U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRED GEHO and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, DE

*Docket No. 98-891; Submitted on the Record;*
*Issued October 15, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he had an employment-related back condition causally related to factors of his employment.

On March 5, 1996 appellant, then a 31-year-old mail clerk, filed a claim for an occupational injury resulting in L4-5 disc herniation and L5 vertebral fracture. He indicated that on March 29, 1993, while sweeping mail from an optical character reader machine, he developed back pain from hyperextension of his back. He stated that excessive repetitive motion such as twisting, stooping and bending at the waist strained his condition every day.[1] In a July 3, 1996 decision, the Office denied appellant's claim on the grounds that evidence of record failed to demonstrate a causal relationship between the claimed injury and the claimed conditions. In an April 10, 1997 decision, an Office hearing representative found that the medical evidence of record was not sufficient to meet appellant's burden of proof. She therefore affirmed the Office's July 3, 1996 decision. In an April 24, 1997 letter, appellant requested reconsideration. In a July 3, 1997 merit decision, the Office denied appellant's request for modification of the prior decisions. In an August 1, 1997 letter, appellant again requested reconsideration. In a November 4, 1997 decision, the Office rejected appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was repetitious and therefore insufficient to warrant review of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that his back condition was causally related to his employment injury.

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

[1] Appellant filed a claim for a traumatic injury for the March 29, 1993 employment injury. The Office of Workers' Compensation Programs accepted the claim for a lumbar strain and lumbar subluxation at L2, 4 and 5. However, in a March 4, 1995 decision, the Office terminated appellant's claim for compensation.

presence or existence of the disease or condition for which compensation is claimed;[2] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[3] 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.[4] The medical evidence required to establish causal relationship, 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,[5] must be one of reasonable medical certainty,[6] 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]

In an October 18, 1994 report, Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon, performing a second opinion examination in appellant's claim for a traumatic injury, indicated that a magnetic resonance imaging (MRI) scan of the lumbar spine showed desiccated discs at L4-5 and L5-S1 with no disc herniated identified. He found no radicular pain or paresthesias to the legs. He noted that appellant had no objective findings. He commented that it could not be defined when the abnormalities found on the MRI scan occurred. He stated that the abnormalities could not be defined as related to the March 29, 1993 employment injury. He indicated on the basis of the desiccated discs that appellant had a lifting restriction of 50 pounds. In a November 9, 1995 report, Dr. Myung Soo Lee, a Board-certified radiologist, stated that a November 8, 1995 MRI scan showed a central small disc herniation at L4-5, bilateral spondylolysis at L5 with a minimal suggestion of spondylolisthesis of L5-S1 and narrowing of the right L5-S1 intervertebral foramen. A March 15, 1996 electromyogram (EMG) showed a chronic L5 radiculopathy. None of these reports discussed whether the conditions were causally related to factors of appellant's employment, as alleged.

In a May 3, 1996 report, Dr. Ronald J. Saggese, a chiropractor, diagnosed lumbar plexus disorder, lumbar intervertebral disc disorder, lumbar disc degeneration and lumbar subluxation. He noted the results of appellant's MRI scan and EMG. He concluded that appellant's disability was causally related to the March 29, 1993 employment injury. He stated that since appellant sustained an injury which involved the movements of the joints to extremes of their normal ranges of motion, with resultant stretching of the ligamentous and muscular structures of the

[2] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[3] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[4] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

lumbar spine, these areas would present problems permanently. Dr. Saggese, however, did not give an explanation on how or why such activity would cause permanent problems for appellant so that he would be disabled due to either the March 29, 1993 employment injury or to factors of appellant's employment. His report, therefore, has limited probative value and is insufficient to meet appellant's burden of proof.

In a December 12, 1996 report, Dr. Bikash Bose, a Board-certified neurosurgeon, stated that appellant had an L5-S1 radiculopathy and a grade I spondylolisthesis at the L5-S1 level. He stated that since appellant injured his back in a work-related incident and the fact that appellant did not have any problems with his back prior to the employment injury, he felt appellant's current symptomatology was a direct result of the work accident. He indicated appellant had a preexisting spondylolysis. He commented, however, that if appellant had no symptoms prior to the employment injury then his current symptoms were related to the employment injury. The Board has held, however, that the mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.[8] Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.[9] As Dr. Bose's opinion is based solely on the statement that appellant's condition is causally related to the March 29, 1993 incident because he had no symptoms prior to the incident, his report is not fully rationalized and, therefore, is insufficient to meet appellant's burden of proof that his disability is related to his employment.

In a March 3, 1997 report, Dr. Bose again stated that appellant had been having back problems since the March 29, 1993 incident. He indicated that appellant was using a machine solder which required him to bend and twist repetitively which would aggravate his injury. Dr. Bose, however, did not explain precisely what condition was caused by the March 29, 1993 incident and the physiological mechanisms by which repetitive bending and twisting would constantly aggravate such a condition thereafter. This report, therefore, also has very little rationale and, as a result, has insufficient probative value to meet appellant's burden of proof.

Appellant submitted memoranda from the employing establishment showing that he was placed on light duty effective October 3, 1996 due to a September 10, 1996 employment injury with restrictions of lifting up to 10 pounds, standing or walking 3 to 4 hours a day, sitting 3 to 4 hours a day and driving 3 to 4 hours a day with restrictions against repetitive motion in bending, twisting, climbing, stooping, squatting pushing, pulling, or overhead reaching. In a November 21, 1996 memorandum, the employing establishment indicated that it would no longer carry appellant in a light-duty status effective November 23, 1996 and indicated that he should make arrangements to cover his absence from work until his restrictions changed or he was able to return to full duty. In a January 17, 1997 letter, the employing establishment found that appellant was physically unfit to perform the duties of the job of full-time mail processor to which he had been assigned. In an undated letter, appellant contended that after his

[8] *Juanita Rogers*, 34 ECAB 544, 546 (1983).

[9] *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

compensation was terminated, he was forced to work as a mail processor and often was given assignments that exceeded his light-duty restrictions. The employing establishment rejected appellant's contentions, claiming that he had never been required to exceed his light-duty limitations. Appellant, however, has not presented any medical evidence that would show that he was on light duty due to the effects of an employment-related condition and that the end of light duty would, therefore, be related to any employment-related condition. The record submitted on appeal does not contain any description of a September 10, 1996 employment injury but only a history from Dr. Saggese in a September 20, 1996 report that appellant had back pain several days previously when bending over to clear a mail jam. Dr. Saggese only repeated his earlier diagnoses and analysis which, as noted above, has limited probative value. Appellant submitted numerous medical notes but these notes were not signed by a physician and therefore cannot be considered competent medical evidence.[10]

The decisions of the Office of Workers' Compensation Programs, dated November 4, July 3 and April 10, 1997, are hereby affirmed.

Dated, Washington, D.C.
October 15, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *Diane Williams*, 47 ECAB 613 (1996).