

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NOEL A. ATHERTON and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, Mo.

*Docket No. 97-2724; Submitted on the Record;
Issued June 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's employment injury of May 20, 1992 caused a herniated disc or right leg injury or a consequential injury on September 1, 1992.

On the prior appeal of this case,¹ the Board found that the case was not in posture for a decision. The Office of Workers' Compensation Programs accepted that appellant sustained a left patellar bursitis as a result of a fall on May 20, 1992 while running from a dog. Appellant received benefits through June 8, 1992. The Office denied appellant's claim that the fall caused a herniated disc or a right leg condition or that it caused a consequential injury on September 1, 1992, when appellant's right knee gave way at home. The Board found that the uncontroverted medical opinion evidence of record was not sufficient to establish such injuries but was sufficiently probative to warrant further development. The Board remanded the case to the Office for further development of the medical evidence with respect to whether appellant directly injured his back on May 20, 1992 and whether he sustained a consequential injury on September 1, 1992. The facts of this case are set forth in the Board's prior decision and are incorporated herein by reference.

On remand, the Office referred appellant, together with copies of pertinent medical records and a statement of accepted facts, to Dr. James P. Emanuel, a Board-certified orthopedic surgeon, for a second opinion. In a report dated October 31, 1996, he related appellant's history of injury, medical course and current complaints. After describing his findings on physical examination and reviewing appellant's diagnostic tests, Dr. Emanuel confirmed that appellant had

¹ Docket No. 94-2152 (issued August 27, 1996).

evidence of a herniated disc at L1-2 and L2-3. On the issue of an employment-related back or right knee condition, he reported:

“I have informed the patient that I did not feel that the fall that he took on [May] 20[,] [19]92 was the direct cause of the herniated discs in his lumbar spine. The reason I say that is because the patient fell in May and did not develop any pain in his back until August. This is highly unusual for an acute herniated disc which normally causes significant immediate lower back discomfort with perhaps progressive neurologic changes over the course of several days to a week. I think the patient did sustain an injury to his knee, which was a traumatic bursitis to his left knee. Right knee, collapsing in the kitchen, I do not feel is work related. I cannot state that the reported fall of [May] 20[,] [19]92 had any significant direct relationship with the patient’s fall on [September] 1[,] [19]92. It [i]s possible that the patient’s quad weakness on the right side, secondary to the patient’s preexistent underlying herniated discs, may have caused some quad weakness that caused his leg to fall, but I cannot directly relate that to a work comp accident. I must reiterate, however, that in the patient’s history, he denies any previous back history prior to this injury. He states that he never had problems with his back prior to the fall. I do not feel the patient has any current residuals from his injured left or right knee. I think the residual from his back is that of some weakness in the quads on the right and left as well as the hamstrings on the left, as well as some numbness to light touch in the right lateral thigh.”

In a decision dated June 13, 1997, the Office denied appellant’s claim of an employment-related back injury on May 20, 1992 or a consequential injury on September 1, 1992.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an employment-related back injury on May 20, 1992 or a consequential injury on September 1, 1992.

A claimant seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ 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.⁴

Because the Office accepts that appellant sustained an injury in the performance of duty on May 20, 1992, it remains for appellant to establish that his herniated discs or right leg condition is causally related to that employment injury.

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁵

As the Board noted in its prior decision, appellant supported his claim with medical evidence relating a herniated disc and the fall at home on September 1, 1992 to the employment incident of May 20, 1992. The Board found this evidence supportive of appellant's claim but insufficient to establish the element of causal relationship in view of appellant's statements that his back did not bother him until the September 1, 1992 incident at home. Further developing the medical evidence, the Office referred appellant to Dr. Emanuel. He noted the history of injury that appellant provided. Appellant stated that he had no immediate pain after the incident of May 20, 1992 but noticed later that night that his left leg started to hurt. Appellant stated that he started to develop pain in his back in August 1992, which he described as a pain in the lower back with aching down into his right leg. Dr. Emanuel explained that this was highly unusual for an acute herniated disc, which normally causes significant immediate lower back discomfort. For this reason Dr. Emanuel concluded that the fall on May 20, 1992 was not the direct cause of the herniated discs later found in appellant's lumbar spine. The Office provided him with copies of pertinent medical records and a statement of accepted facts. The Board finds that Dr. Emanuel's opinion is based on a complete and accurate history and is sufficiently well reasoned and that it constitutes the weight of the medical evidence in this case. The medical opinion evidence supporting appellant's claim either rests on the unsupported notion that appellant's back symptoms existed since the employment injury of May 20, 1992 and were only aggravated by the fall at home on September 1, 1992, or it simply fails to reconcile an acute herniated disc injury on May 20, 1992 with the absence of low back symptoms for three months.

As the weight of the medical opinion evidence negates appellant's claim of an employment-related lumbar disc or right leg condition, appellant has not met his burden of proof.

⁵ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

The June 13, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 17, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member