

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

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**M.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hauppauge, NY, Employer**

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**Docket No. 07-192  
Issued: June 15, 2007**

*Appearances:*

*Paul Kalker, 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  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 3, 2006 which denied his claim for a back injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he sustained a low back injury causally related to his October 21, 1999 traumatic injury.

**FACTUAL HISTORY**

On October 21, 1999 appellant, then a 53-year-old tractor trailer operator, filed a traumatic injury claim alleging injury to his head while driving a trailer that day over a construction area. The Office accepted his claim for head contusion and expanded his claim to include cervical radiculopathy. Appellant did not stop work.

Appellant submitted emergency room treatment notes prepared by Dr. R. Uy Megur, a Board-certified emergency room physician, dated October 21, 1999. Dr. Megur noted that while appellant was driving a truck he sustained an injury to his head and also complained of lower back pain. He advised that a computerized tomography (CT) scan of the neck revealed an old fracture at C6. Dr. Megur diagnosed head contusion. A CT scan of the cervical spine dated October 21, 1999, revealed an irregularity of C6 with associated focal degenerative changes consistent with a fracture which may be chronic in nature.

Appellant came under the treatment of Dr. Peter J. Lesniewski, a Board-certified orthopedic surgeon. In an October 25, 1999 report, Dr. Lesniewski reviewed the history of injury in which appellant stuck his head on the top of the cab. He noted symptoms of significant neck pain with restricted range of motion in the neck and back. Dr. Lesniewski diagnosed decreased disc space at C5-6 with probable spondylosis. On November 2, 1999 he diagnosed spinal cord contusion and underlying spinal stenosis. In reports dated December 22, 1999 to March 29, 2000, Dr. Lesniewski noted symptoms of numbness radiating into appellant's left hand due to the whiplash injury to his cervical spine. The record reflects that appellant underwent two epidural injections with good results and returned to regular duty in June 2000. A December 15, 1999 cervical spine x-ray, revealed degenerative changes with C6-7 disc space with narrowing and neural foraminal compromise. A February 16, 2000 magnetic resonance imaging (MRI) scan of the cervical spine revealed a small midline disc herniation at the C6-7 level and mild bulging disc disease at the C2-3 and C5-6 levels.

Thereafter, appellant submitted reports from Dr. Harvey Finkelstein, a Board-certified anesthesiologist. On April 7 and June 12, 2000 Dr. Finkelstein noted that appellant underwent three cervical epidural steroid injections with a 75 percent improvement in symptoms. In reports dated July 9, 2001 and May 17, 2002, he advised that appellant experienced persistent headache, neck pain and upper extremity radiculopathy since his work injury of October 21, 1999. An MRI scan of the lumbosacral spine dated December 2, 2002 revealed an L3-4 small disc herniation asymmetric to the left and a small disc bulge at L4-5.

In an October 1, 2002 report, Dr. Lesniewski advised that appellant had significant low back and neck pain and opined that his back condition was related to the original October 21, 1999 injury. In a report dated November 6, 2002, he advised that appellant's low back pain was increasing and that appellant had complained of low back pain when he initially sought treatment in the emergency room on October 21, 1999. Dr. Lesniewski opined that appellant's low back condition was part of his original work injury. In a March 5, 2003 report, he indicated that, after appellant's automobile accident on October 21, 1999, he complained of back pain that persisted through the years although he was not treated for this condition. In a report dated March 26, 2003, Dr. Lesniewski noted that on October 21, 1999 appellant was driving a trailer and drove over a construction area and was thrown around the cab of his truck. Appellant hit his head on the ceiling of the truck. Dr. Lesniewski indicated that the initial examination note reported appellant's complaints of pain radiating down his arms, wrist pain, low back and neck pain. He advised that appellant's low back pain was sporadic and gradually developed into a full blown syndrome with the development of an absent ankle jerk on the right and a positive Michelle sign. Dr. Lesniewski diagnosed herniated disc of the cervical spine, probable herniated disc of the lumbar spine and recommended epidural injections for the back. He opined that within a degree of medical certainty appellant's cervical and lumbar spine

problems were related to the October 21, 1999 injury. On September 16, 2003 and November 14, 2005 Dr. Finkelstein diagnosed cervical herniated disc disease, bulging disc at C2-3, old herniated cervical disc disease at C6-7, degenerative post-traumatic disc disease at C5-6 and C6-7 and recommended epidural steroid injections and facet blocks.

Appellant submitted statements dated July 18 to October 10, 2005 and requested that his claim be expanded to include his lumbar condition.

In a November 29, 2005 decision, the Office denied appellant's claim for a low back injury on the grounds that the medical evidence was not sufficient to establish that his lumbar condition was caused by the October 21, 1999 incident.

