

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

W.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bakersfield, CA, Employer**

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**Docket No. 08-1598
Issued: January 13, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 8, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated November 6, 2007 denying his claim and an April 2, 2008 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he developed a back condition causally related to his federal employment; and (2) whether the Office properly denied his request for reconsideration without further merit review.

FACTUAL HISTORY

On May 14, 2007 appellant, then a 58-year-old letter carrier, filed an occupational disease claim alleging that he sustained a herniated disc in his back at T7-8 as a result of lifting, sorting and carrying mail. He first became aware of his back condition and its relation to his employment on April 16, 2007. Appellant stopped work on April 18, 2007 and did not return.

In a May 24, 2007 letter, the Office advised appellant of the factual and medical evidence needed to establish his claim and provided him 30 days to submit additional information.

In response, appellant reiterated that his position as a letter carrier consisted of carrying, delivering and casing mail. He noted that the repetitive act of looking down at each piece of mail while casing caused a stiff neck and back.

A May 30, 2007 progress report from Dr. Charles Wrobel, a Board-certified neurosurgeon, diagnosed symptomatic, large thoracic disc herniation at T7-8. He noted that appellant was a postal letter carrier with back pain. Dr. Wrobel recommended surgery. In a June 4, 2007 progress note, Dr. Kathryn Mason, a family practitioner, evaluated appellant's right hip and knee noting a prior June 9, 2003 injury. Her note stated that appellant would be submitting a claim for his low back and he was seeing Dr. Wrobel for this problem. In a June 22, 2007 progress report, Dr. Wrobel referred appellant to Kaiser Permanente for a second opinion on thoracic disc surgery. A fax cover sheet dated June 28, 2007, from an employee in Dr. Wrobel's office, stated that "Dr. Wrobel does feel that this is a work-related injury." Magnetic resonance imaging (MRI) scan results dated April 26, 2007 from Dr. John Gundzik, Board-certified in diagnostic radiology, concluded that appellant had degenerative changes from T9-12 and a "fairly large left dorsal disc extrusion at T7-8."

In a July 2, 2007 decision, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish that the claimed back condition was causally related to the accepted work activities.

On July 30, 2007 appellant requested a review of the written record. In a June 29, 2007 progress note, Dr. Irene Helen Sanchez, an internist, diagnosed herniation of the lumbar, cervical and thoracic intervertebral discs, with radiculopathy. She noted that appellant's job activities required repetitive bending, twisting, grasping, pushing and pulling. Dr. Sanchez indicated that her findings and diagnosis were consistent with the history of appellant performing repetitive activities in his job such as sorting or casing mail. In an August 6, 2007 progress report, Dr. Sanchez noted that Dr. Wrobel had performed surgery at the T7-8 level. She stated that appellant could return to modified work with no pushing, pulling or lifting. On August 16, 2007 Dr. Sanchez noted that appellant had continued back pain around the T7-8 region but his condition remained unchanged from his previous visit. On September 14, 2007 she diagnosed herniation of thoracic and cervical intervertebral discs with radiculopathy and noted that appellant's pain increased with movement of his neck and back and when reaching, pushing, pulling or lifting.

In a November 6, 2007 decision, an Office hearing representative affirmed the July 2, 2007 decision on the grounds that the medical evidence did not establish a causal relationship between appellant's herniated discs and his duties as a letter carrier.

On January 11, 2008 appellant requested reconsideration. He provided a detailed description of his job activities while casing and delivering mail. Appellant also stated that he had ongoing back and neck pain as a result of his condition.

In an April 2, 2008 decision, the Office denied appellant's request for reconsideration, finding that the evidence did not warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

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; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹

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 diagnosed condition is causally related to the employment factors identified by the claimant.²

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 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 appellant, 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.³

ANALYSIS -- ISSUE 1

The record establishes that appellant's duties as a letter carrier require lifting, sorting and casing mail. However, he has not submitted sufficient medical evidence establishing that his duties caused or aggravated his diagnosed back condition.

Dr. Sanchez obtained a history of the repetitive motions that appellant's job requires. She diagnosed herniated lumbar, cervical and thoracic discs. Dr. Sanchez stated that her findings and diagnosis were consistent with appellant's duties such as casing and sorting mail. However, her opinion on causal relation is of limited probative value as she provided no medical explanation

¹ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor Woodhams*, 41 ECAB 345 (1989).

as to how lifting and sorting mail would cause or contribute to the diagnosed herniated discs.⁴ Dr. Sanchez did not explain the reasons that particular employment activities caused or aggravated appellant's diagnosed herniated discs and radiculopathy. Her September 14, 2007 progress report merely noted that appellant's neck and back pain had increased with general pushing, pulling or lifting movements. Dr. Sanchez did not specifically identify that these movements were employment related. She provided no history as to the weight of mail appellant was required to lift or the amount of time he engaged in such activity while at work. Dr. Sanchez noted that appellant underwent back surgery performed by Dr. Wrobel and could return to modified work. However, she did not provide further explanation of the causal relationship between appellant's work activities and his diagnosed conditions. Consequently, the reports of Dr. Sanchez are insufficient to establish causal relationship.

The other medical reports of record are similarly difficult as they do not address how his herniated disc at T7-8 is causally related to his employment.⁵ In a May 30, 2007 report, Dr. Wrobel noted that appellant is a letter carrier with back pain. He diagnosed the thoracic disc herniation. However, Dr. Wrobel did not explain how appellant's job as a letter carrier caused or contributed to the disc herniation. His June 22, 2007 progress report also makes no reference to the cause of appellant's condition. The April 26, 2007 MRI scan report did not address causal relationship between appellant's work duties and his disc herniation. On June 4, 2007 Dr. Mason examined appellant's right hip and knee for an unrelated injury sustained on June 9, 2003. She specifically noted that she was not treating appellant's thoracic condition. Therefore, this evidence is not relevant to appellant's claim on appeal.

A June 28, 2007 fax cover sheet from an employee in Dr. Wrobel's office, stated that the physician believed that appellant's injury was work related. However, this statement cannot be considered as probative medical opinion evidence as there is no evidence that it was made by Dr. Wrobel.⁶

The Board finds that appellant has not submitted sufficient medical evidence to establish a causal relationship between his work duties and his T7-8 disc herniation. Consequently, he has not met his burden of proof in establishing that he sustained an occupational disease in the performance of duty.

⁴ *Gloria McPherson*, 51 ECAB 441 (2000) (a physician's opinion 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 *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁶ *See* 5 U.S.C. § 8101(2) (defining the term "physician"); *see also Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁷ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant provided a statement noting his job activities and ongoing symptoms but he did not submit any additional medical evidence. The underlying issue is medical in nature -- whether there is a causal relationship between his work duties and disc herniation. Appellant's statement is not relevant to the underlying medical issue. He did not otherwise attempt to show that the Office erroneously applied a point of law or advance a new relevant legal argument. Consequently, the Office properly denied appellant's request for reconsideration without further merit review.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a back condition causally related to his work activities. The Board also finds that the Office properly denied his request for reconsideration without conducting further merit review.

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ *Id.* at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 2, 2008, November 6 and July 2, 2007 are affirmed.

Issued: January 13, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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