

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYRNA GAMBOA and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

*Docket No. 01-584 Submitted on the Record;
Issued November 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty causally related to factors of her federal employment.

On April 12, 1999 appellant, then a 48-year-old letter sorting machine clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her scoliosis and low back pain was due to factors of her federal employment.¹ Appellant did not stop work.²

In a statement received by the Office of Workers' Compensation Programs on April 13, 1999, appellant provided descriptions of her various duties within the employing establishment and indicated which factors she believed contributed to her condition. She also described her previous claims for back injuries.

By memorandum dated April 13, 1999, the employing establishment controverted appellant's claim on the basis that it was a duplicate of claim number 13-1109834, which was denied.

¹ Appellant had sustained previous back injuries, which were accepted under the following claim numbers: 13-970034 for a December 2, 1991 injury and 13-1086054 for an August 11, 1995 injury. An August 20, 1996 injury, claim number (13-1109834), was accepted for lumbar strain on September 19, 1996, but appellant's claim for recurrence on May 6, 1997, was denied on March 10, 1998. A compensation order denying modification of the March 10, 1998 decision was issued on May 2, 1998. Appellant also had a claim for repetitive motion on March 11, 1995. Additionally, appellant sustained nonwork-related back injuries in May 1997 while walking on her vacation and in August 1997 while jogging.

² The record reflects that limited duty was offered to appellant, which she accepted.

In a July 8, 1992 magnetic resonance imaging (MRI) scan, Dr. Joy D. Foster, a Board-certified radiologist, found physiologic disc degeneration at L5-S1 with no evidence of significant disc bulge or herniation and mild scoliosis of the lumbar spine.

In an April 3, 1998 report, Dr. Richard Zapanta, a Board-certified orthopedic surgeon, stated that appellant initially sustained an industrial injury to her lower back in 1991 with a diagnosis of lumbar strain/sprain and received conservative treatment. He noted that appellant was placed on permanent restrictions of no lifting over 15 pounds. Dr. Zapanta also noted that appellant sustained a nonindustrial incident on August 22, 1997 while jogging and a December 8, 1997 diagnosis of sacrococcygeal spine, which was not work related. He diagnosed chronic low back pain syndrome with musculoligamentous strain/sprain as a result of an initial industrial injury that occurred in December 1991. Dr. Zapanta found that appellant had exacerbations on March 11, 1995, August 20, 1996 and May 5, 1997. He found that appellant had a chronic lower back condition and physical composition that precluded her from resuming a job requiring lifting over 10 pounds. Dr. Zapanta further advised that he did not feel appellant required further treatment and discharged appellant from his care.

In a March 24, 1999 report, Dr. Aeree Yoon, an internist, indicated that appellant had a history of low back pain, which started after her December 2, 1991 work injury. He indicated that appellant's problem was chronic in nature and although her condition was stable at this time, it could be aggravated any time by certain activities such as lifting objects which weighed more than 10 pounds, bending, prolonged periods of standing, sitting and sitting in a chair without back support. He concluded that appellant should be on indefinite light duty.

In a letter dated June 7, 1999, the Office requested that appellant submit additional information. The Office also requested medical documentation explaining how the reported work incident caused or aggravated the claimed injury. Appellant was allotted 30 days to submit the requested evidence.

Appellant submitted duty status reports from June 2 to July 28, 1999, in which Dr. Yoon indicated that appellant had degenerative disc disease and scoliosis but could perform light duty.

In an August 19, 1997 radiological report, Dr. Thomas Walden, a Board-certified radiologist, indicated that the vertebrae were in normal alignment, all osseous components appeared normal, all disc spaces were in normal limits, there was no soft tissue change and the sacroiliac joints were normal.

In a July 9, 1999 report, Dr. Yoon noted that appellant's chronic low back pain started when she was performing her duties at work and since then, appellant worked with restrictions. He stated that appellant's new work conditions required her to sit on a backless slanting stool or stand for six to eight hours per day, which aggravated her condition. Dr. Yoon stated that appellant had another exacerbation in August 1997, which occurred when she had a nonindustrial fall while jogging. He further found that his examination of June 29, 1999 revealed no deformities, a good range of motion and a negative straight leg raise test bilaterally. Dr. Yoon stated that appellant's condition was chronic, permanent and stationary. He found that her condition could be aggravated at any time by lifting heavy objects, twisting at the back, bending, pushing and pulling.

In a July 4, 1999 statement, appellant described her work duties and indicated that she believed these activities strongly contributed to her condition. She further described her previous injuries. Additionally, she provided an August 18, 1997 treatment note from Dr. Alexander Lippert, a Board-certified family practitioner, wherein he indicated that appellant had a fall on August 16, 1997 with an injury to the coccyx.

In a February 13, 1996 fitness-for-duty report, Dr. Geoffrey M. Miller, a Board-certified orthopedic surgeon, noted appellant's injuries from December 2, 1991, a motor vehicle accident from 1980 and her work injury of August 19, 1995. He diagnosed musculoligamentous strain of the lumbar spine paravertebral musculature, superimposed on physiologic degenerative lumbar disc disease, without persuasive evidence of any significant injury on the job; history of motor vehicle accident in 1980 with fracture of the right clavicle and a small stature. Dr. Miller opined that appellant's diminutive stature would prohibit her from performing unrestricted duties regardless of any injury or disease. He further stated that appellant had nothing wrong with her low back, despite some symptoms. Dr. Miller indicated that he was unable to find anything wrong with appellant and it was quite clear that appellant had no obvious musculoskeletal impairment or disability and was never injured on the job.

