

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGIL L. PATTON and U.S. POSTAL SERVICE,
POST OFFICE, Des Moines, IA

*Docket No. 99-2348; Submitted on the Record;
Issued October 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof in establishing that his low back condition of April 13, 1998 was causally related to factors of his federal employment or to his November 1987 accepted injury.

Appellant, then a 45-year-old bulk mail clerk, filed an occupational disease claim on June 26, 1998 alleging that an injury sustained at home on April 13, 1998 aggravated a 1987 work-related injury to his lower back.¹ Appellant also alleged that the lower back pain and tightness, which had prevented him from bending was mostly due to his work duties of lifting and pulling, while in federal service for more than 19 years. Appellant's employing establishment challenged appellant's claim asserting that the April 13, 1998 injury was not work related, as it occurred while appellant was at home and that no medical evidence had been submitted to support a work-related condition. Appellant did not stop work as a result of this injury.

On July 29, 1998 the Office requested additional factual and medical evidence regarding appellant's claim and allotted him 30 days to respond. Appellant submitted an outpatient evaluation report evidencing physical therapy dated July 20, 1998, a copy of appellant's preemployment medical examination dated August 14, 1978, a medical slip from Dr. Donna Bahls, attending physician, prescribing a back support device for appellant's arthritic condition and a facsimile from the Iowa Orthopedic Center dated September 25, 1998, which included treatment notes from Drs. Bahls and Cassim Igram, a Board-certified orthopedist, dated July 15 through August 13, 1998. In a July 15, 1998 note, Dr. Igram related appellant's complaints of low back pain that he reported had been symptomatic for a long period of time. Appellant had also reported to Dr. Igram that he sustained a low back injury in 1987, which caused him

¹ The Office of Workers' Compensation Programs accepted that appellant sustained lumbar strain on November 26, 1987 while lifting and pulling at work. The original case file is contained in the record with medical documentation evidencing treatment and evaluation in 1987 for the accepted injury.

problems intermittently and that he reinjured his back in April 1998. He assessed appellant with low back pain. In an August 12, 1998 note, Dr. Igram noted appellant's progress with physical therapy and his diagnosis of myofascial back pain. He related that appellant believed his injury might be work related; however, Dr. Igram gave no opinion and indicated that he had not seen any supporting documentation of a work-related claim. In an August 13, 1998 note, Dr. Bahls reported appellant's history and that he was seen for persistent low back and right leg symptoms. Appellant also reported to her that he first started having problems with his low back in 1987. Dr. Bahls related that in April 1998 appellant was at home when he slipped in his yard and jerked his back. She diagnosed appellant with post-lumbosacral strain.

By decision dated September 25, 1998, the Office denied appellant compensation on the grounds that the medical evidence was insufficient to establish the relationship between a medical condition and the employment factor alleged to have caused or contributed to his condition.

By letter dated October 19, 1998, appellant disagreed with the decision and requested an oral hearing. Appellant asserted in his hearing request that he sustained a recurrence of the original injury in 1987.² He submitted a medical report dated December 1, 1987 from Dr. Mark Jones, an osteopath, who treated him for lumbar strain in 1987. Appellant also submitted reports from Dr. Jones dated June 29 and October 6, 1998, which noted that appellant had been seen for continued complaints of low back pain. Dr. Jones discussed in his reports appellant's condition in 1987 and related that appellant reinjured his back while mowing on April 13, 1998.

A hearing was held on April 20, 1999 in which appellant was represented by counsel. Appellant's counsel argued that the April 13, 1998 incident did not result in a new injury. He argued that appellant's pain had been continual since the original 1987 injury and that this incident at home aggravated his condition. Appellant testified about his injury in 1987 at work and that he was placed on limited duty and received physical therapy for approximately two weeks; however, his relief was temporary and he continually suffered from low back pain after the incident. Appellant stated, however, that he was not specifically treated for his back condition on a continual basis. Appellant further testified about his injury on April 13, 1998 when he stated that his foot slipped while mowing, which caused severe pain and tightening muscles, similar to the pain experienced due to the 1987 injury.

Following the hearing, appellant submitted an August 14, 1998 report from Dr. Bahls, which summarized a magnetic resonance imaging (MRI) scan and a follow-up report from her dated August 21, 1998. Dr. Bahls reported that the MRI revealed moderate facet

² The Office procedure manual defines a recurrence of disability to include a work stoppage caused by the following: (1) a spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness; (2) a return or increase of disability due to an accepted consequential injury; or (3) withdrawal of a light-duty assignment, made specifically to accommodate the claimant's condition due to the work-related injury, for reasons other than misconduct or nonperformance of job duties. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995). The Office in its September 25, 1998 decision and later in its July 13, 1999 decision analyzed appellant's April 13, 1998 injury as a superceding intervening event and not a spontaneous material change in the accepted medical condition.

osteoarthropathy throughout the lumbar spine, especially at L4-5, with moderate spur formation. She also stated: "The patient also questioned whether these problems were work related. I explained to him that the type of work he does might irritate it."

