

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES C. MARTIN and DEPARTMENT OF THE TREASURY,
U.S. MINT, Denver, Colo.

*Docket No. 97-27; Submitted on the Record;
Issued September 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant failed to establish that he sustained an injury in the performance of his duties.

On March 12, 1996 appellant, then a 51-year-old electrical equipment repairer, filed a claim for compensation (Form CA-2) alleging that on February 29, 1996, he first realized that the pinched nerve on the right side of his neck was aggravated when he carried a tool pouch on his right shoulder.

In an unsigned treatment note dated March 11, 1996, appellant was diagnosed as having a pinched nerve in the neck. The report indicated that appellant sustained pain in his right neck and trapezius in late February and that he had not fallen or experienced any trauma.

In a duty status report dated March 11, 1996, Dr. Daniel D. Lowery, an attending Board-certified internist, diagnosed right paracervical muscle and right trapezium strain with possible right cervical radiculopathy.

In a report dated March 19, 1996, Dr. Ralph R. Round, a Board-certified neurologist, noted that on physical examination the "trapezius musculature is not tender or spasmed. Cervical range-of-motion is fair and no paraspinal spasm is noted." Dr. Round noted full strength on motor examination and a "heightened sensation in the volar aspect of the middle digit of the right hand only" on sensory examination. Dr. Round diagnosed an apparent C7 radiculitis/radiculopathy.

By letter dated March 21, 1996, the Office requested appellant to submit medical evidence in support of his claim including a physician's rationalized opinion regarding the causal relationship between his claimed condition and factors of his employment. The Office also requested that appellant describe how he believed his employment-related activities contributed to his claimed condition.

In a letter dated March 26, 1996, Dr. Round noted that appellant continued to have “parastheisa of the right hand, involving the index, middle and ring finger, which for the most part is present at all times, along with some forearm pain.” Dr. Round again diagnosed probable C7 radiculopathy and indicated an MRI scan was pending. The letter failed to state whether the condition was either caused or aggravated by appellant’s working conditions.

In a letter dated April 10, 1996, Dr. Lowery stated that he saw appellant on March 11, 1996 for right shoulder and neck pain, which appellant noted “after carrying his tool pouch on the right shoulder about February 20, 1996.” Dr. Lowery indicated that appellant was being treated by Dr. Round, a neurologist, for a pinched nerve. As to the etiology of the numbness of appellant’s hands, Dr. Round stated he was unsure, but believed that appellant’s right neck and shoulder pains was due to his carrying the tool pouch.

In an undated letter received by the Office on April 17, 1996, appellant indicated that he believed his condition began when he “tried carrying my tool pouch around my neck right to left.” Appellant noted that the pouch weighed approximately 13 pounds and he carried this about 4 or 5 times per day for about one-half a block. Appellant stated that he had no injury to his right shoulder prior to carrying his tool pouch, which was new.

By letter dated April 23, 1996, the Office advised appellant that the medical evidence was insufficient as there was no discussion by his physicians regarding how his diagnosed condition was causally related to carrying tools in his employment.

By decision dated May 20, 1996, the Office denied appellant’s claim on the grounds that the medical evidence failed to establish that his claimed condition was caused by factors of his employment.¹

The Board finds that appellant has not established that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act² 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

¹ Following the Office’s May 20, 1996 decision, appellant submitted additional new evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodham*, 41 ECAB 345 (1989).

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 claimant. The medical evidence required to establish causal relationship is rationalized medical 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.⁵

In the present case, it is uncontested that appellant has a pinched nerve in his right shoulder. Appellant, however, has submitted insufficient medical evidence to establish that the diagnosed condition is causally related to carrying a tool pouch in his federal employment. None of the medical evidence, which appellant submitted provides a rationalized medical opinion, based upon reasonable medical certainty, that there is a causal connection between appellant's medical condition and the alleged workplace factors. Dr. Round diagnosed apparent C7 radiculitis/radiculopathy in his March 19, 1996 report and probable C7 radiculopathy in his March 26, 1996 report. Dr. Round did not address the cause of appellant's condition. Dr. Lowery in his April 10, 1996 report, stated he was unsure of the etiology of the numbness in appellant's hands, but believed that the neck and shoulder pain was from the tool strap. However, Dr. Lowery did not fully address the cause for appellant's pinched nerve and the basis for his conclusion that a strap attached to a tool pouch could cause or contribute to appellant's condition.

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. Causal relationship must be established by rationalized medical opinion evidence. Appellant has failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

⁵ *Id.*

The decision of the Office of Workers' Compensation Programs dated May 20, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 25, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member