

**United States Department of Labor
Employees' Compensation Appeals Board**

JOHN E. KELLY, Appellant

and

**U.S POSTAL SERVICE, POST OFFICE,
Clearwater, FL, Employer**

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**Docket No. 05-1785
Issued: November 8, 2005**

Appearances:
John E. Kelly, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 29, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' July 14, 2005 merit decision. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a basal cell carcinoma condition in the performance of duty.

FACTUAL HISTORY

On April 25, 2005 appellant, a 59-year-old distribution clerk, filed a Form CA-2 claim for benefits, alleging that he developed basal cell carcinoma caused by factors of his employment; *i.e.*, long-term exposure to the sun.

In support of his claim, appellant submitted a February 11, 2005 diagnostic test from Laboratory Corporation of America, which stated: "sections show nodular aggregates of basal neoplastic cells typical for basal cell carcinoma." The record also includes a February 22, 2005

pathology report from Dr. George P. Pavlidakey, a Board-certified dermatologist and a February 25, 2005 pathology report from AmeriPath Pathology Associates. These reports diagnosed a squamous cell carcinoma, invasive, keratoacanthoma on the skin of the left forearm.

By letter dated May 12, 2005, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from a treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a May 27, 2005 report, Dr. Pavlidakey stated that he had treated appellant for various skin problems, primarily related to the treatment of actinic keratosis and the diagnosis and treatment of basal and squamous cell carcinomas. He advised that the first skin cancer was diagnosed on March 2, 2000 as a squamous cell carcinoma on the left forearm. Dr. Pavlidakey also related that appellant was diagnosed with a basal cell carcinoma on the right upper chest on February 15, 2002 and with a basal cell carcinoma on the right upper helix on February 24, 2005. He stated that the most common cause of skin cancer and actinic keratosis (sun damage) was ultraviolet radiation. He noted that probably 85 percent of lifetime sun exposure was acquired in childhood by age 18. Dr. Pavlidakey concluded that “it was difficult for that reason to conclusively ascertain whether any one occupation was deleterious on one’s chances of developing precancerous or cancerous lesions when the majority of sun exposure was achieved prior to most people entering the work force.”

Dr. Pavlidakey attached a chapter from a medical journal pertaining to basal cell carcinoma, “*Fitzpatrick’s Dermatology and General Medicine, 5th Edition.*” Appellant submitted pathology reports from February 2002, December 2004 and February 2005, various pathology reports and treatment notes for his basal cell carcinoma from 1999 to 2005.

By decision dated July 14, 2005, the Office denied appellant’s claim, finding that appellant failed to submit medical evidence sufficient to establish that his basal cell carcinoma condition was causally related to factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that 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 *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every 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 causal relationship is usually 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

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed cervical condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵ The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a casual relationship between the two.⁶

ANALYSIS

The Board finds that appellant has failed to submit adequate medical evidence containing a rationalized, probative opinion by a physician which relates his claimed basal cell carcinoma condition to factors of his employment. For this reason, he has not discharged his burden of proof to establish his claim that this condition arose in the performance of duty.

In support of his claim, appellant submitted the May 27, 2005 report from Dr. Pavlidakey. This report, however, did not contain a probative, rationalized medical opinion that the claimed basal cell carcinoma condition was causally related to employment factors. Dr. Pavlidakey noted that he had treated appellant for various skin problems and had initially diagnosed a squamous cell carcinoma on the left forearm on March 2, 2000 and a basal cell

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

⁵ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁶ *See Ernest St. Pierre*, 51 ECAB 623 (2000).

carcinoma on the right upper chest on February 15, 2002. Appellant was also diagnosed with basal cell carcinoma on the right upper helix on February 24, 2005. Dr. Pavlidakey noted, however, the fact that the majority of sun exposure was achieved by the age of 18, prior to when most people entered the work force. He stated that it was difficult to conclusively determine that any particular type of employment made someone more susceptible to skin cancer.

Dr. Pavlidakey's opinion does not establish that appellant's claimed basal cell carcinoma condition is causally related to his exposure to sunlight or ultraviolet radiation in his federal employment. His report is of limited probative value as it did not contain sufficient medical rationale explaining how or why appellant's claimed basal cell carcinoma condition was caused or contributed to by factors of appellant's employment.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Pavlidakey's opinion is generalized in nature and equivocal. He did not state conclusively that appellant's basal cell carcinoma condition was causally related to his exposure to sunlight a ultra-violet radiation in his employment as a mail carrier. The Office therefore properly found that appellant did not sustain a basal cell carcinoma condition in the performance of duty.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the evidence required to establish his claim. However, appellant failed to submit such evidence. Accordingly, the Office properly denied his claim for compensation.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish that his basal cell carcinoma is causally related to factors of his federal employment.

⁷ *William C. Thomas*, 45 ECAB 591 (1994).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ *See id.*

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 8, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board