On January 17, 2006 appellant appealed his claim to the Board. In an order remanding case dated June 26, 2006, the Board set aside the November 29, 2005 Office decision.<sup>1</sup> The Board found that the Office's decision did not contain an adequate description of the basis for the denial of the claim and remanded the case for a *de novo* decision with appropriate findings of fact and conclusions of law.

On May 25, 2006 appellant filed a CA-2a, claim for recurrence of disability alleging that he experienced a spontaneous return of the symptoms of his work-related injury. He stopped work on May 16, 2006.<sup>2</sup> In a report dated June 7, 2006, Dr. Lesniewski noted a history of injury and advised that he first treated appellant on October 25, 1999. At that time, he noted examination findings of diffuse tenderness, pain and spasm with restricted range of motion of the neck and reflexes revealed pain on motion in appellant's back with restricted range of motion and minimal radiation. Dr. Lesniewski indicated that appellant's major problem was his cervical spine; however, his low back pain was also present. In a September 18, 2006 report, Dr. Frank P. Cammisa, Jr., Board-certified orthopedic surgeon, evaluated appellant for cervical spinal surgical surgery and diagnosed cervical spondylosis with foraminal stenosis and left C7 radiculitis and dizziness.

In a decision dated October 3, 2006, the Office denied appellant's claim for a low back condition.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.<sup>3</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the

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<sup>1</sup> Docket No. 06-583 (issued June 26, 2006).

<sup>2</sup> In a decision dated October 6, 2006, the Office denied appellant's claim for a recurrence of disability. However, appellant, through his attorney, did not appeal this matter and therefore this issue is not before the Board at this time.

<sup>3</sup> *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>5</sup> 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.<sup>6</sup> Neither the 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.<sup>7</sup>

### ANALYSIS

Appellant sustained an injury on October 21, 1999 while driving a trailer. The Office accepted that he hit his head on the top of the cab. It accepted appellant's claim for head contusion and expanded his claim to include cervical radiculopathy.

The Office denied appellant's claim for compensation for a low back injury on the grounds that the medical evidence was not sufficient to establish that his lumbar condition was causally related to the October 21, 1999 injury. However, the Board notes that the medical evidence submitted by appellant generally supports that he sustained a back injury from the October 21, 1999 incident. Specifically, the emergency room report from October 21, 1999 noted that while appellant was driving his truck he sustained an injury to his head and also complained of lower back pain.

Also submitted was a report from Dr. Lesniewski dated October 25, 1999. Dr. Lesniewski noted that on October 21, 1999 appellant was driving a tractor trailer and drove over a construction area and struck his head on the top of the cab. He noted symptoms of significant neck pain with restricted range of motion in the neck and back. Dr. Lesniewski diagnosed decreased disc space at C5-6 with probable spondylosis. In a report dated October 1, 2002, he advised that appellant experienced a significant amount of low back and neck pain and opined that appellant's back condition was related to the original accident on October 21, 1999. In a report dated March 5, 2003, Dr. Lesniewski indicated that, after appellant's automobile accident on October 21, 1999, he complained of back pain which has persisted through the years although he was not treated for this condition. On March 26, 2003 he noted a history of injury and indicated that the initial examination note reported appellant's complaints of low back pain.

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<sup>4</sup> *Id.*

<sup>5</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Dr. Lesniewski advised that appellant's back pain was sporadic and gradually has developed into a full blown syndrome with the development of an absent ankle jerk on the right and a positive Michelle sign. He diagnosed herniated disc of the cervical spine and probable herniated disc of the lumbar spine. Dr. Lesniewski opined that within a degree of medical certainty appellant's cervical and lumbar spine problems were associated with his October 21, 1999 accident and his treatment has been ongoing. In a June 7, 2006 report, he noted that he first treated appellant after his work-related accident on October 25, 1999 and at that time he noted findings upon physical examination of pain on motion in his back with restricted range of motion and minimal radiation. Dr. Lesniewski indicated that appellant's major problem was his cervical spine; however, his back pain was present. Although his opinion is not sufficiently rationalized to carry appellant's burden of proof in establishing his claim, they stand uncontroverted in the record and are, therefore, sufficient to require further development of the case by the Office.<sup>8</sup>

In view of the above evidence, the Office should have referred the matter to an appropriate medical specialist to determine whether appellant may have sustained a back injury as a result of his employment duties.

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>9</sup>

The case will be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist for an opinion on whether appellant's low back condition was caused or contributed to by the October 21, 1999 incident. Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

### **CONCLUSION**

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

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<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>9</sup> *John W. Butler*, 39 ECAB 852 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2006 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: June 15, 2007  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board