



employment on January 1, 2004. Appellant alleged that he was unemployed and 100 percent disabled.<sup>1</sup>

Appellant submitted a medical report dated September 22, 2004 signed by Dr. Robert Austin Gorsuch, a Board-certified osteopath, specializing in internal medicine. Dr. Gorsuch diagnosed appellant with poorly controlled diabetes, severe peripheral neuropathy, plantar fasciitis and one other condition which is illegible. In a subsequent medical report, dated June 20, 2005, he modified his diagnosis to peripheral neuropathy, plantar fasciitis, diabetes and tinnitus.

Appellant submitted no other medical evidence with his claim and by decision dated December 7, 2007 the Office denied his claim finding it was not timely filed.

Appellant disagreed and requested an oral hearing. By decision dated January 14, 2008, the Office rescinded its December 7, 2007 decision, finding that appellant's claim was, in fact, timely. By separate decision dated January 14, 2008, it denied appellant's claim because the evidence of record was insufficient to establish that he sustained an injury as defined by the Act.

Again appellant disagreed and requested an oral hearing. By letter dated April 14, 2008, the Office notified appellant that a hearing had been scheduled for May 13, 2008 at 1:30 pm.

At the hearing appellant testified that he had worked out of his vehicle, rather than in an office environment, at the Hanford Reservation while conducting investigations. He testified that it was "record of fact that dioxin was used in the Hanford area." Appellant also testified that it would be difficult to obtain a physician's report which would discuss his exposure to dioxin and provide an opinion regarding causal relationship to his current conditions as the dioxin was no longer in his system. He also noted that the Department of Veterans Affairs had a policy which presumed causal relationship upon exposure to dioxin.

By decision dated July 25, 2008, the Branch of Hearings and Review affirmed the Office's January 14, 2008 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> These are the essential

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<sup>1</sup> Appellant noted that he had previously filed the claim under Department of Labor, Energy Employee's Occupational Illness Compensation Program. After a long delay he had been informed that he was not eligible for benefits under that program.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>5</sup>

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.<sup>6</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

The issue is whether appellant met his burden of proof in establishing that he sustained severe peripheral neuropathy in his legs, hands and arms, Type II diabetes and tinnitus arising out of his work duties as an investigator at the Hanford Nuclear Reservation. The Board finds that appellant did not submit sufficient medical evidence to establish his claim.

Appellant has alleged that he was exposed to dioxin at the Hanford Reservation as he was constantly traveling around the reservation conducting investigations. The relevant medical evidence of record consists of two medical reports from Dr. Gorsuch who diagnosed appellant with poorly controlled diabetes, severe peripheral neuropathy, tinnitus, as well as plantar fasciitis. However neither medical report of record proffered a rationalized opinion concerning the causal connection between any diagnosed condition and factors of appellant's employment. The Board has consistently held that medical reports lacking a rationale on causal relationship have little probative value.<sup>8</sup>

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>8</sup> *Mary E. Marshall*, 56 ECAB 420 (2005).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup>

The Board has held that the fact that a condition manifests itself or worsens during a period of employment<sup>10</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>11</sup> does not raise an inference of causal relationship between a claimed condition and employment factors.

While appellant has urged that the Act's program adopt a presumption of causal relationship for cases which involved exposure to dioxin, such presumption would be contrary to fundamental principles of the program.

As there is no probative rationalized medical evidence addressing how appellant's alleged injury was caused or aggravated by his employment,<sup>12</sup> he has not met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to his federal employment.

### **CONCLUSION**

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty.

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<sup>9</sup> *D.I.*, 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>10</sup> *E.A.*, 58 ECAB \_\_\_\_ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

<sup>11</sup> *D.E.*, 58 ECAB \_\_\_\_ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

<sup>12</sup> *See Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review dated July 25, 2008 is affirmed.

Issued: May 15, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board