

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID W. THOMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Redford, Mich.

*Docket No. 95-3118; Submitted on the Record;
Issued April 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty causally related to factors of his federal employment.

On May 25, 1993 appellant, then a 43-year-old letter carrier, filed an occupational disease claim alleging that he suffered degenerative disc disease, which was aggravated by his duties as a letter carrier. He stated that he first became aware of the disease in June 1984 and that it was caused or aggravated by his employment on August 2, 1984. Appellant stopped working on October 29, 1992 and returned to light-duty status on February 7, 1993.

Dr. Nelson Lytle, a Board-certified internist, treated appellant on September 19, 1991 for low back problems with known degenerative disc disease at L3-4 and L5-S1. Dr. Lytle recorded symptoms of pain, radiating down appellant's leg into his foot. On October 2, 1991 he diagnosed mild diffuse bulging at L3-4, L4-5, as well as an osteophyte at L4-5; Dr. Lytle relied on a computerized axial tomography (CAT) scan of the lumbar spine interpreted on September 30, 1991 by Dr. Suresh C. Patel, a Board-certified surgeon.

Dr. Robert Hunter, a specialist in internal medicine, treated appellant on October 17, 1991 and diagnosed acute low back pains and left sciatic neuritis, secondary to degenerative arthritis and degenerative disc disease at L3-4 and L4-5. On November 18, 1991 he noted that appellant had recurring episodes of low back pain for the past seven years, becoming more severe in the last four years.

On May 5, 1992 Dr. Daniel Sestak, a Board-certified internist, diagnosed chronic low back and irritable bowel syndrome.

In a statement dated May 25, 1993, appellant stated that he became aware of his degenerative disc disease on August 1 or 2, 1984, after a medical examination. He stated that he first experienced a lower back problem in July 1984 when he bent over to pick up a bundle of

mail and was unable to return to a standing position. Appellant stated that, as he continued his duties that day, the pain intensified to the point that he was unable to get out of his car at the end of the day. He indicated that he experienced several recurrences since that day and that he has not carried mail since October 29, 1992. Appellant further stated that he is on light duty, working no more than 6 hours per day with restrictions of lifting no more than 10 pounds and of performing no repetitive lifting or prolonged reaching above the shoulders. He stated, however, that he experienced pain in his lower back, hips and legs, sometimes radiating to his foot. Appellant indicated that he must sit down every 25 to 30 minutes or the pain in his lower back intensifies. He reported that often he cannot stand completely upright after sitting without experience pain in his lower back and that he cannot walk long distances without experiencing this pain. He stated that the last day that he carried mail was October 29, 1992 and that on that day he was walking down flight of stairs on his route when he experienced sudden, severe pain in his lower back and down his right leg to his foot. Appellant indicated that his right leg collapsed and he dropped his mail, almost falling down the stairs. He stated that his former duties as a letter carrier required lifting up to 70 pounds, carrying a 35-pound satchel, and prolonged walking and standing 8 hours a day, 40 hours per week. Appellant stated that this created mechanical stress on his degenerative disc, which caused pain in his lower back, hips, and legs. He indicated that he could not recall lower back problems prior to July 1984.

On July 25, 1993 appellant filed a claim for wages lost between September 19, 1991 and July 30, 1993.

In an attending physician's report dated June 25, 1993, Dr. Sestak indicated that appellant had recurrent low back and neck pain, abdominal pain and diarrhea. He checked "no" to indicate that there was no history of concurrent or preexistent injury, disease, or physical impairment. Dr. Sestak found muscle spasm and degenerative disc disease by x-ray or magnetic resonance imaging (MRI) scan. He diagnosed degenerative disc disease of the spine, spastic colon, and stress/anxiety. Dr. Sestak stated that he could not determine if appellant's employment activity caused his diagnoses, but that his occupation definitely aggravated all three conditions.

In a letter dated June 25, 1993, Dr. Sestak stated that he had treated appellant since May 5, 1992. He indicated that he treated appellant for a variety of medical problems, the most significant of which was degenerative disc of the spine, a spastic colon, and a stress reaction. Based on appellant's statement and his treatment records, Dr. Sestak concluded that it was fairly clear that his medical conditions, if not caused by his employment, were certainly aggravated by it. He stated that the degenerative disc disease of both the cervical and lumbar spine was documented by clinical history, examination, x-rays and MRI scan. Dr. Sestak stated that his diagnoses of spastic colon and stress reaction were arrived at from a combination of clinical findings and history, but that these conditions were not amenable to definitive testing. He further stated that extensive testing was done to rule out other causes of appellant's symptomology. Dr. Sestak indicated that appellant's statements outlined extensive walking, climbing, carrying as much as 35 pounds, and lifting up to 70 pounds, which definitely aggravated appellant's cervical and lumbar spine disease. He stated that he had no definite evidence that appellant's occupation caused this disease. Dr. Sestak noted that appellant told him of high stress levels on the job and that appellant's neurologic complaints revealed

symptoms out of proportion the documented disease. Consequently, he concluded that a significant portion of appellant's symptomology was related to anxiety and stress.

On October 19, 1993 Dr. Edward Dorsey, Board-certified in psychiatry and neurology, examined appellant on behalf of the employing establishment. He made no psychiatric diagnoses, but diagnosed somatization personality traits, a history of spastic colon, degenerative disc problems and life stresses. Dr. Dorsey opined that appellant's low back pain was a way of controlling his work output. He stated that degenerative discopathy could not be explained on the basis of back strain picking up a bundle of mail. Dr. Dorsey stated that the basic condition was a somatization personality trait which means he controls his behavior through physical symptoms. He concluded that job stress was not a factor in the need for continuous limited duty.

