

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES KILGORE and U.S. POSTAL SERVICE,  
POST OFFICE, Chattanooga, TN

*Docket No. 00-431; Submitted on the Record;  
Issued April 11, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a back injury in the performance of duty on January 5, 1998.

On January 16, 1998 appellant, then a 45-year-old postal clerk, filed a traumatic injury claim, alleging that he hurt his lower back and had pain extending down his left leg. He stated that he was not sure what caused the injury, which "could have been caused by lifting." Appellant stopped work on January 8, 1998.

Medical records from a family practice clinic indicated that appellant was treated for complaints of low back pain and sciatica on the left side as early as February 1996.

In a letter dated January 14, 1998, a physician whose name is illegible stated that appellant suffered from a disc herniation at L4-5 and that the condition was aggravated by sitting for prolonged periods of time. He recommended that appellant be taken off the sitting portion of his mail route and placed on a mail route that involved walking, which did not aggravate appellant's back problems.

In a report dated January 16, 1998, Dr. Barry R. Vaughn, a Board-certified orthopedic surgeon, noted that appellant was seen for complaints of low back, left hip and leg pain with some tingling and numbness since January 5, 1998. He related that there was "no known injury." According to Dr. Vaughn, appellant had a history of significant renal abnormality with polycystic kidney disease, recurrent urinary tract infections and multiple surgeries on his kidneys. He noted that magnetic resonance imaging (MRI) scan demonstrated a small disc herniation at L5-6.<sup>1</sup> Because appellant showed signs of radiculopathy, he recommended an epidural block for relief of the symptoms.

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<sup>1</sup> The date of the MRI scan was January 13, 1998.

By letter dated February 9, 1998, the Office of Workers' Compensation Programs advised appellant of the medical and factual evidence required to establish his claim.

In a CA-20 attending physician's report dated February 24, 1998, Dr. Vaughn diagnosed a lumbar "HNP [herniated nucleus pulposus at] L5-6" that was caused or aggravated by an injury on January 5, 1998 and for which appellant underwent a lumbar microdiscectomy on February 18, 1998. He reported that appellant first began feeling pain and soreness on January 5, 1998 and that his symptoms increased over the next 10 days until he sought medical treatment. Dr. Vaughn opined that appellant was partially disabled from work.

In a treatment note dated March 3, 1998, Dr. Vaughn advised that appellant was "status post lumbar discectomy" and that he was approved for light duty.

In a decision dated March 11, 1998, the Office denied compensation on the grounds that appellant failed to establish fact of injury.

On March 17, 1998 appellant requested reconsideration. Appellant related that he injured his back on January 5, 1998 while loading his work vehicle with trays of mail from a larger hamper that is used to move mail. He added that his back condition was further aggravated when he moved empty trays of mail from the back of his vehicle and replaced them with full ones for delivery. Appellant also submitted a March 31, 1998 treatment note from Dr. Vaughn, in which the physician diagnosed status post lumbar discectomy and opined that appellant could return to work in a light-duty capacity.

By decision dated June 2, 1998, the Office modified the prior March 11, 1998 decision to reflect that appellant established that an employment incident occurred on January 5, 1998 at the time, place and in the manner alleged. The Office determined, however, that the medical evidence was insufficient to establish that appellant's back condition was causally related to the employment incident.

In a July 22, 1998 letter, appellant requested reconsideration.

Appellant subsequently submitted a July 9, 1998 report by Dr. Ronald C. Brooksbank, a family practitioner. He stated:

"I have reviewed the medical records of [appellant] in regards to back pain. The cause of the pain could have occurred on the job or he could have exacerbated a previous injury on the job. However, the medical record reveals that the patient had been experiencing back pain for several months even dating back to 1996. This could have also been job related, regardless the patient should have reported the back pain to his employer at the time if he felt it was job related."

In a September 1, 1998 report, Dr. Vaughn opined that appellant had reached maximum medical improvement and stated that appellant had an eight percent impairment of the whole

person per the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He stated:

“With regards to whether the injury is work related or not, the only information I have to go on is the information provided for me upon my initial evaluation by the patient. [At] that point he denied, to myself during the collection of my history and physical and the staff during completion of our forms, any previous injury. He indicated the pain came on spontaneously.”

In a September 9, 1998 decision, the Office again found the medical evidence of record insufficient to establish a causal relationship between appellant’s back condition and the work injury on January 5, 1998.

On July 15, 1999 appellant filed another request for reconsideration and submitted an October 29, 1998 report by Dr. Jerry Smith, Board-certified in physical medicine and rehabilitation, who reviewed appellant’s medical record and conducted an evaluation at the request of appellant’s family physician. Dr. Smith diagnosed polycystic kidney disease, chronic renal insufficiency, status post right nephrectomy, recent nephrolithiasis, orthostatic hypotension, lumbar herniated nucleus pulposus status post microdiscectomy, acute low back strain, sensorineural hearing loss, median nerve neuritis bilaterally, gastroesophageal reflux disease, peptic ulcer disease, chronic prostatitis and enlarged bladder. He opined that appellant was unable to perform his job because he could not drive due to dizzy spells. Dr. Smith recommend that appellant undergo a permanent impairment evaluation when he reached maximum medical improvement from his orthostatic hypotension and his low back pain. He did not address the etiology of appellant’s diagnosed conditions or his low back symptoms.

In a decision dated September 10, 1999, the Office found the evidence insufficient to warrant modification of the September 9, 1998 decision.

The Board finds that appellant failed to establish that he sustained a back injury in the performance of duty on January 5, 1998.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> 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.<sup>3</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. § 10.115 (1999); *Joe D Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a “fact of injury” has been established. There are two components involved in establishing fact of injury that must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> The medical evidence required to establish a causal relationship, generally is rationalized medical evidence.<sup>7</sup>

In this case, appellant has submitted no rationalized medical evidence from which to conclude that he sustained a herniated disc on January 5, 1998 in the performance of his duties as a mail carrier.

The only physicians of record to address the etiology of appellant’s back pain were Drs. Vaughn and Brooksbank. Dr. Vaughn provided no medical rationale for his conclusion that appellant’s herniated disc was due to the August 5, 1998 work injury. Similarly, Dr. Brooksbank could only speculate that appellant’s pain might have been due to a work injury or that work duties may have aggravated a preexisting back condition. The Board has often held that an opinion, which is speculative in nature, has limited probative value in determining the issue of causal relationship.<sup>8</sup>

The record indicates that appellant has complained of back pain since 1996. In the absence of a rationalized medical opinion addressing the nature of appellant’s injury in relation to appellant’s January 5, 1998 work incident and appellant’s history of back problems, the Board finds that appellant has failed to carry his burden of proof.

Appellant’s symptoms may have started at work, but that in itself is not sufficient to carry appellant’s burden of proof in establishing his claim. The fact that a condition manifests itself or worsens during a period of employment, or that work activities produce symptoms revelatory of an underlying condition, does not raise an inference of causal relationship between the claimed condition and the employment factors.<sup>9</sup> Consequently, the Board concludes that the Office properly denied compensation.

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<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>8</sup> *Arthur P. Vliet*, 31 ECAB 366 (1979).

<sup>9</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995); *Ruby I. Fish* *supra* note 7.

The September 10, 1999 decision of the Office of Workers' Compensation Program is hereby affirmed.

Dated, Washington, DC  
April 11, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member