

**United States Department of Labor
Employees' Compensation Appeals Board**

JULIE A. KWIATKOWSKI, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Broadview Heights, OH, Employer**

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**Docket No. 06-25
Issued: February 16, 2006**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 3, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 16, 2005 which denied her claim. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury causally related to factors of employment.

FACTUAL HISTORY

This case has previously been before the Board. In an April 1, 2005 decision, the Board found that appellant established that an employment incident occurred on August 14, 2003 while she was bending and lifting mail tubs. The Board, however, found that the medical evidence of record was insufficient to establish that the August 14, 2003 incident caused or contributed to her

diagnosed back condition.¹ The law and the facts as set forth in the previous Board decision and order are incorporated herein by reference.

Appellant, through counsel, requested reconsideration, and submitted reports dated August 1, 2005 from Dr. Todd S. Hochman, Board-certified in internal medicine and pediatrics. He noted a history of injury that, while in the process of lifting tubs weighing between 5 and 50 pounds, appellant developed the immediate onset of low back pain with radicular symptoms and went to the emergency room where she was diagnosed with a strain. He reported magnetic resonance imaging (MRI) findings of herniated disc with nerve root impingement at L4-5 and that she had undergone two surgical procedures but continued to have chronic low back pain with radiation into the left lower extremity. Lumbar physical findings included midline tenderness, bilateral spasm and a positive straight leg raising test on the left. Dr. Hochman diagnosed acute lumbar myofasciitis and sciatica neuritis. He concluded:

“Given the history of injury as stated by [appellant], as well as objective findings on physical examination and lumbar MRI, I can state with a reasonable degree of medical certainty, that [she] sustained a disc herniation at the L4-L5 level, as well as disc bulge at the L5-S1 level ... and now suffers from lumbar radiculitis as a direct result of her injury on August 14, 2003.”

By decision dated September 6, 2005, the Office denied modification of the prior decision, finding the medical evidence insufficient to establish causal relationship. The Office noted that Dr. Hochman based his opinion on multiple lifting incidents that occurred on August 14, 2003 whereas the Board found that appellant established that only one lifting incident occurred that day.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 period 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.³

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁴ To determine whether an employee sustained a traumatic injury in the

¹ Docket No. 05-44 (issued April 1, 2005).

² 5 U.S.C. §§ 8101-8193.

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

performance of duty, the Office must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁵

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁶ Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical 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.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

Under the Act, the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.⁹ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹⁰

ANALYSIS

The issue in this case is whether appellant met her burden of proof to establish that she sustained a back condition causally related to the established work-related incident of lifting tubs of mail on August 14, 2003. In its September 6, 2005 decision, the Office discounted

⁵ Gary J. Watling, *supra* note 3.

⁶ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

⁷ Leslie C. Moore, 52 ECAB 132 (2000); Gary L. Fowler, 45 ECAB 365 (1994).

⁸ Dennis M. Mascarenas, 49 ECAB 215 (1997).

⁹ Cheryl L. Decavich, 50 ECAB 397 (1999).

¹⁰ Fereidoon Kharabi, 52 ECAB 291 (2001).

Dr. Hochman's medical opinion because he stated that appellant's injury occurred while she was lifting tubs of mail, thus implying multiple lifting incidents. The Board's April 1, 2005 decision, however, found that on August 14, 2003 appellant repeatedly lifted tubs of mail that day and experienced back pain. She reported to her supervisor and sought medical help.

The Board finds that the history of injury provided by Dr. Hochman in his August 1, 2005 report is consistent with the incident of lifting mail tubs during her work shift on August 14, 2003. He also reported physical findings of tenderness, spasm and a positive straight leg raising test on the left and noted that MRI scan demonstrated disc herniation at the L4-5 level and disc bulge at the L5-S1 level. Dr. Hochman concluded that, based on the history provided by appellant, objective findings on physical examination and her MRI scan findings, she had lumbar radiculitis which he attributed to the August 14, 2003 employment incident.

While Dr. Hochman's reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that her back condition was caused by lifting mail tubs on August 14, 2003, this does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. Dr. Hochman examined appellant, reviewed medical records including an MRI scan and concluded that the August 14, 2003 incidents caused her back condition. In the absence of medical evidence to the contrary, Dr. Hochman's reports are sufficient to establish a *prima facie* claim.¹¹

It is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹² The case shall therefore be remanded to the Office to further develop the medical evidence to determine what if any back condition and any disability there from that appellant suffered as a result of the August 14, 2003 lifting of mail tubs. After this and such further development as deemed necessary, the Office shall issue an appropriate decision.

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant sustained an injury on August 14, 2003 caused by lifting tubs of mail on that date.

¹¹ Jimmy A. Hammons, 51 ECAB 219 (1999); John J. Carlone, 41 ECAB 354 (1989).

¹² See Jimmy A. Hammons, *supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 6, 2005 be vacated and the case remanded to the Office for further proceedings consistent with this opinion of the Board.

Issued: February 16, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board