On October 18, 1993 appellant was examined by Dr. Grant J. Hyatt, a Board-certified orthopedic surgeon. He recorded that appellant began experiencing back problems in 1984 when he picked up a bundle of mail and had difficulty returning to a standing position. Dr. Hyatt noted continual residual symptoms until October 1992 when appellant experienced a sudden increase in low back pain. He also indicated that appellant's past medical history was negative for significant injury to his neck or back. Dr. Hyatt concluded that both objective clinical and radiographic findings were significant for evidence of moderate degenerative disc disease of the lumbosacral spine involving levels L3-4 and L4-5. Dr. Hyatt reviewed an MRI scan on November 15, 1993 and recommended functional restrictions of limiting/carrying to 35 pounds and avoiding repetitive bending, twisting, stooping and overhead work.

The Office subsequently referred appellant to Dr. Michael Holda, a Board-certified orthopedic surgeon, along with a statement of accepted facts. The statement of facts dated October 18, 1993 indicated that appellant had a history of back problems since June 1982 and preexisting degenerative disease of the lumbar spine. Dr. Holda examined appellant on November 24, 1993. He stated that appellant complained of daily low back pain which comes and goes. Dr. Holda recorded that appellant developed back pain in July 1984 when he bent to pick up a mail bundle and that appellant suffered back injuries in 1989 and 1990 when he fell during dog attacks. He diagnosed degenerative arthritis of the lumbar spine based on x-rays showing the disease at L3-4 and L4-5. Although he found no evidence of a disc herniation or a work injury, he restricted appellant to lifting 50 pounds. On December 15, 1993 Dr. Holda stated that he was unable to find a medical condition resulting from appellant's employment and indicated that he was not totally disabled. He indicated that his suggested restrictions were due to degenerative arthritis of the lumbar spine consistent with the aging process.

In a decision dated January 5, 1994, the Office of Workers' Compensation Programs denied the claim finding that the evidence of record failed to demonstrate a causal relationship between the claimed condition and identified factors of appellant's federal employment.

On January 27, 1994 appellant requested a hearing.

In a decision dated November 18, 1994, the Office hearing representative affirmed the Office's January 5, 1994 decision finding that Dr. Holda's opinion was entitled to more weight than Dr. Holda's opinion constituted the weight of the evidence.

On June 1, 1995 appellant requested reconsideration. In support, appellant submitted an April 19, 1995 report from Dr. John Gilroy, a physician Board-certified in psychiatry and neurology. Dr. Gilroy indicated that appellant injured his back in 1984 when he bent over to pick up a bundle of mail and could not stand up. He stated that appellant was examined and diagnosed with degenerative disc disease. Dr. Gilroy reported that appellant's back pain returned when he fell during dog attacks in 1989 and 1990. He stated that on October 29, 1992 appellant experienced intense pain in his back radiating down to his right foot when he climb down steps on his route. Dr. Gilroy diagnosed C5 radiculopathy, right, in the neck, L3 radiculopathy, left, in the lower back, and L5 radiculopathy, left, in the lower back. He stated that appellant's condition was "obviously related to his occupation as a letter carrier and I think this comes out quite clearly in my history, as well as my physical examination."

Appellant also submitted a January 30, 1995 report from Dr. David H. Mendelson, a Board-certified orthopedic surgeon. He stated that appellant informed him that his problems began in July 1984, but that appellant acknowledged back problems prior to late time. Dr. Mendelson noted that appellant fell in a dog attack while on his route in 1990 injuring his back. He diagnosed degenerative arthritis of the lumbar spine with degenerative lumbar disc disease and mild lumbar radiculopathy. Dr. Mendelson stated that he did not "feel his work in and of itself, resulted in the initial degenerative disc problem, but that it is quite probable that the second injury of 1990, did, in fact, accelerate his condition."

In a decision dated August 28, 1995, the Office found that the evidence submitted in support of the application for reconsideration was insufficient to warrant modification of the prior decisions.

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

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim, including the fact that he 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.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 the 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 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.²

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Geraldine H. Johnson*, 44 ECAB 745, 749 (1992).

The medical evidence required to establish causal relationship, generally, 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 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.³

There is no dispute that appellant is a federal employee and that he filed a timely claim for compensation benefits. Moreover, as there is no evidence refuting appellant's description of the factors to which he attributed his pain, the Board finds that appellant has established that the claim events, incidents or exposures occurred as alleged.⁴

In the instant case, Dr. Sestak, a Board-certified internist and appellant's treating physician, provided a medical opinion stating that appellant's degenerative disc disease of the spine, his spastic colon, and stress reaction were "certainly aggravated" by his employment. Similarly, Dr. Mendelson, a Board-certified orthopedic surgeon, also provided a rationalized medical opinion indicating that appellant's 1990 employment injury "accelerated" his initial degenerative disc problem. These opinions, however, are contradicted by the medical opinion of Dr. Holda, a Board-certified orthopedic surgeon, who opined that he was unable to find a medical condition resulting from appellant's employment.

When there are opposing medical reports of virtual equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act,⁵ to resolve the conflict in the medical opinion. As an unresolved conflict exists in the medical evidence, this case will be remanded to the Office for referral to an impartial medical specialist. After such further development as necessary, the Office shall issue a *de novo* decision.

³ *Id.*

⁴ See *Robert A. Gregory*, 40 ECAB 478 (1989).

⁵ 5 U.S.C. § 8123(a); see *Martha A. Whitson (Joe D. Whitson)*, 36 ECAB 370 (1984).

The decisions of the Office of Workers' Compensation Programs dated August 28, 1995 and November 18, 1994 are hereby set aside and the case is remanded to the Office for further development consistent with this opinion.

Dated, Washington, D.C.
April 8, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member