U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL E. ENGLISH and DEPARTMENT OF AGRICULTURE, FOOD, SAFETY & INSPECTION SERVICE, Minneapolis, Minn.

Docket No. 96-1907; Submitted on the Record;
Issued August 6, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a low back injury or other medical condition causally related to factors of his employment.

On December 12, 1994 appellant, then a 52-year-old food inspector, filed a claim for compensation benefits alleging that the aching and pains in his back and legs were a result of the constant walking on concrete floors of the plant to which he was assigned from June 1994 to December 1994. Appellant stopped work on December 10, 1994 and has not returned.

Dr. Daniel M. Webster, a Board-certified family practitioner, initially treated appellant on December 12, 1994. Dr. Webster noted complaints of lower back and leg pain. Dr. Webster diagnosed a low back strain and ordered conservative treatment.

A December 20, 1994 computerized axial tomography (CAT) scan of the lumbar spine demonstrated only mild degenerative changes at the L2-3 through L5-S1 levels with no clear-cut evidence of focal, central, or foraminal stenosis/disc herniation.

On March 21, 1995 Dr. Richard D. Ball, Board-certified in physical medicine and rehabilitation, evaluated appellant. Dr. Ball indicated that appellant had a normal electrodiagnostic examination. He opined that appellant's symptom presentation was probably consistent with a transient type of positional radiculopathy. Dr. Ball prescribed a weight lifters belt.

In a report dated April 21, 1995, Dr. Ball noted that appellant's symptoms in his low back and leg were mostly in the daytime. Dr. Ball also noted that one focal area in the low back was consistent with myofascial etiology and, subsequently, treated appellant with a steroid injection. In a report dated May 5, 1995, Dr. Ball noted that appellant had substantial relief associated with the steroid injection. After appellant expressed misgivings as to his ability to return to work, walking on concrete floors anywhere from 10 to 12 hours per day, Dr. Ball

suggested that appellant limit his working to eight hours per day. Dr. Ball noted that appellant had applied for workman's compensation since the original onset of symptoms occurred while he was performing his work. Dr. Ball stated that he "did not see there being any significant disability associated with this, although he may need to modify some of his work habits as described above."

In a Form CA-20 report of June 20, 1995, Dr. Webster diagnosed a low back muscle pain and spasm. He indicated his support for causal relationship by checking a box "yes" and provided the notations of "walking and standing."

On June 19 and August 18, 1995, Dr. Ball administered steroid injections to appellant. On September 5, 1995 Dr. Ball noted that appellant was doing well and that he would be seen on a per needed basis.

In a September 15, 1995 report, Dr. Webster noted that he had followed appellant since December 12, 1994 for back pain. He stated that appellant's work-up to date revealed musculoskeletal diagnoses. Dr. Webster indicated that appellant was going to be evaluated by a neurosurgeon for possible surgical abnormalities, although he thought that this was not likely. Dr. Webster stated that appellant was ambulatory but unable to work a full-time job. Dr. Webster stated that, dependent upon the neurosurgeon's evaluation, appellant may be able to resume work on a part-time basis.

In a September 22, 1995 medical report, Dr. J. Eric Zimmerman, a Board-certified neurosurgeon, noted that appellant's problem was low back pain with discomfort also radiating to the right hip and on down the iliotibial track on the right side. Dr. Zimmerman stated that appellant's problems "began rather insidiously in the line of his work as an agricultural inspector. His work demanded that he be on his feet for long periods of time and the symptoms were especially severe during those times. He had to quit work … due to the severity of the discomfort when he was working." Dr. Zimmerman noted appellant's medical history and remarked that appellant's pain sounded like more of a facet disease and sacroiliac pain than it did radicular pain. After performing a neurologic examination, Dr. Zimmerman opined that appellant has myofascial arthritic pain syndrome, for which there was no surgical treatment.

The Office referred appellant, along with a Statement of Accepted Facts and the medical evidence of record, to Dr. Earl S. Rhind, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a medical report dated October 23, 1995, Dr. Rhind noted appellant's history and performed a brief general physical examination along with a through neurological and orthopedic examination. Dr. Rhind diagnosed chronic leg aches due to combination of tight achilles tendons and faulty shoeware and possible masked depression. Dr. Rhind also provided a discussion regarding appellant's medical condition:

> "Individuals with tight muscles who wear flat-soled shoes and are on their feet all day long are going to develop leg aches. This is nonoccupational and is a matter of poor conditioning and proper shoes. It is highly reversible and simply treated. He needs to wear a shoe with a somewhat elevated heel and quality orthotics. He

also needs a good personal fitness program, especially involving stretching of tight low back, hip flexor, and heel cord muscles. Aerobic fitness would also be helpful."

