

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JEFFREY L. BROWER and DEPARTMENT OF THE INTERIOR,  
U.S. GEOLOGICAL SURVEY, Denver, CO

*Docket No. 02-561; Submitted on the Record;  
Issued May 6, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury on or about July 11, 2000 causally related to factors of his federal employment.

On January 31, 2001 appellant, then a 47-year-old hydrologic technician, filed a claim alleging that he was exposed to an infectious agent which resulted in his illness while working at the stream flow gaging station at either Ponil Creek near Cimarron, Cimarron River at Springer, or in the town of Cimarron. He noted that his illness has yet to be diagnosed. A witness statement given by Scott Kimball related that appellant, another coworker, and himself worked on the above gaging stations and provided comments on the conditions of such stations, including the odor and condition of the water from the stream and gage pool. Mr. Kimball additionally related that "reports earlier in the year on both the television news and in the Albuquerque paper told of sewage that had flowed into the Cimarron River from the city sewage facility." He additionally related that there was a definite rotten odor to the water. In a decision dated March 26, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence of file was insufficient to establish that appellant's condition was causally related to appellant's employment activity. The Office specifically noted that none of the medical records included a physician's opinion explaining how the claimed event caused appellant's medical condition. Appellant requested reconsideration and submitted additional medical evidence. By decision dated November 20, 2001, the Office denied modification of its previous decision.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that he sustained an injury causally related to factors of his federal employment.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>1</sup> The Board has held that the mere fact that a disease or

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

condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>2</sup> Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated his condition is sufficient to establish causal relationship.<sup>3</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,<sup>4</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>5</sup>

In the present case, appellant indicated that his claimed condition (a persistent intestinal flu) was self-diagnosed as the flu, but got progressively worse over a period of months. He indicated that after he spoke with his other coworkers and noted that they also experienced similar symptoms such as an inability to hold food down, diarrhea, fever, weakness, dizziness, headaches, fatigue and weight loss, did they discover the source. Progress notes from Dr. Howard K. Gogel, an gastroenterologist, and St. Joseph Health Care document appellant's symptoms of infectious gastroenteritis and contain notations of appellant working on the river and possible exposure to waste water, but fail to relate the possible sources of this condition or provide an explanation as to how appellant's claimed condition was caused or contributed to by appellant's federal employment. A medical report of Dr. Barry Weiss, a Board-certified internist specializing in gastroenterology, documenting the results of his March 12, 2001 examination of appellant was also provided. Dr. Weiss noted that last year, on July 11, 2000, appellant and two of his colleagues were performing work for their employer in a stream that had river water which was foul smelling and looked polluted. In the last week of July, appellant developed diarrhea, vomiting, dizziness, low grade fevers to 99 to 100 degrees, fatigue and body aches. He also developed upper abdominal cramping followed eventually by lower abdominal cramping and a lot of borborygmi. Appellant's symptoms have persisted since that time. Dr. Weiss noted appellant's medical history and advised that all test studies were negative. He noted that two of appellant's colleagues who were with him on July 11, 2000 also manifested similar illnesses. Dr. Weiss provided his examination findings. He stated:

“This patient developed an acute illness last July and around the same time two of his coworkers developed similar illnesses. Nothing has been found by any of the tests on any one of these three patient's, as one is a patient I [ha]ve already seen and the other is by this patient's history.... It certainly sounds like he picked up some sort of infectious illness. It [i]s certainly possible he could have picked it up in the water he was working, although with a bacterial illness, you would think he

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<sup>2</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>3</sup> *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>4</sup> *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

<sup>5</sup> *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

would've gotten sick sooner and with a viral illness, one would have thought that it would have disappeared certainly by now, although the prevention of teaching that bacterial pathogens usually are a self-limited illness that I [a]m sure there are exceptions to this, and I have seen patient's who have had prolonged diarrhea from presumed pathogens.”

Dr. Weiss then outlined his treatment plan. The evidence presented by appellant from Dr. Weiss is equivocal and speculative in nature as he said it was “certainly possible” appellant could have picked up an infectious illness in the water he was working.<sup>6</sup> He did not provide an explanation of the cause of appellant’s claimed condition or how it was caused or contributed to by appellant’s federal employment. The report of Dr. Weiss does not support that appellant’s condition was causally related the work factors identified by appellant, working in foul smelling water on July 11, 2000. As appellant has not established that his claimed condition was related to this factor of his federal employment, he has not met his burden of proof.<sup>7</sup>

The decisions of the Office of Workers’ Compensation Programs dated November 20 and March 26, 2001 are hereby affirmed.

Dated, Washington, DC  
May 6, 2003

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Ern Reynolds*, 45 ECAB 690, 696 (1994); *Charles A. Massenzo*, 30 ECAB 844 (1978).

<sup>7</sup> The Board notes that appellant’s appeal to the Board was accompanied by new evidence. The Board’s jurisdiction on appeal is limited to a review of the evidence which was in the case record before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c). Therefore, the Board is precluded from reviewing this evidence. Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).