

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of DIANA K. HENDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, Ohio

*Docket No. 96-1547; Submitted on the Record;
Issued July 2, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that her current back condition was causally related to work factors.

On October 26, 1994 appellant, then a 33-year-old box clerk, filed a notice of traumatic injury, claiming that she felt sudden pain in her lower back and down her right leg when she reached up to case mail. Appellant submitted a form report from Dr. John Peterangelo, an osteopathic practitioner, who diagnosed disc disease with right L-5 radiculopathy and related the condition to appellant's work where she was sorting letters and reached up and felt severe pain.

A November 5, 1994 computerized tomographic scan showed "minimal possible subtle" disc bulging at L5-S1, and an electromyogram dated November 17, 1994 which revealed a right L-5 radiculopathy. Also in the file is a November 7, 1994 letter from Dr. James D. Ruffner, a practitioner in occupational medicine who examined appellant on November 4, 1994 to determine her fitness for duty. Dr. Ruffner stated that appellant's account of sitting down, reaching up, and experiencing pain "was not consistent" with a work-related injury but rather with her previous back condition.¹ He noted that her work was sedentary and light duty to protect her from further injury and that she had been doing her work despite some continued pain.

Dr. Peterangelo referred appellant to Dr. Philip A. Minella, Board-certified in neurological surgery, who stated in a December 7, 1994 report that five to six weeks ago appellant experienced back pain radiating down the right leg with spasms "when she lifted and twisted on the job." He prescribed physical therapy three times a week for three weeks.

¹ Appellant was injured on November 28, 1989 in an accident involving her rural delivery vehicle. Her claim was accepted for sprain and strain of the back, shoulder, neck, wrist, and hip. Subsequently, the Office of Workers' Compensation Programs denied two claims for recurrences of disability. Following back surgery in March 1993, appellant returned to limited duty on February 23, 1994.

On January 5, 1995 the Office requested that appellant submit more detailed factual information and a narrative medical report which included a rationalized opinion on the cause of appellant's injury, particularly in view of her previous work-related back condition.

Appellant explained in a letter dated January 10, 1995 that in her modified job she would stack all the letters that belonged on top of the case in a pile so that she would not have to reach up repeatedly. On the day of her injury she picked up these letters with her right hand and put them to the left upper side of the case. She stated that when she reached up and to the left, she felt a sharp and severe pain in her lower right side and the pain shot down to her foot. Appellant added that the pain was so severe she went to the emergency room and had to stay in bed for three days. She then went to Dr. Peterangelo for treatment.

Appellant submitted a January 23, 1995 letter from Dr. Minella who stated that appellant's symptoms represented a new injury; she may have had some carry-over from her original problem, but her current back pain involved the opposite leg. Dr. Minella completed a form report dated January 27, 1995 stating that when appellant was seen on December 7, 1994 she related that she "lifted and twisted at work" causing the injury to her back.

In a February 6, 1995 letter Dr. Minella reiterated that appellant was sitting in a chair and sorting mail, and when she picked up a letter with her right hand and "while reaching above her head and twisting at the same time, she felt a severe pain" in her low back which radiated down her right leg to her foot.

On February 13, 1995 the Office denied the claim on the grounds that the evidence failed to establish that appellant's back condition was causally related to work factors. The Office noted that appellant's physicians failed to provide any reasoning for their conclusion that the October 26, 1994 incident of reaching up and over to the left lifting several letters overhead would cause a right-sided radiculopathy.

Appellant timely requested reconsideration and submitted a March 13, 1995 report from Dr. Minella who stated that at work on October 26, 1994 appellant "twisted to the left while lifting with her right hand and noted a sudden onset of radicular pain." Dr. Minella added that the twisting and bending done while working was the cause of the pain.

On May 18, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office found that appellant's account of the October 26, 1994 incident at work was inconsistent with the history provided to Dr. Minella, who in his latest report stated that appellant's pain also resulted from bending as well as twisting, neither of which was reported by appellant initially.

Appellant again requested reconsideration and submitted medical evidence as well as a personal statement. Appellant noted that on her claim form and initial statement she did not mention "twisting" because not until she demonstrated to Dr. Minella what had happened at work did he point out that a twisting motion was a contributing factor. Appellant explained that she was sitting down facing forward and that when she picked up the letters with her right hand to put them up to the left, the movement involved a twisting of her upper body.

On September 16, 1995 the Office again denied modification of its prior decision on the grounds of insufficient evidence. The Office noted that the most probative history of the October 26, 1994 incident was appellant's contemporaneous account of what happened at work on that day and not later revisions "which can only be described as self-serving."