By decision dated July 13, 1999, the hearing representative affirmed the September 25, 1998 decision on the grounds that the medical evidence was insufficient to meet appellant's burden of proof in establishing a causal relationship between appellant's low back condition of April 13, 1998 and his November 26, 1987 employment injury. The hearing representative acknowledged appellant's allegations of continual pain and that he believed the April 13, 1998 incident aggravated a previous injury. He noted, however, that appellant's 1987 back injury did not result in any missed time from work and only two weeks of light duty and physical therapy, and that appellant sought no further medical treatment for low back pain until April 1998, a period of over 10 years. He found that all three physicians of record noted appellant's history of injury in 1987 and the onset of pain following the April 13, 1998 incident at home; however, none of them provided an opinion specifically relating appellant's condition at that time to his 1987 work injury.

The Board finds that appellant failed to meet his burden of proof in establishing that his low back injury of April 13, 1998 was causally related to factors of his federal employment or to his November 1987 accepted injury.

The Board notes initially that this claim was filed as an occupational disease claim and that appellant alleged that his condition in April 1998 was caused by his employment duties over the past 19 years, as well as the April 13, 1998 incident at home.

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 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.³ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and his federal employment.⁴

Appellant submitted treatment notes from Dr. Igram dated July 15 and August 12, 1998, who related appellant's complaints of low back pain that had been symptomatic for a long period of time and diagnosed appellant with myofascial back pain. He further indicated that appellant believed his injury might be work related; however, Dr. Igram gave no opinion on the cause of his low back pain and noted that he had not seen any supporting documentation of a work-related

³ Victor J. Woodhams, 41 ECAB 345 (1989).

⁴ See Walter D. Morehead, 31 ECAB 188 (1979).

claim. Appellant also submitted an August 13, 1998 treatment note from Dr. Bahls who reported that appellant was seen for persistent low back and right leg symptoms and that appellant first started having problems with his low back in 1987. She diagnosed appellant with post-lumbosacral strain; however, Dr. Bahls did not provide an opinion that causally related appellant's low back condition to his 1987 accepted injury. Appellant also submitted an August 21, 1998 report from Dr. Bahls, who after reporting the results of an MRI stated that appellant's type of work "might" irritate his condition.

To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.

The Board notes that there is a distinct lack of evidence that appellant had back complaints over his 19 years of employment, which required medical treatment until his 1998 injury at home, while mowing the lawn. No physician of record has explained what specific duties appellant performed over his 19 years of employment that would have caused the back condition diagnosed in May 1998.

Appellant has also alleged that the onset of pain experienced while mowing his lawn at home on April 13, 1998 aggravated his back condition, which resulted from the 1987 work injury.

The Board has held that once the work-connected character of any condition is established, "the subsequent progression of that condition remains compensable *so long as the worsening is not shown to have been produced by an independent nonindustrial cause.*"⁵ (Emphasis added.) If a member weakened by an employment injury contributes to a later fall or other injury, the subsequent injury will be compensable as a consequential injury, if the further medical complication flows from the compensable injury, *i.e.*, "so long as it is clear that the real operative factor is the progression of the compensable injury, with an exertion that in itself would not be unreasonable in the circumstances."⁶

Although Dr. Bahls indicated the possibility that appellant's condition might have been aggravated by the previous injury, her opinion is speculative and thus lacks probative value.⁷ Dr. Jones stated that he treated appellant for his previous injury in 1987 and for subsequent complaints of back pain, but he never provided an opinion that appellant's April 13, 1998 injury sustained at home was causally related to the 1987 accepted work injury. As the medical evidence fails to establish that appellant's condition on April 13, 1998 was due to a "natural progression" of his prior back condition, his injury on April 13, 1998 constitutes an independent

⁵ Robert W. Meeson, 44 ECAB 834 (1993); see John R. Knox, 42 ECAB 193 (1990); see also Larson, *The Law of Workers' Compensation* § 13.11.

⁶ Larson at § 13.11(a).

⁷ Ceferino L. Gonzales, 32 ECAB 1591 (1981); George Randolph Taylor, 6 ECAB 968 (1954).

intervening nonindustrial cause of his claimed back condition and, therefore, is not compensable under the Federal Employees' Compensation Act.

Because appellant failed to submit any such medical evidence to support that his April 13, 1998 onset of pain after an injury at home was caused or aggravated by his accepted work injury of November 1987, the Board finds that he failed to submit a *prima facie* claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated July 13, 1999 and September 25, 1998 are affirmed.

Dated, Washington, DC
October 10, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member