In a decision dated October 14, 1999, the Office denied the claim on the grounds that the evidence failed to demonstrate that the condition claimed was causally related to the claimed employment factors.

By letter dated November 12, 1999, appellant requested an oral hearing. A hearing was held on June 29, 2000.

In a June 29, 2000 report, Dr. Yoon advised that appellant's chronic low back pain started on December 2, 1991 when she was performing her duties at work. He stated that, since that time, she worked in a restricted capacity and her condition was stable until July 1995, when her work activities changed due to equipment changes made by her employer. Dr. Yoon stated that these changes required appellant to sit on a backless slanting stool or stand for six to eight hours per day and caused her condition to worsen. He opined that the worsening of appellant's condition was employment related. Dr. Yoon further opined that appellant did have a fall in August 1997 but indicated that "the worsening of the preexisting condition, which was employment related in the first place, was employment related." He stated that appellant could continue to work; only with restrictions, otherwise her condition would worsen.

By decision dated September 19, 2000, the hearing representative affirmed the prior decision.

The Board finds that appellant has not established that she sustained an injury in the performance of duty causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act 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 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 is causally related to the employment injury.”³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

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 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.⁵

In the present case, appellant identified factors of her employment that she believed contributed to her condition. Appellant, however, has failed to submit sufficient medical evidence establishing that her condition was causally related to factors of her employment. Appellant submitted several reports from Dr. Yoon. In his March 24, 1999 report, Dr. Yoon indicated that appellant had a history of low back pain, which started after her December 2, 1991 injury and her condition was chronic in nature. He opined that although it was chronic in nature, it was stable and could be aggravated by certain activities. This report is not probative as Dr. Yoon indicated her condition was stable. Additionally, the Board has stated, “fear of future injury is not compensable. There must be some medical evidence showing that appellant is currently disabled for work due to his employment-related condition.”⁶ In his duty status reports from June 2 to July 28, 1999, he indicated that appellant’s diagnosis was degenerative disc disease and scoliosis. Dr. Yoon merely provided a diagnosis and no explanation that these diseases were work related. Dr. Yoon’s reports are of diminished probative value because they discussed appellant’s symptoms and diagnosis, but did not sufficiently address how implicated employment factors caused or contributed to appellant’s back condition.⁷ Dr. Yoon provided a

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *William A. Kandel*, 43 ECAB 1011 (1992); *see Gaeten F. Valenza*, 39 ECAB 1349 (1988). (In this case, involving aggravation of asthma, the Board stated: “the possibility of future injury does not constitute an injury under the Act and, therefore, no compensation can be paid for such a possibility”).

⁷ *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

July 9, 1999 report wherein he indicated that appellant's work conditions aggravated her condition and also stated a nonindustrial fall while jogging in August 1997 also contributed to appellant's condition. He opined that appellant's condition was chronic, permanent and stationary and could be aggravated at any time.⁸ In his June 29, 2000 report, Dr. Yoon opined that the worsening of appellant's condition was employment related because of changes in her work activities. He noted that appellant did have a fall in August 1997 but Dr. Yoon did not attribute her condition to this event. For example, he did not explain in any of his reports, why certain work activities would contribute to her condition instead of the nonindustrial falls or why her preexisting scoliosis, degenerative disc and stature did not contribute to her condition. Dr. Yoon did not provide a rationalized medical opinion,⁹ in any of his reports, based upon a medical certainty, that there was a causal connection between appellant's back condition and any specific workplace factors.

She provided an August 18, 1997 report from Dr. Lippert, who addressed appellant's fall in August 1997. He made no discussion of appellant's August 20, 1996 employment injury and this report was not probative.

Appellant also submitted the August 19, 1997 radiological report from Dr. Walden, who indicated that appellant's vertebrae, osseous components and disc spaces were normal. This report does not show that appellant's spine is abnormal.

Appellant provided a July 8, 1992 MRI scan, with a diagnosis of physiologic disc degeneration and mild scoliosis of the lumbar spine. This report is of diminished probative value because it discussed appellant's symptoms and diagnosis, but did not address the implicated employment factors.¹⁰

In an April 3, 1998 report, Dr. Zapanta opined that appellant initially sustained an industrial injury in 1991 to her low back with exacerbation's on March 11, 1995, August 20, 1996 and May 5, 1997. He noted a nonindustrial jogging injury on August 22, 1997 and a diagnosis of sacrococcygeal spine on December 8, 1997. Dr. Zapanta opined that the chronic symptoms to appellant's back were a result of her initial industrial injury in December 1991 but he did not explain why he related appellant's symptoms to the industrial injury as opposed to the jogging incident, her diagnosis of sacrococcygeal spine, or her preexisting scoliosis and disc degeneration. As Dr. Zapanta did not provide a specific opinion regarding whether employment factors caused or contributed to the diagnosed condition, his opinion is insufficient to meet appellant's burden of proof.¹¹

relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁸ *See* footnote 6.

⁹ *Id.*

¹⁰ *Charles H. Tomaszewski and see also George Randolph Taylor, supra* note 7.

¹¹ *Id.*

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.¹² Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office properly denied appellant's claim for compensation.

The September 19, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

¹² *Id.*