

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY V. TUCKER and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE AND ACCOUNTING SERVICE, Columbus, OH

*Docket No. 02-1881; Submitted on the Record;
Issued January 23, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof in establishing that her October 30, 2000 employment injury caused or aggravated her diagnosed lumbar disc disease.

On January 10, 2001 appellant, then a 45-year-old accounting technician, filed a traumatic injury claim alleging that on October 30, 2000 she tripped over an overhead projector at work and injured her right hip, sciatic nerve and right side of the spine. She stopped work on November 8 and returned November 13, 2000.

Appellant submitted an attending physician's report (Form CA-20) from Dr. Brian Griffin, a Board-certified internist, dated January 16, 2001, who related the facts of appellant's October 30, 2000 injury. He also indicated that there was evidence of a concurrent or preexisting injury involved. Dr. Griffin reported that appellant had been off work due to another work-related injury in which a coworker kicked her in the back and that she had never been medically released to return to work following that incident. The physician indicated that he had not obtained any diagnostic testing for the new injury of October 30, 2000 except lumbar x-rays. Dr. Griffin diagnosed sciatic nerve mononeuritis, causalgia, contusion of sacrum, sacroiliitis and lumbar intervertebral disc disease. The physician checked yes on the form report that he believed the condition was caused or aggravated by an employment activity. Dr. Griffin estimated that appellant was disabled until approximately April 30, 2001 and that it was undetermined whether appellant would have any permanent effects due to her condition.

In a letter dated February 26, 2001, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant within 30 days in order to make a determination on her claim.

By decision dated April 5, 2001, the Office denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's right back condition and factors of her federal employment.

On February 6, 2002 appellant requested reconsideration and submitted additional factual information, diagnostic findings and new medical reports. In a statement dated April 4, 2001, appellant discussed the October 30, 2000 incident. She also indicated that previously, on December 17, 1998, she was kicked by a coworker and suffered a contusion to the coccyx, buttocks and sciatica.

In an attending physician's report (Form CA-20), dated April 8, 2001, Dr. Andrew Smith, a Board-certified internist, diagnosed persistent sciatic notch tenderness and difficulty walking. He noted October 30, 2000 as the date of injury and reported that appellant was originally injured in December 1998. Dr. Smith checked yes that he believed the condition was caused by an employment activity and noted that appellant was kicked by a fellow employee at work. Dr. Smith concluded that appellant's injury appeared to be permanent but released her from total disability on May 31, 2001.

In an April 5, 2001 report, Dr. Arlo Brakel, a Board-certified neurologist, discussed that appellant presented with persistent low back; right hip and leg pain and noted that she was asymptomatic until she was kicked in the back by a coworker on December 17, 1998. He indicated that from that date onward, appellant's previously asymptomatic back became progressively symptomatic and incapacitating. Dr. Brakel reported that there was a secondary incident of further aggravation on or about October 30, 2000, when appellant tripped over an overhead projector and that her problems had been present and progressive since that time. The physician later reported that "apparently there was an exacerbation of her problems after a period during which it was thought she was improved to the point of becoming productive and functional and that it was on the occasion of bending over at home with the laundry on or about February 15, 2000." Following a review of diagnostic studies and physical examination, Dr. Brakel diagnosed degenerative disc disease, at L5-S1. He further stated:

"Obviously a point of contention here may be that of an association with the incidents of December 7, 1998 and a secondary further aggravating injury of October 30, 2000.... There was no means of confirmation that the initial overall abnormality of the L5-S1 disc began with the incident of December 17, 1998. To the contrary, with this image being some five months after the incident and the degree of degeneration as seen, that, this was a preexisting condition. However, it is a situation wherein [appellant] states that there was never a leave of absence or medical attention necessitated for any back symptoms, that from that point onward there had been the disorder symptomatically with only a secondary aggravation on October 30, 2000 as described. Therefore, it is our opinion to a reasonable degree of medical probability that [appellant] had a previously asymptomatic degenerative disc disorder of L5-S1, which was aggravated to a symptomatic level by the incident of December 17, 1998, with some perpetration by a secondary recurrent injury October 30, 2000 and that this is the causation of the protracted abnormality she had experienced."

The Office conducted a merit review of the April 5, 2001 decision. By decision dated April 15, 2002, the Office denied modification of the prior decision.

The Board finds that appellant failed to meet her burden of proof to establish that her October 30, 2000 employment injury resulted in a right lumbar disc disease condition.

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

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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In the instant case, none of the medical reports pertaining to the claimed conditions contain any rationalized medical opinion, which relates the cause of these claimed conditions to the October 30, 2000 employment injury. In particular, Dr. Brakel's April 5, 2002 report does not constitute sufficient medical evidence demonstrating a causal connection between appellant's October 30, 2000 injury and her right hip, sciatic nerve and right spine conditions. Causal relationship must be established by rationalized medical opinion evidence.

Dr. Brakel diagnosed appellant with degenerative disc disease L5-S1 and indicated that this was a preexisting condition, which was asymptomatic until she was forcibly kicked in her back by a coworker on December 17, 1998. The physician indicated that, from that point onward, appellant's previously asymptomatic back became progressively symptomatic with persistent low back, right hip and leg pain and was incapacitating. Dr. Brakel reported that appellant's condition was further aggravated due to the October 30, 2000 incident; however, he later stated that there was an exacerbation of her problems prior to the claimed injury while bending over at home with the laundry on or about February 15, 2000. His opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his stated conclusions.⁵ He did not explain the process by which the October 13, 2000

¹ 5 U.S.C. §§ 8101-8193; *see* 20 C.F.R. §§ 10.115, 10.116 (1999).

² *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 *Id.*

⁵ *William C. Thomas*, 45 ECAB 591 (1994).

incident would have been competent to cause or aggravate the claimed right lumbar conditions. Moreover, his opinion is of limited probative value for the further reason that the opinion is equivocal. Dr. Brakel stated summarily that appellant's conditions were further aggravated by the October 30, 2000 injury without discussion, although there were two separate events in December 1998 and February 2000 that apparently also contributed to the condition. The full history of appellant's medical condition was not addressed

The attending physician reports submitted by Dr. Griffin and Dr. Smith are equivocal regarding causation and merely assert that appellant's sciatic nerve and lumbar disc disease were caused by an employment activity. Dr. Smith indicated in his CA-20 report that appellant had an injury on October 30, 2000; however, he related appellant's condition to the previous injury in December 1998.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish her claim; however, she failed to submit such evidence establishing that the October 30, 2000 employment incident caused or aggravated the lumbar disc disease, therefore, the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated April 15, 2002 is affirmed.

Dated, Washington, DC
January 23, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁶ *Victor J. Woodhams, supra* at note 3.