

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGEL GUNTER and DEPARTMENT OF VETERANS AFFAIRS,
ALVIN C. YORK MEDICAL CENTER, Murfreesboro, TN

*Docket No. 00-1367; Submitted on the Record;
Issued March 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained a back condition as a result of an employment injury on November 13, 1997.

On December 15, 1997 the Office of Workers' Compensation Programs received a traumatic injury claim filed by appellant, then a 36-year-old pharmacy technician, alleging that on November 13, 1997 she "turned to pick up a box from the line and felt a sharp pain in her buttock and left leg."

By letter dated December 30, 1997, the Office wrote to appellant and appellant's employer requesting additional factual and medical information.

By decision dated February 11, 1998, the Office denied appellant's claim stating that the evidence of record did not establish a fact of injury since the evidence did not provide a diagnosis for appellant's condition.

By letter dated February 19, 1998, appellant requested reconsideration. In support of her request, she submitted various factual and medical information, including several reports from Dr. James L. Rungee, a Board-certified orthopedic surgeon, dated December 8, 1997 and January 14, 1998, diagnosing appellant with spondylolisthesis. In the December 8, 1997 report, Dr. Rungee opined that appellant's condition was congenital in nature.

By decision dated May 7, 1998, the Office denied appellant's claim. The Office found that the medical evidence did not establish a causal relationship between the diagnosed condition and appellant's employment.

By letter dated June 5, 1998, appellant requested reconsideration. In support of her request, she submitted a report from Dr. Rungee dated May 28, 1998, which stated: "I again explained to [appellant] that the spondylolisthesis that she has was not caused by her episode of work, although it conceivably could have been exacerbated by it."

By decision dated October 22, 1998, the Office denied modification of the prior decision, stating that the report from Dr. Rungee was insufficient to support a causal relationship between appellant's condition and the work incident of November 13, 1997.

By letter dated September 13, 1999, appellant's representative requested reconsideration. In support of the request, he submitted a medical report from Dr. Timothy P. Schoettle, a Board-certified neurological surgeon, dated January 11, 1999. Dr. Schoettle stated that he had treated appellant intermittently since November 1988 for complaints of back and leg pain. The report stated that appellant's "primary pain generator is a Grade I to II spondylolisthesis at L5-S1 that became symptomatic for the first time in September 1988, related to a work injury while pulling a mail cart weighing 400 pounds." He stated that appellant had also had intermittent flare-ups of pain, specifically in 1989 and 1995, and most recently with an episode in November 1997. Dr. Schoettle further opined: "this is a congenital condition that was asymptomatic and was brought into disabling symptomatology on an intermittent basis by her work accident that occurred in 1988."

By decision dated December 13, 1999, the Office denied modification of the prior decision stating that the medical evidence established that she had a congenital back condition not caused by her employment.¹

The Board finds that appellant has not established that her back condition is causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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 period 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.⁵ Second, the employee

¹ The Office's December 13, 1999 decision indicates that appellant suffered an injury on September 19, 1988.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

The medical evidence required to establish a causal relationship 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

In the present case, appellant submitted reports from Dr. Rungee dated December 8, 1997, January 14 and May 28, 1998. In the December 8, 1997 report, Dr. Rungee diagnosed appellant with "symptomatic L5 spondylolisthesis, Grade I," stating: "I explained that her problem is congenital, although it has been somewhat aggravated by her work. She is [sic] certainly, with the diagnosis given her in 1988, should not be doing work where she is forced to repetitively bend, lift and twist with her back." He stated that he had explained to appellant that she was at risk for a ruptured disc or exacerbation of her spondylolisthesis if she did not restrict her work activities. On January 5, 1998 Dr. Rungee noted that appellant was doing well after having worked on a restricted basis. He stated that he had spoken "very pointedly" with appellant regarding her congenital back condition and the need for permanent restrictions. Dr. Rungee concluded that appellant will require permanent restrictions, but that "she will have no permanent partial impairment as a consequence of her aggravation of her congenital spine problem. In the January 14, 1998 report, Dr. Rungee examined appellant and stated: "clinically she can flex today to 90 degrees. She has no tenderness or spasm, but aches across the lower aspect of her back. Her neurologic exam[ination] is unchanged." He diagnosed appellant with "known spondylolisthesis." In the May 28, 1998 report, Dr. Rungee stated: "I again explained to her that the spondylolisthesis that she has was not caused by her episode of work; although it conceivably could have been exacerbated by it." In his reports Dr. Rungee did not provide medical rationale explaining the nature of the relationship between appellant's current diagnosed condition and the specific employment factors of her federal employment, nor did he explain how or why the diagnosed spondylolisthesis may have been aggravated by her work.

Dr. Rungee has opined that appellant has a congenital spondylolisthesis which was made symptomatic by work activities. The Board has held that, although work activities may produce symptoms revelatory of an underlying condition, it does not raise an inference of causal relation.⁹ To establish causal relation where a preexisting condition is allegedly aggravated by work, a

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁷ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *Lucrecia M. Nelson*, 42 ECAB 583 (1991).

rationalized medical opinion must explain how the underlying condition was aggravated by the work activity. When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect which the employment factors might have on the underlying condition. Under such circumstances, his disqualification for continued employment is due to the underlying condition, without any contribution by the employment.¹⁰

By office note dated January 5, 1998, Dr. Rungee reported that appellant would have “no permanent partial impairment” due to aggravation of her congenital condition. He also did not support a finding that appellant’s work incident of November 13, 1997 caused a temporary aggravation of her underlying spondylolisthesis condition. On May 28, 1998 Dr. Rungee merely speculated that while her spondylolisthesis was not caused by work, it could have “conceivably” been exacerbated by it. A speculative opinion, without medical justification, is insufficient to establish causal relation.¹¹ Dr. Rungee noted in several of his reports that he had discussed with appellant the congenital nature of her condition and her need to avoid certain physical activities to prevent further injury. It is clear that Dr. Rungee was limiting appellant’s work, due to her underlying congenital condition, which is not a basis for payment of compensation benefits.

Appellant also submitted a report from Dr. Schoettle dated January 11, 1999. In his report Dr. Schoettle stated that appellant’s diagnosed spondylolisthesis became symptomatic for the first time in September 1988 when appellant injured herself while pulling a 400-pound mail cart. He further stated that in the course of her normal work activities appellant had intermittent flare-ups of pain in 1989, 1995 and November 1997. Dr. Schoettle did not specifically mention the incident on November 13, 1997. He further opined: “this is a congenital condition that was asymptomatic and was brought into disabling symptomatology on an intermittent basis by her work accident that occurred in 1988.” Dr. Schoettle did not provide sufficient medical rationale explaining how appellant’s current condition is related to her 1988 injury, nor did he establish how appellant’s underlying condition was aggravated as a result of her injury on November 13, 1997.

As appellant did not establish that her back condition after November 13, 1997 was causally related to her lifting incident of that date, appellant did not meet her burden of proof.

¹⁰ *John Watkins*, 47 ECAB 597 (1996).

¹¹ *Alberta S. Williamson*, 47 ECAB 569 (1996).

The decision of the Office of Workers' Compensation Programs dated December 13, 1999 is hereby affirmed.

Dated, Washington, DC
March 22, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member