

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS L. HICKS and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 99-1722; Submitted on the Record;
Issued October 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained a back condition causally related to factors of his federal employment.

On September 27, 1997 appellant, then a 58-year-old mailhandler, filed a notice of occupational disease and claim for compensation alleging that he sustained a herniated disc at C5-6 in the performance of duty. Appellant noted on his CA-2 form that he was required in his job to push around various equipment and to stoop down in a crouched position to connect a motorized mule to pull equipment. He indicated that he first realized that his back condition was attributable to his work duties on February 15, 1997.

In a February 27, 1997 treatment note, Dr. Jeffrey Oppenheim, a Board-certified family practitioner, indicated that appellant was followed in the past for a muscle injury to the neck and shoulder. He reported that for the past several days appellant complained of tingling in the first and second digit of the left hand down to the fingers and up his arms, "all related to work." Dr. Oppenheim tentatively diagnosed carpal tunnel syndrome and prescribed appellant a splint for his left arm.

An x-ray of the cervical spine taken March 10, 1997 revealed old spurring at C5-6 and C7. The March 10, 1997 x-ray was noted to be unchanged as compared to a previous film of August 1996.

In a report dated April 7, 1997, Dr. Larry Janoff, a Board-certified neurologist, noted that he examined appellant at the request of Dr. Oppenheim. Dr. Janoff related that, on or about February 14, 1977 one hour after looking under the dashboard of a car in a distorted position, appellant developed pain in the left upper extremity, which increased in quality over the next several months. Dr. Janoff noted that appellant had a history of gunshot wound to the neck, which resulted in an irregular scar at the "11 o'clock position" between the left supraclavicular,

scapular and upper thoracic area. He reported physical findings and stated that appellant seemed to have C6-7 type of radiculopathy.

A magnetic resonance imaging (MRI) of the cervical spine was taken on May 1, 1997 and showed a moderate left paracentral disc herniation at C5-6 with evidence of cord impingement. In a report dated May 7, 1997, Dr. Janoff noted that appellant's cervical disc herniation would be a causal factor for his left upper extremity discomfort.

Appellant was subsequently prescribed a two-piece collar, physical therapy and a home traction exercise kit by Dr. Arnold Berman, an orthopedist, who reviewed appellant's May 1, 1997 MRI and opined that it showed evidence of a degenerative and herniated disc. He indicated that appellant could perform light duty.

In a May 9, 1997 report, Dr. Janoff diagnosed a C5-6 herniated disc with radicular pain. He agreed that appellant should wear a neck collar but opined that appellant would be unable to work as he could not drive a truck with his collar on.

A nerve conduction study and electromyography performed on May 29, 1997 was interpreted as showing mild denervation at the mid C5-6 cervical paraspinal muscles. The study also suggested "a more proximal lesion in the brachial plexus involving the medial cord or lower trunk area."

In a report dated June 3, 1997, Dr. Janoff noted that appellant was about 25 percent improved with continuing complaints of radicular pain down the left arm. He noted that appellant had returned to work on light duty with 10-pound lifting restriction.

Treatment notes dated July 2 and August 22, 1997 from Dr. Oppenheim indicated that appellant was treated for radicular pain in his left arm and groin pain. He noted that appellant had a herniated disc in the lumbar spine but did not address the issue of causation.

In an August 28, 1997 report, Dr. Janoff noted that there was considerable improvement in appellant's arm discomfort, with occasional tingling but no pain. He cautioned appellant against lifting any weights above his head.

By letter dated November 3, 1997, the Office of Workers' Compensation Programs requested that Dr. Oppenheim prepare a report addressing the nature of appellant's diagnosed condition and whether it was causally related to appellant's federal employment.

In a decision dated January 5, 1999, the Office denied appellant's claim for compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's back condition and factors of his federal employment.

Appellant requested a hearing, which was held on September 22, 1998. An Office hearing representative advised appellant of the type of medical evidence he needed to submit to support his claim and provided appellant with 30 days posthearing to submit that evidence.

In a report dated October 28, 1997, which was submitted as exhibit A by appellant posthearing, Dr. Oppenheim noted that appellant had been treated for approximately one year for a herniated disc at L5-S1. He summarized appellant's medical history and course of treatment for degenerative back disease and a herniated disc. He stated: "About the relationship between [appellant's] symptoms and his work as a mailhandler, a job which requires him to push various pieces of equipment, it is certainly possible that there is a relationship between his work and the symptoms he is feeling now."

In a decision dated January 28, 1999, an Office hearing representative affirmed the Office's January 5, 1998 decision denying compensation benefits.

The Board finds that appellant failed to establish that he sustained a back condition causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of a disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.⁴

The medical evidence required to establish causation, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

¹ 5 U.S.C. §§ 8101-8193; *see* 20 C.F.R. § 10.115-116 (1999).

² *See Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Woodhams*, *supra* note 3.

nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁵

In the instant case, the Office properly found that appellant did not provide rationalized medical evidence that his back condition was caused by factors of his employment. In support of his claim, appellant submitted medical treatment notes from his treating physician, Dr. Janus, who indicated that appellant suffered from a herniated disc but did not attribute that condition to appellant's work duties. Dr. Janus offered no opinion as to whether appellant sustained a herniated cervical disc or any other condition causally related to the factors of appellant's employment as described on the CA-2 form.

Furthermore, although Dr. Oppenheim's opined that there was a "possibility" of a relationship between appellant's symptoms and his work factors, Dr. Oppenheim's opinion must be deemed speculative and, therefore, insufficient to carry appellant's burden of proof on causation. The Board has held that speculative medical opinions have only limited probative value in determining the issue of causal relationship.⁶

Neither the fact that appellant's back conditions became apparent during a period of employment, nor the belief of appellant that his conditions were caused or aggravated by employment conditions, is sufficient to establish causal relationship.⁷ Because there is insufficient medical evidence to establish a causal relationship between appellant's back condition and his employment, the Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty.

⁵ *Id.*

⁶ The Board has often held that an opinion, which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur Vilet*, 31 ECAB 366 (1979).

⁷ *Woodhams*, *supra* note 3.

The decision of the Office of Workers' Compensation Programs dated January 28, 1999 is hereby affirmed.

Dated, Washington, DC
October 24, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member