

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

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| _____   | ) |                                 |
| <b>J.L., Appellant</b>                        | ) |                                 |
|   | ) |                                 |
| <b>and</b>                                    | ) |                                 |
|   | ) | <b>Docket No. 10-715</b>        |
| <b>DEPARTMENT OF HEALTH &amp; HUMAN</b>       | ) | <b>Issued: October 21, 2010</b> |
| <b>SERVICES, CENTERS FOR DISEASE</b>          | ) |                                 |
| <b>CONTROL &amp; PREVENTION, Atlanta, GA,</b> | ) |                                 |
| <b>Employer</b>                               | ) |                                 |
| _____   | ) |                                 |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 25, 2010 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 22, 2009. Pursuant to 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 established that he sustained an injury in the performance of duty on August 21, 2009 causally related to his employment.

**FACTUAL HISTORY**

On August 26, 2009 appellant, a 50-year-old utility systems repairer and operator, filed a traumatic injury claim (Form CA-1) for a possible hernia that he attributed to an August 21, 2009 incident when, after setting down a box of files he was carrying, he experienced a sharp pain in his groin area.

On October 1, 2009 Dr. Bobby Kalb, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging scan of appellant's abdomen and pelvis revealed no etiology for abdominal pain. He also diagnosed diverticulosis.

By letter dated November 18, 2009, the Office advised appellant that further evidence was necessary to establish his claim, including a detailed medical report which provided a medical explanation as to how the incident caused the claimed injury.

By decision dated December 22, 2009, the Office accepted the identified employment incident occurred as alleged. However, it denied the claim because the evidence of record did not demonstrate that appellant's alleged condition was caused by the accepted employment incident.<sup>1</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of proof to establish the essential elements of his claim by the weight of the evidence,<sup>3</sup> including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.<sup>4</sup> As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.<sup>5</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> Second, the employee must submit

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<sup>1</sup> Appellant submitted additional evidence following the Office's December 22, 2009 decision. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). See *J.T.*, 59 ECAB 293 (2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision). New evidence can be submitted to the Office with a request for reconsideration.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>9</sup>

### ANALYSIS

The Office accepted that the identified employment incident occurred as alleged. Appellant's burden is to demonstrate that the accepted employment incident caused a medically-diagnosed injury. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence. Appellant has not submitted sufficient medical evidence supporting his claim and, consequently, has not established the requisite causal relationship.

The medical opinion evidence of record consists of a report signed by Dr. Kalb. Although he provided findings on examination and a diagnosis of diverticulosis, without diverticulitis, his report has little probative value on causal relationship because he did not explain how the accepted employment incident caused the condition he diagnosed or any other medically-diagnosed injury. For this reason, Dr. Kalb's report does not establish the required causal relationship.

The Board also notes that, although appellant alleged a possible hernia, he submitted no evidence substantiating a diagnosis of hernia.

An award of compensation may not be based on surmise, conjecture or speculation.<sup>10</sup> 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>11</sup> The fact that a condition manifests itself or worsens during a period of employment<sup>12</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>13</sup> does not raise an inference of causal relationship between a claimed condition and identified employment factors.

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<sup>8</sup> *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *Edgar G. Maiscott*, 4 ECAB 558 (1952).

<sup>11</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

<sup>12</sup> *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

<sup>13</sup> *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155, 157 (1960).

Appellant has not submitted medical opinion evidence explaining how the accepted employment incident caused or aggravated a medically-diagnosed injury. The Board finds appellant has not established the essential element of causal relationship.

**CONCLUSION**

The Board finds appellant has not established that he sustained an injury in the performance of duty on August 21, 2009 causally related to his employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board