

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY D. COLLINS and TENNESSEE VALLEY AUTHORITY,
Golden Pond, KY

*Docket No. 97-2202; Submitted on the Record;
Issued September 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained an injury on March 1, 1996 in the performance of duty causally related to factors of his employment.

On March 12, 1996 appellant, then a 50-year-old property maintenance worker, filed a compensation claim alleging that on March 1, 1996 he sustained an injury to his back and left leg and ankle which he attributed to bending, lifting and stooping at work on that date.

In an attachment to appellant's claim form, appellant's supervisor, Charles Massey, related that appellant had a history of back problems when he came to work at the employing establishment in 1988. He stated that appellant's back condition had been ongoing and that he continued to obtain regular medical treatment. Mr. Massey also noted that appellant had been involved in a nonwork-related automobile accident on February 15, 1996. He stated that on March 1, 1996 appellant was told to report to a campground to perform maintenance work but that appellant did not want to perform that assignment although the physical demands were within his work restrictions. Mr. Massey related that appellant was advised that he could not choose his assignments and that he appeared to be disgruntled and said "we will see." He stated that appellant was scheduled to begin work at 7:00 a.m. but did not report to the campground until 10:00 a.m. and that at 10:30 a.m. he was observed sitting in a truck listening to the radio and eating. Mr. Massey stated that appellant continued to express his unhappiness about being assigned to the campground and that after he left the work area at 3:15 p.m., the area was inspected and the only work completed was that the floor was swept and the sinks had been washed out on the men's side of the shower room. He related that on March 4, 1996 appellant telephoned the employing establishment stating that he had injured his back on March 1, 1996 while performing work at the campground but that he cited no specific incident or activity as the cause.

In clinical notes dated March 1, 1996, an unidentified physician related that appellant was experiencing back pain and left leg pain. He did not provide an opinion as to the cause of the condition.

In a report dated March 26, 1996, Dr. Melvin D. Law, Jr., an orthopedic surgeon, related that appellant had a complaint of back pain associated with left leg pain and that his leg pain had been present for approximately one year, getting progressively worse. He related that appellant had a long history of back problems commencing in 1965 while he was serving in the military and that he had experienced back problems on and off since that time. Dr. Law related appellant's statement that he was cleaning some buildings with a leaf blower on March 1, 1996 and that his back began hurting and became quite severe by the end of the day. He provided findings on examination and diagnosed degenerative disc disease of the lumbar spine at the L3-4, L4-5, L5-S1 and herniation at L4-5 with radiculopathy. Dr. Law did not provide an opinion as to the cause of the condition.

In a form report dated April 24, 1996, Dr. Law diagnosed displacement of the lumbar spine, radiculopathy and sciatica and, in answer to the question, as to whether the condition was causally related to appellant's employment he checked the block marked "yes" and wrote "According to [appellant]."

In a statement dated May 31, 1996, appellant stated that on March 1, 1996 he experienced severe pain in his lower back and left leg while performing his assigned duties. He stated that he reported the injury to the acting supervisor at approximately 3:00 p.m. on the date. Appellant stated that he had been involved in an automobile accident on February 15, 1996 but that he sustained only headaches and a feeling of being light-headed from this incident.

By decision dated July 1, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish that he had sustained a medical condition causally related to factors of his employment.

By letter dated October 21, 1996, appellant requested reconsideration of the denial of his claim and submitted additional evidence.

In a report dated July 9, 1996, Dr. Charles L. Robinette, Jr., a Board-certified radiologist, provided findings on examination and diagnosed mild degenerative disc disease and disc bulge at L3-4, moderate degeneration of the disc at L4-5 and a herniated nucleus pulposus at L5-S1. He did not provide an opinion as to the cause of the condition.

In clinical notes dated August 16, 1996, Dr. Law stated:

"[Appellant] feels quite certain that his injury in the military in 1965 was stable and [he] did work for quite a period of time and is quite certain that his ... on-the-job injury ... was what caused his current complaints and has caused the pain that he cannot get over at this point. I basically explained to him that given that history, that I did think his degeneration has become symptomatic because of this."

By decision dated February 26, 1997, the Office denied modification of its July 1, 1996 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on March 1, 1996 causally related to factors of his employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.¹ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ 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.⁵

In this case, appellant alleged that he sustained an injury to his back and left leg and ankle on March 1, 1996 which he attributed to bending, lifting and stooping at work on that date. He provided medical evidence in support of his claim.

In clinical notes dated March 1, 1996, a physician related that appellant was experiencing back pain and left leg pain. However, he did not provide an opinion as to the cause of these conditions and therefore these notes are not sufficient to establish that appellant sustained a work-related injury.

In a report dated March 26, 1996, Dr. Law, an orthopedic surgeon, related appellant's statement that he was cleaning some buildings with a leaf blower on March 1, 1996 and that his back began hurting and became quite severe by the end of the day. He provided findings on examination and diagnosed degenerative disc disease of the lumbar spine and a disc herniation at L4-5. However, he did not provide an opinion as to the cause of the condition and therefore this report does not discharge appellant's burden of proof.

In a form report dated April 24, 1996, Dr. Law diagnosed displacement of the lumbar spine, radiculopathy and sciatica. In answer to the form question as to whether the condition was causally related to appellant's employment he checked the block marked "yes" and wrote "According to the [appellant]." However, appellant's opinion as to the cause of his condition

¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

² *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

³ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *Joseph T. Gulla*, *supra* note 3.

does not constitute probative medical evidence. Dr. Law did not provide his own medical opinion as to the cause of appellant's back condition and therefore this report is not sufficient to establish that appellant sustained an injury on March 1, 1996 causally related to factors of his employment.

In a report dated July 9, 1996, Dr. Robinette, a Board-certified radiologist, provided findings on examination and diagnosed mild degenerative disc disease, a disc bulge and a herniated disc. However, he did not provide an opinion as to the cause of the condition and therefore this report is not sufficient to discharge appellant's burden of proof.

In clinical notes dated August 16, 1996, Dr. Law stated his opinion that appellant's degenerative disc condition had become symptomatic due to his job. However, he failed to provide sufficient medical rationale in support of his opinion and, therefore, his opinion is of limited probative value and is not sufficient to establish that appellant sustained an injury on March 1, 1996 in the performance of duty.

The February 26, 1997 and July 1, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 20, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member