

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALLEN D. McCOSKEY and U.S. POSTAL SERVICE,
POST OFFICE, Malibu, CA

*Docket No. 03-1462; Submitted on the Record;
Issued September 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a medical condition in the performance of duty.

On December 16, 2002 appellant, then a 52-year-old distribution clerk, filed a notice of occupational disease, alleging that he sustained an employment-related medical condition. He indicated that he worked for eight years from 8:00 a.m. to 5:00 p.m., Monday through Friday and then was required to work from 5:00 a.m. to 1:30 p.m., Monday through Thursday and Saturday. Appellant noted that he had grand mal epilepsy diagnosed in 1975 and stated:

“The drastic change in schedule disrupted my timing for medication, meals, sleep pattern and other routines. These changes increased my risk of seizure activity -- indications of such activity included dizzy spells, severe and constant headaches, as well as digestive problems and high blood pressure.”

Appellant indicated that he first became aware of the employment-related nature of his condition on May 21, 2001 and he stopped work on May 24, 2001. The employing establishment noted that appellant had only worked three days on a 5:00 a.m. to 1:30 p.m. shift before stopping work. It noted that, beginning May 29, 2001 appellant would have been able to work 9:00 a.m. to 6:00 p.m., Monday through Friday.

In support of his claim, appellant submitted a January 22, 2002 report of Dr. Gunnar Heuser, an attending Board-certified internist, who indicated that he first treated appellant in January 1980, at which time he was diagnosed with grand mal epilepsy.¹ He noted that appellant's condition was eventually controlled through appropriate medication and lifestyle, including control of his diet, daily activities, sleep and emotional state. Dr. Heuser indicated that

¹ Dr. Heuser indicated that appellant first experienced seizures in 1975, which were accompanied by loss of consciousness.

appellant worked from 8:00 a.m. to 5:00 p.m., Monday through Friday, without window service or driving and that in May 2001; he was assigned to work from 5:00 a.m. to 1:30 p.m. Monday through Thursday and Saturday. He further stated:

“This new assignment disrupted his schedule in terms of timing of medication, sleep pattern, meal times and other routines. All these changes increased his risk of seizure activity. That is why he went on sick leave.”

* * *

“From a medical point of view, [appellant] should be returned to an 8:00 a.m. to 5:00 p.m., Monday through Friday work schedule without overtime. His work schedule should not include driving and should not include window service.”

By letter dated March 6, 2003, the Office of Workers’ Compensation Programs requested that appellant submit additional factual and medical information within 30 days of the date of the letter. Appellant advised the Office that he felt he had adequately supported his claim, but he did not submit any additional evidence within the allotted time. By decision dated May 2, 2003, the Office denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a medical condition in the performance of duty.²

The Board finds that appellant did not meet his burden of proof to establish that he sustained a medical condition in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing the essential elements of his 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 the disease or condition for which compensation is claimed; (2) a factual

² It appears that the Office accepted as an employment factor, the fact that appellant’s work shift was changed in May 2001. The Board has held that a change in an employee’s work shift may under certain circumstances be a factor of employment to be considered in determining if an injury has been sustained in the performance of duty; *see Gloria Swanson*, 43 ECAB 161, 165-68 (1991); *Charles J. Jenkins*, 40 ECAB 362, 366 (1988). It should be noted, however, that it appears that appellant had only worked three days on a 5:00 a.m. to 1:30 p.m. shift before stopping work on May 24, 2001.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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 the 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 the claimant. 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.⁶

In the present case, appellant did not submit sufficient evidence to establish that employment factors caused or aggravated his grand mal epilepsy or such claimed conditions as dizzy spells, headaches, digestive problems and high blood pressure.⁷ In support of his claim, appellant submitted a January 22, 2002 report of Dr. Heuser, an attending Board-certified internist. Dr. Heuser indicated that appellant had grand mal epilepsy since 1975, a condition which had been controlled through appropriate medication and lifestyle, including control of his diet, daily activities, sleep and emotional state. He then indicated that appellant went on sick leave because his new work shift disrupted his schedule regarding the timing of his medication, sleep pattern, meal times and other routines such that he had "an increased his risk of seizure activity." Dr. Heuser recommended that appellant be allowed to work from 8:00 a.m. to 5:00 p.m., Monday through Friday.

Dr. Heuser's report is of limited probative value because he did not provide a clear opinion that appellant's change in work shift or any other employment factor actually caused or aggravated a specific condition.⁸ In essence, he provided a speculative opinion that appellant's grand mal epilepsy condition could at some point in the future be affected by the change in his work shift. It is well established that the possibility of future injury constitutes no basis for the payment of compensation⁹ and a speculative opinion on causal relationship is of limited probative value.¹⁰ In addition, Dr. Heuser's report and any ostensible opinion on causal

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ As noted above, it has been accepted that in May 2001, appellant changed from working 8:00 a.m. to 5:00 p.m., Monday through Friday, to working 5:00 a.m. to 1:30 p.m., Monday through Thursday and Saturday. However, he only worked this new schedule for three days before stopping work on May 24, 2001.

⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁹ *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

¹⁰ See *Jennifer Beville*, 33 ECAB 1970, 1973 (1982), *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (finding that an opinion which is speculative in nature is of limited probative value on the issue of causal relationship).

relationship were not based on a complete and accurate factual and medical history.¹¹ He did not provide any notable discussion regarding the details of appellant's new work shift, such as the length of time he worked under the new work shift or the practical effect such a change had on his taking of medication, sleep patterns, meal times and similar matters.

For these reasons, appellant did not establish that he sustained a medical condition in the performance of duty.

The May 2, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).