In response to the Office of Workers' Compensation Programs' specific inquiries, Dr. Rhind opined that appellant's employment did not cause his diagnosis. Dr. Rhind stated that appellant has remitting symptoms because of nonoccupational problems, with no worsening of his underlying condition as a result of his employment or employment activities. Dr. Rhind further noted that appellant needs to be addressed by appropriate stretching and conditioning programs. Orthotics and shoes with heels would be very beneficial. Dr. Rhind stated that he believes that all of these things are complicated by appellant's preexisting and chronic emotional situation, which needs to be further evaluated to either confirm or refute his belief that appellant's emotional background plays into or impacts upon his management. Dr. Rhind further opined that there is no evidence that appellant's emotional situation has anything whatsoever to do with his employment.

By decision dated November 16, 1995, the Office denied the claim for compensation on the basis that the evidence of record failed to establish a causal relationship between the claimed condition and appellant's employment.

In a letter dated November 27, 1995, appellant requested a review of the written record. In his request, appellant discussed his employment and his disagreement with Dr. Rhind's report. He additionally noted that his personal physician stated that his injury was the direct result of working on concrete floors, metal ladders, and metal grates.

By decision dated April 18, 1996, the Office hearing representative affirmed the Office's November 16, 1995 decision on the grounds that appellant did not meet his burden of proof to establish that he sustained a low back or other medical condition causally related to his employment.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a low back injury or other medical condition causally related to his employment.

A person who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation is caused or adversely affected by his employment.[2] This burden includes the necessity of furnishing rationalized medical opinion evidence showing a causal relationship between the alleged condition and factors of his employment which is based upon a proper medical and factual background of the claimant and a specific and accurate history of employment incidents or factors alleged to have caused or exacerbated the claimed disability.[3] The medical evidence submitted by appellant did not meet this criteria.

[1] 5 U.S.C. § 8101 *et seq.*

[2] *Birger Areskog*, 30 ECAB 571 (1979).

[3] *Philip J. Deroo*, 39 ECAB 1294 (1988); *William Nimitz, Jr.*, 30 ECAB 567 (1979).

In a form report dated June 20, 1995, Dr. Webster, appellant's treating physician, diagnosed low back pain and spasms. He indicated by checking the block marked "yes" that the condition was caused by appellant's employment. The Board has held that an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.[4] Without any explanation or rationale, such a report has little probative value and is insufficient to establish causal relationship.[5] Although Dr. Webster did include the notations of "walking and standing" as causing appellant's condition, none of Dr. Webster's reports include a specific description of employment factors alleged by appellant to have caused or contributed to his medical condition. Because the opinion of a physician must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant, Dr. Webster's notations may not be considered to be an explanation or rationale supporting the opinion on causal relationship.[6] Therefore, in light of the fact that the June 20, 1995 report is the only instance whereby Dr. Webster indicated his support for a causal relationship, Dr. Webster's June 20, 1995 report is insufficient to establish that appellant sustained an injury on December 12, 1994 causally related to his employment.

Dr. Ball and Dr. Zimmerman simply note that appellant had an onset of his symptoms while at work. The Board has held that the fact that a condition manifests itself or worsens during a period of employment[7] does not raise an inference of causal relationship between a claimed condition and employment factors. As neither physician provides a specific opinion, with supporting rationale, establishing a causal relationship between appellant's condition and his employment, their reports are insufficient to establish appellant's claim.

Dr. Rhind's medical report of October 23, 1995 specifically negates a causal relationship between appellant's condition and his employment. Dr. Rhind diagnosed chronic leg aches due to combination of tight achilles tendons and faulty shoeware and possible masked depression. He explained this diagnosis by medical rationale. Moreover, Dr. Rhind stated that appellant's remitting symptoms were nonoccuptional and that there was no worsening of his underlying condition as a result of his employment or employment activities. As Dr. Rhind's opinion regarding causal relationship was based on a complete factual and medical background and was explained by medical rationale, his opinion is of high probative value.[8]

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[9] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal

[4] *Deborah S. King*, 44 ECAB 203 (1992); *Donald W. Long*, 41 ECAB 142, 146 (1989).

[5] *Id.*

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *William Nimitz, Jr.*, *supra* note 3.

[8] *Id.*

[9] *Id.*; *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

relationship between the condition and the employment.[10] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[11] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[12] neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[13] In this case, appellant submitted no such evidence in support of his claim and therefore failed to discharge his burden of proof.

The April 18, 1996 and November 16, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 6, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[11] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[12] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[13] *See Margaret A. Donnelley*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).