

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WINFRED O. BRISTOW, JR. and DEPARTMENT OF THE ARMY,
PINE BLUFF ARSENAL, Pine Bluff, AR

*Docket No. 99-152; Submitted on the Record;
Issued October 23, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on November 30, 1994 as alleged.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on November 30, 1994.

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

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

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

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

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

⁵ *Id.*

On December 13, 1994 appellant, then a 56-year-old public affairs clerk, filed a traumatic injury claim alleging that he sustained an injury to his back on November 30, 1994 when he placed his hand on a door knob, turned to look at a coffee pot, and felt severe pain in his back. By decision dated March 22, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence of record did not establish that he sustained a medical condition due to the incident on November 30, 1994. By decisions dated May 24 and August 1, 1995, the Office denied modification of its denial of appellant's claim. By letter dated August 14, 1995, appellant filed an appeal with the Board. On May 20, 1998 the Board issued an order remanding the case for reconstruction and proper assemblage of the case record and a *de novo* decision in order to protect appellant's appeal rights.⁶ On August 11, 1998 the Office issued a decision denying appellant's claim on identical grounds as the March 22, 1995 decision.

Regarding the medical evidence, in emergency room notes dated November 30, 1994, a physician related that appellant was walking out a door when he turned his body to look behind him and felt acute low back pain. However, the physician did not make a diagnosis and did not opine that appellant's low back pain was caused by the incident at work. Therefore, these notes are insufficient to establish that appellant sustained an injury on November 30, 1994 causally related to his employment.

In notes dated December 2, 1994, Dr. Paul W. Davis, appellant's attending Board-certified family practitioner, related that he was having pain in his lower back with radicular pain down the right leg and that the pain was described by appellant as similar to the pain he felt in the early 1960's and 1982 when he had back surgeries. He noted that no precipitating factor for appellant's previous back condition had been found. He provided findings on examination but did not give a history of injury or a diagnosis of the condition and he did not provide an opinion as to the cause of the condition. Therefore these notes are not sufficient to establish that appellant's back problem was causally related to the incident on November 30, 1994.

A radiology report dated December 6, 1994 indicated that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed generalized degenerative disc disease with increased soft tissue in the lateral portion of the right neuroforamen of L3-4 but no acute posterior disc herniation. The report noted that if appellant had undergone previous surgery in that area and that the findings could represent post surgical scar tissue. As this report does not attribute appellant's back condition to the November 30, 1994 employment incident, it is not sufficient to discharge his burden of proof.

In a report dated December 20, 1994, Dr. Earl Peeples, a Board-certified orthopedic surgeon, related that appellant had a history of problems with his spine which included previous back surgeries in 1960, 1961 and 1982. He related that appellant felt low back pain in late November 1994 and had also experienced right leg pain since that time. Dr. Peeples related that the pain in November 1994 "was triggered apparently by minor twisting injuries." He noted that x-rays revealed degenerative disc disease at multiple levels and an MRI scan performed on December 6, 1994 revealed no fresh disc herniation and that there was evidence of old scar and

⁶ Docket No. 95-3046 (issued May 20, 1998).

other changes consistent with previous surgery and hypertrophic degenerative changes in the spine. Dr. Peeples provided findings on examination and indicated that appellant appeared to have an irritation of the right sciatic nerve. However, Dr. Peeples provided no definite diagnosis and did not opine that appellant's back problem was causally related to the incident on November 30, 1994. Therefore, this report does not establish that appellant's claimed back condition was causally related to the November 30, 1994 employment incident.

In a report dated February 14, 1995, Dr. F. Richard Jordan, a Board-certified neurosurgeon, related appellant's complaints of back and right leg pain. He related that appellant was getting ready to leave an office and twisted his upper body without moving his lower extremities and had the acute onset of back and bilateral leg pain. Dr. Jordan noted that appellant underwent surgery in 1986 for a herniated disc in the lumbar back and cervical disc surgery in 1992. He provided findings on examination and noted that an MRI scan revealed a herniated disc at L3-4 and that surgery had been scheduled for February 17, 1995. However, Dr. Jordan did not provide an opinion as to the cause of the condition or whether it was related to the November 30, 1994 employment incident. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated May 9, 1995, Dr. Jordan related that appellant was at work preparing to go from one office to another with some records in his hand and, prior to exiting the room, he had one hand on the door and twisted to see if he forgot something from his desk and had the acute onset of pain in the back and leg. He stated his opinion that appellant's herniated disc was caused by the November 30, 1994 incident as he did not have any preexisting condition that could have caused it and he had recovered from his 1986 back surgery. However, Dr. Jordan did not provide sufficient medical rationale explaining how appellant's condition was causally related to the November 30, 1994 incident at work. Such rationale is particularly important in light of appellant's long history of back problems dating as far back as the 1960's. Additionally, he failed to explain his opinion that appellant had a herniated disc in light of the fact that he noted in his December 20, 1994 report that the MRI performed on December 6, 1994 showed no disc herniation. Therefore this report is not sufficient to discharge appellant's burden of proof.

In a report dated May 22, 1995, Dr. Peeples stated his opinion that appellant's herniated disc was caused by the incident at work on November 30, 1994 when he twisted his back. However, he did not provide sufficient medical rationale explaining how the incident at work caused a disc herniation. Additionally, he failed to explain his opinion that appellant had a herniated disc in light of the fact that he noted in his December 20, 1994 report that the MRI performed on December 6, 1994 showed no disc herniation. Due to these deficiencies, this report is not sufficient to establish that appellant sustained a herniated disc or any other back condition causally related to the November 30, 1994 employment incident.

The decision of the Office of Workers' Compensation Programs dated August 11, 1998 is hereby affirmed.

Dated, Washington, DC
October 23, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member