

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES E. WEIMER and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Minneapolis, MN

*Docket No. 98-1311; Submitted on the Record;
Issued February 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained an injury in the performance of duty on July 24, 1992 causally related to factors of his employment.

On July 2, 1993 appellant, then a 55-year-old electronic technician, filed a claim for compensation benefits alleging that on July 24, 1992 he sustained an injury to his low back when he was traveling in a government vehicle across an airport.

By decisions dated May 3 and August 30, 1994, July 19, 1995 and September 23, 1996, the Office of Workers' Compensation Programs denied appellant's claim.

By letter dated September 20, 1997, appellant requested reconsideration of the denial of his claim and submitted additional evidence. The Office denied modification of its prior decision on December 11, 1997.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury on July 24, 1992 in the performance of duty.

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

¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

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).

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 a report dated August 28, 1992, Dr. Charles D. Officer, appellant's attending Board-certified family practitioner, related that appellant had a long history of chronic low back pain. He provided findings on examination and diagnosed low back pain of a type undetermined. He did not provide an opinion as to the cause of the condition. Therefore, this report does not establish that appellant sustained an employment-related injury on July 24, 1992, as alleged.

In a report dated September 15, 1992, Dr. Steve A. Wilson related that appellant had a long history of back pain worsening over the last several years. He provided findings on examination and noted that a September 3, 1992 computerized tomography (CT) scan of the lumbar spine revealed a disc herniation at L4-5. However, Dr. Wilson provided no explanation as to how this condition occurred and therefore this report does not discharge appellant's burden of proof.

In undated notes submitted on October 12, 1992, by Dr. Robert M. Barnett, a Board-certified orthopedic surgeon, related that appellant had a long history of low back pain which had become more persistent and intense. He provided findings on examination and stated that a CT scan demonstrated a moderate disc herniation with impingement on the right L5 nerve root but noted that appellant's symptoms were "not clearly consistent with his CT findings." As Dr. Barnett did not provide a rationalized opinion explaining how appellant's condition was causally related to his employment, this report does not establish a work-related injury on July 24, 1992.

In a report dated May 3, 1994, Dr. Officer noted that appellant had experienced intermittent low back pain over the last couple of years and that a CT scan in 1992 revealed a herniated disc. He noted that appellant had recently driven home from South Dakota and developed severe pain in his back. Dr. Officer provided findings on examination and diagnosed a history of a herniated disc. As he did not opine that appellant's condition was causally related to his employment, this report does not establish that he sustained a work-related injury.

In a report dated October 3, 1994, Dr. Officer related that he first saw appellant on August 28, 1992 and that appellant related a history of chronic low back pain. He stated, "There was no discussion of work-aggravated conditions concerning his back on this date." Dr. Officer related appellant's complaint that just prior to his examination on May 3, 1994 he was driving home from another state and developed severe pain in his back. He provided findings on examination and stated, "I am unable to make any kind of determination about whether this is connected with his work in view of the chronicity of the complaint." As Dr. Officer was not able to determine that the condition was causally related to appellant's employment, this report does not discharge appellant's burden of proof. Moreover, Dr. Officer noted that at the time of his August 28, 1992 report, just one month after the claimed injury, appellant did not give a history of any employment incident as the cause of his back problems.

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

⁵ *Joseph T. Gulla*, *supra* note 3.

In a report dated December 28, 1994, Dr. Wilson related that appellant first injured his back while on military duty in 1960 and had been diagnosed with chronic intermittent back strain since that time but that the back strain had never been incapacitating. He related that on July 24, 1992, while in work status, appellant was riding in a vehicle which dropped suddenly into a depression and he felt significant low back pain. Dr. Wilson provided findings on examination and stated his opinion that appellant's condition was work related. However, he provided insufficient medical rationale explaining how appellant's condition was causally related to the claimed incident on July 24, 1992. This is particularly important in light of the fact that in his September 15, 1992 report, less than two months after the claimed incident, Dr. Wilson did not relate any work-related history for appellant's back problem, noting only that appellant had a long history of back pain. Therefore, this report is not sufficient to establish that appellant sustained an employment-related injury on July 24, 1992.

In a statement dated September 4, 1997, Mr. Thomas E. Ilika, appellant's supervisor, stated that appellant's job required him to drive over irregular terrain and related that on July 28, 1992 appellant advised him that he may have sustained an injury on July 24, 1992 while driving at work. He related appellant's explanation that the almost 18-month delay in filing the claim was due to a desire to ascertain whether the back pain was due to the claimed incident on July 24, 1992 or to his preexisting back condition and to difficulty in scheduling a medical examination. In a letter dated September 8, 1997, Dr. Officer stated, "After reading Mr. Ilika's letter concerning [appellant's] injury, it seems reasonable to assume that his disability was due to the injury at work on [July 24, 1992]." However, Dr. Officer provided no medical rationale explaining how appellant's condition was causally related to the July 24, 1992 incident. Therefore, this letter is not sufficient to establish that appellant sustained an injury in the performance of duty on July 24, 1992 causally related to factors of his employment. Accordingly, the Office's December 11, 1997 denial of modification will be affirmed.

The December 11, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 10, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson

Member