

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERT NORVILLE and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 02-732; Oral Argument Held March 18, 2003;
Issued May 16, 2003*

Appearances: *Bert Norville, pro se; Julia Mankata-Tamakloe, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he has a back condition causally related to factors of his federal employment.

This case is on appeal to the Board for the second time.¹ On the first appeal, the Board found that the opinion of appellant's treating physician, Dr. Roy Goodman, a Board-certified neurologist, while not completely rationalized, raised an uncontroverted inference between the claimed injury and appellant's employment. The Board, therefore, set aside the decisions of the Office of Workers' Compensation Programs dated September 30 and June 29, 1998 in which the Office denied appellant's claim and remanded the case to the Office for further development. The Board also found that appellant's traumatic injury claim of October 11, 1994 was related to his July 31, 1997 occupational claim and instructed the Office to double the claims.

In a report dated November 25, 1994, Dr. Maria Toczek, a Board-certified psychiatrist and neurologist, stated that appellant was treated by the Department of Veterans Affairs (VA) Medical Center since at least 1990 and that he was originally treated for a lumbar radiculopathy which was service connected and had status post L4-5 discectomy. She stated that, more recently, he developed neck pain while working as a letter carrier. Dr. Toczek reviewed x-rays of the cervical spine showing degenerative changes from the C4-7 regions and reviewed an electromyogram and nerve conducting study which had findings consistent with a right C6 radiculopathy and sensory/motor neuropathy. She stated that appellant should not return to work for at least 45 days and strongly recommended that appellant not return to work as a letter carrier

¹ Docket No. 99-254 (issued May 4, 2000). The facts and history surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

“as this not only aggravates his service-connected disability, but more importantly is further aggravating his cervical radiculopathy that could lead to further, more permanent damage.”

By decision dated October 6, 2000, the Office denied the claim, stating that the evidence did not establish that appellant’s cervical spine condition was caused or aggravated by the employment factors he described.

By letter dated November 2, 2000, appellant requested an oral hearing before an Office hearing representative; the hearing was held on July 19, 2001. At the hearing, appellant’s representative, Thomas Bundy, stated that appellant first came to the District of Columbia area in 1994 and after a difficult job search, he obtained employment as a casual carrier. Mr. Bundy stated that when appellant slipped and fell on October 11, 1994 his supervisor told him that, because of his casual employee status, if he filed a claim he would be likely to lose his job. Mr. Bundy stated that appellant was scared of losing his job and did not mention his fall. He stated, however, that the medical evidence documents that appellant had pain in his arm and right shoulder as of October 11, 1994. Mr. Bundy stated that appellant’s VA disability rating increased to 20 percent sometime after 1994. He also stated that Dr. Goodman’s report established that appellant’s disability was caused or aggravated by his employment. Mr. Bundy contended that appellant was injured in his fall and then his condition was aggravated by his duties as a custodian and by his duties as a letter carrier.

Appellant testified that he started working as a casual letter carrier for the employing establishment in 1992 or 1993. He stated that when he began working he had symptoms of back pain and pain going down into his right leg. Appellant testified that he fell on October 11, 1994 while delivering mail and going up some stairs. According to appellant, his supervisor accompanied him to the emergency room and his supervisor told him that, if he reported the accident, they would have to let him go. Appellant stated that he nonetheless filed a claim and was “let go,” but then he reapplied for the custodian position and got it back. He further stated that most of his duties as a custodian were mopping and cleaning in high places and he felt these activities worsened his condition. Appellant testified that a year ago he was appointed as an acting supervisor and although he sometimes swept and mopped, most of his job was paperwork.

As the Board noted in its prior decision, in his July 24, 1997 report, Dr. Goodman stated that appellant’s flexing his neck, working in low places, lifting and swinging the arms from side to side as required in buffing and mopping “clearly agitates the patient’s nerve root irritation.” He stated that appellant should not lift more than 20 pounds, should not work in low places where his neck is flexed for long periods of time and should not do tasks requiring pulling or swinging movements over the shoulder. In his July 30, 1998 report, Dr. Goodman stated that appellant’s cervical disc condition resulted from his work-related fall and carrying the heavy mail sack in October 1994.

By decision dated November 6, 2001, the Office hearing representative affirmed the Office’s October 6, 2000 decision.

The Board finds that the case is not in posture for decision.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 appellant'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 appellant.²

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.³

In this case, in its prior decision, the Board found that Dr. Goodman's July 24, 1997 report was supportive of appellant's position that his preexisting cervical condition was aggravated or worsened by his job duties as a mail carrier beginning in 1992 and as a custodian after October 1994 and remanded the case to the Office for further development.⁴ In its decisions on remand, however, the Office did not respond to the Board's instructions and took no action to develop the evidence in order to determine whether appellant's duties as a custodian aggravated or worsened his condition. The case must, therefore, be remanded a second time for the Office to make this determination. On remand, the Office should refer appellant, with the case record and a statement of accepted facts to the appropriate medical specialist, for another medical evaluation and to obtain a well-rationalized opinion regarding whether appellant's cervical condition resulted from his employment, particularly his sweeping and buffering activities as a custodian. After any further development it deems necessary, the Office should issue a *de novo* decision.

² See Victor J. Woodhams, 41 ECAB 345, 352 (1989).

³ Lucrecia M. Nielsen, 42 ECAB 583, 593 (1991); Joseph T. Gulla, 36 ECAB 516, 519 (1985).

⁴ Dr. Toczek's November 25, 1994 report is also supportive that appellant's cervical condition arose from his employment as Dr. Toczek stated that appellant's work as a letter carrier aggravated his service-connected disability and was aggravating his cervical radiculopathy.

The November 6, 2001 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC
May 16, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member