. She wrote that appellant feels the closest he came to blood to blood contact was his exposure to sewage while doing plumbing work.

In an undated letter received on June 24, 2002 appellant wrote that as a plumber he is exposed to all kinds of conditions including going into crawl spaces, over and under pipes and electrical conduits, crawling around sewage from broken sewer pipes. He noted that he is exposed to fecal matter, bloody underwear, tampons and bloody stools. Appellant noted that one time in Building 400 he was in a crawl space working on a sewer line that came from a laboratory and he was soaked from head to toe. At other times, appellant wrote, he worked on a drain line from a dental office and a morgue and was soaked by the drainage. Appellant added that sometimes he has to take apart sewage grinders and must stick his hands in clogged pumps.

Appellant wrote that as a housekeeper, he was exposed to bloody stools in Building 407 and a patient painted the bathroom with bloody feces that got on appellant when he cleaned it up.

In a July 31, 2002 decision, the Office denied appellant's claim finding the medical evidence insufficient on the issue of a causal relationship between appellant's condition and his work factors.

Appellant requested reconsideration and submitted an August 16, 2002 report from Dr. Roger Kweste, who wrote that hepatitis C is not transmitted from the environment, only via bodily fluids with some percentages of cases having no known cause of transmission. Appellant also submitted a report dated August 19, 2002 from Drs. Darren Schwartz and Eric Gaumnitz, gastroenterologists, diagnosing chronic hepatitis C.

In a December 27, 2002 decision, the Office denied modification finding the medical evidence lacked a rationalized statement causally linking appellant's medical condition to his work factors.

The Board finds that appellant has not met his burden of proof to establish that he contracted hepatitis C in the course of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are the

¹ 5 U.S.C. §§ 8101-8193.

² *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.³

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. 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.⁴

In the present case, appellant alleged that he was exposed to body fluids during his federal employment. The medical evidence provides a diagnosis of hepatitis C, but fails to provide a reasoned opinion on causal relationship between the diagnosed condition and the identified employment factors. Causal relationship is a medical issue, but the medical evidence appellant submitted does not provide a rationalized opinion that explains how appellant contracted hepatitis C from his federal employment. Dr. Kweste's August 16, 2002 report states that the disease is not transmittable via the environment, only via body fluids with some percentages of cases with no known cause of transmission. This statement is not sufficient to meet appellant's burden of proof as it does not discuss appellant's specific exposure to body fluids or explain how his exposure during federal employment caused him to contract the disease. Drs. Schwartz and Gaumnitz provide a diagnosis of hepatitis C without discussing causal relationship with employment. In the absence of probative medical evidence on causal relationship, the Board finds that appellant has not met his burden of proof in this case.

³ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The decisions of the Office of Workers' Compensation Programs dated December 27 and July 31, 2002 are affirmed.

Dated, Washington, DC
November 21, 2001

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member