Appellant requested reconsideration and again explained the mechanism of her claimed injury. She stated that she was unaware of the twisting motion at the time of her injury but "[u]pon thinking it over and demonstrating the movement it became apparent to me that twisting was unavoidable when you move the upper part of the body to reach, while remaining seated and not moving the lower part of the body." Appellant added that her physicians did not agree that the incident was "an unexplained episode of pain" at work and requested an independent medical evaluation. Appellant noted that she had undergone a lumbar discectomy on July 11, 1995 and claimed compensation from October 26, 1994 through December 19, 1995.

On April 2, 1996 the Office again denied appellant's request on the grounds that the evidence was insufficient to warrant review of its prior decision. The Office noted that the original denial was based on the fact that the record contained no reasoned medical opinion addressing how the injury as reported by appellant caused the diagnosis of L5 radiculopathy and that appellant submitted no evidence on reconsideration to support such a causal relationship.

The Board finds that appellant has failed to meet her burden of proof in establishing that her current back condition was causally related to the October 26, 1994 incident at work.

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 filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.⁵ The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.⁶ Thus the claimant

² 5 U.S.C. §§ 8101-8193 (1974).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Id.*

⁵ *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

⁶ 20 C.F.R. § 10.5(15).

must show that the specific event or incident or series of events or incidents within a single work day or shift resulted in an injury within the meaning of the Act.⁷

Once the claimant establishes fact of injury he or she must then demonstrate through medical evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specified conditions of the employment.⁸ The causal relationship must be shown by rationalized medical evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and on a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.

The physician's conclusion of causal relationship must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁹ Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that her condition was caused by her employment is sufficient to establish a causal relationship.¹⁰

In this case, the Board finds that the medical evidence is not sufficiently rationalized to establish a causal relationship between the episode of severe pain appellant experienced on October 26, 1994 and the diagnosed radiculopathy and resulting disc surgery. In an attending physician's report, Dr. Peterangelo stated that appellant's radiculopathy was related to her employment on the basis that she was at work sorting letters and reached up and felt severe pain. However, Dr. Peterangelo offered no explanation of this statement and failed to discuss how such an action resulted in disc disease and radiculopathy at L5. Therefore, his report has little probative value.¹¹

In his initial report on December 7, 1994, Dr. Minella stated that appellant experienced pain when she lifted and twisted at work but he did not explain how such movements caused the diagnosed conditions of disc disease and radiculopathy. Later, Dr. Minella stated that because appellant's complaints of pain involved the opposite leg, her problem was a new injury, although she had a "weakened back."

On a January 27, 1995 form, Dr. Minella related that appellant had told him she lifted and twisted at work, causing the back injury. Yet in her statement responding to the Office's inquiry, appellant did not mention any twisting motion. In later reports, Dr. Minella reiterated that the twisting motion while reaching above her head caused appellant's pain but then added that twisting and bending at work were the cause as well.

⁷ *Richard D. Wray*, 45 ECAB 758, 762 (1994).

⁸ *Robert Lombardo*, 40 ECAB 1038, 1041 (1989).

⁹ *Steven R. Piper*, 39 ECAB 312, 314 (1987).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹¹ *See Ruth S. Johnson*, 46 ECAB 237, 242 (1994) (finding that a causation opinion that consists only of checking "yes" to a form question has little probative value and is thus insufficient to establish causal relationship).

While Dr. Minella consistently attributed appellant's back condition to her work, he based this conclusion on an inconsistent history provided by appellant, who initially reported simply reaching up to case letters, but later remembered that she had lifted and twisted the upper part of her body.¹² Dr. Minella's opinion on the cause of appellant's current back condition is essentially based on her complaint of an episode of severe pain at work and not on specific work factors such as casing letters or lifting bundles of mail. Thus, the Board finds his conclusion to be of diminished probative value in establishing a causal relationship between appellant's employment and her diagnosed back condition.¹³

Although the Office explained to appellant why the medical evidence in support of her claim was deficient, she failed to provide a rationalized medical opinion to establish that she sustained a diagnosed back condition causally related to her employment duties.¹⁴ Therefore, the Board finds that appellant has failed to carry her burden of proof in establishing that she sustained a back injury due to her employment.¹⁵

The April 2, 1996 and September 16 and May 18, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
July 2, 1998

¹² See *George V. Lambert*, 44 ECAB 870, 876 (1993) (finding that inconsistencies in the record cast serious doubt on the validity of the claim); *Mary Joan Coppolino*, 43 ECAB 988, 991 (1992) (same); *William Sircovitch*, 38 ECAB 756, 762 (1987) (same).

¹³ See *Rosie M. Price*, 34 ECAB 292, 294 (1982) (finding that the mere occurrence of an episode of pain during the work day is not proof of an injury having occurred at work; nor does such an occurrence raise an inference of causal relationship); *Max Haber*, 19 ECAB 243, 247 (1967) (same). See also *John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

¹⁴ See *Gary R. Sieber*, 46 ECAB 215, 224 (1994) (finding that the weight of a medical opinion is determined by its reliability, its probative value, and its convincing quality).

¹⁵ Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540, 551 (1993). Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member