

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARREL W. McNELL and U. S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, La.

*Docket No. 97-351; Submitted on the Record;
Issued September 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established that his herniated disc condition is causally related to factors of his federal employment.

On May 21, 1996 appellant, then a 41-year-old carrier technician, filed a claim for compensation alleging that on that day he injured his back while in the performance of duty.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

³ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁶ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Causal relationship is a medical issue,⁷ and the medical evidence required to establish a causal relationship is rationalized medical evidence. 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.⁸ Moreover, 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.⁹ Nonetheless, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹⁰

By letter dated June 6, 1996, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim for compensation including a detailed narrative medical report containing a well-rationalized medical opinion as to the relationship between the alleged work incident and the claimed medical condition.

In response, appellant submitted a May 28, 1996 duty status report from Dr. Alonzo N. Diodene, appellant's treating physician and a Board-certified orthopedic surgeon, which the Office received on June 14, 1996. He indicated that appellant had degenerative disc disease while rendering a diagnosis of lower back strain. Dr. Diodene noted also that the condition was consistent with the history of injury as related by appellant.

In a medical report dated May 28, 1996 and received by the Office on July 5, 1996, Dr. Diodene stated that appellant had subjective complaints of back pain sustained as a result of a fall at work during the preceding week and that he had been treated by a chiropractor pursuant to the injury. He noted that x-rays revealed "very narrowed L4-5 disc space, and early narrowing of L3-4 and L5-S1 disc spaces" and determined that appellant had degenerative disc disease. Dr. Diodene also noted appellant's history of back pain, noting that appellant had had "intermittent problems with back pain since 1983 -- [appellant] was trying to enter an old jeep."

On July 25, 1996 the Office, in a decision, denied appellant's claim on the grounds that the evidence of record failed to establish that an injury was sustained as alleged.

On August 14, 1996 the Office received appellant's undated request for reconsideration.

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 6.

⁹ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

¹⁰ *Larry Warner*, 43 ECAB 1027 (1992).

On August 19, 1996 the Office, in a nonmerit decision, denied appellant's request for reconsideration on the grounds that appellant raised neither substantive legal questions nor introduced new and relevant evidence to support his request for reconsideration.

In a letter received by the Office on September 4, 1996, appellant requested reconsideration and submitted an August 9, 1996 medical report from Dr. Frances Allen Johnston, a Board-certified orthopedic surgeon and appellant's treating physician. He stated that appellant's work-related May 1996 back pain was caused by "significant disc herniations at L4-5 and L5-S1" as revealed by a recent magnetic resonance imaging (MRI) scan and recommended epidural steroid injections for treatment.

On September 10, 1996 the Office, in an advisory letter, notified appellant that his claim had been denied in July and he would need to submit additional information in order for the Office to reconsider his claim.

Appellant again filed a request for reconsideration in a letter received by the Office on September 18, 1996. In support of his request, appellant submitted an August 1, 1996 medical report from Dr. Gary B. Lum, Board-certified in radiology, in which he stated that an MRI scan performed that day revealed prominent disc herniation at L4-5, disc herniation at L5-S1, and "foraminal disease ... most pronounced at L4-5."

On September 26, 1996 the Office notified appellant that it had rescinded its July 25, 1996 decision and accepted his claim for lumbar strain filed pursuant to his work-related injury on May 21, 1996. In an attached memorandum, the Office stated that Dr. Johnston's medical reports constituted new evidence and that therefore a merit review had been conducted in appellant's case. As a result of this review, the Office determined that Dr. Diodene's medical reports were sufficiently rationalized to establish that appellant had sustained a work-related lumbar strain on May 21, 1996.¹¹ However, the Office noted that there was "insufficient evidence to establish that the herniated discs resulted from the injury, in light of the preexisting back condition and the lack of medical records pertaining to this preexisting problem."

On October 22, 1996 appellant filed an appeal with the Board requesting review of the Office's September 26, 1996 decision in which the Office found that appellant's medical evidence failed to establish that his disc condition was causally related to his employment.

The medical evidence relevant to appellant's herniated disc condition includes a May 28, 1996 medical report from Dr. Diodene who diagnosed degenerative disc disease but provided no rationalized medical evidence to support that diagnosis; the doctor's duty status report who again noted degenerative disc disease and indicated that appellant's lower back pain was consistent with the injury as related by appellant; and a medical report from Dr. Johnston who stated that appellant's pain was caused by significant herniated discs which appeared to correlate with his May 1996 work-related injury. While these reports do not establish a reasonable medical certainty that appellant's herniated disc condition was causally related to his employment, the

¹¹ It appears that the Office did not consider Dr. Diodene's medical reports in its development of the case as reflected in its July 25, 1996 decision.

fact that the medical evidence contains deficiencies preventing appellant from discharging his burden does not mean that it should be completely disregarded by the Office. It merely means that the probative value of the evidence is diminished.¹² It is well established that proceedings under the Act are not adversarial in nature,¹³ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁴ The Board therefore finds that the uncontroverted medical evidence constitutes a sufficient basis to require further development of the record and, therefore, the case must be remanded. On remand, the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's herniated disc condition on or after May 21, 1996 was either caused or aggravated by employment factors. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated September 26, 1996 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
September 4, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹² See *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *Rebel L. Cantrell*, 44 ECAB 660 (1993).

¹⁴ *Udella Billups*, 41 ECAB 260, 269 (1989).