

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT HENDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Austin, Tex.

*Docket No. 96-1368; Submitted on the Record;
Issued March 3, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish a back injury in the performance of duty, as alleged.

The Board has duly reviewed the record in the present appeal and finds that appellant has not met his burden of proof to establish a back injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the 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.² These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury due to one single incident, or an occupational disease due to events occurring over a period of time.³ With respect to the factual component of a claim, an injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁴ An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ The Office of Workers' Compensation Programs' regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift. *See* 20 C.F.R. §§ 10.5(a)(15), (16).

⁴ *Thelma S. Buffington*, 34 ECAB 104 (1982); *Theodore W. Manginen*, 15 ECAB 57 (1963).

doubt upon the validity of the claim.⁵ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁶

With respect to the medical component, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁷ Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.⁸

Appellant, a 54-year-old clerk, filed a claim on March 29, 1995 for a back injury which he related to difficulty in opening a gate on March 1, 1995. In his statement submitted with his claim, he noted that when unable to open the gate, he forced it open with a bar. He stated that he awoke with pain the following day and went to the Veterans Hospital, where he was provided with a disability note to stay off of work. Appellant did not submit any witness statements, but he submitted a record of treatment which showed treatment on March 2, 1995, for acute sciatica and low back pain with a recommendation that he rest at home for four or five days. In response to an April 12, 1995 letter from the Office, appellant submitted additional medical records from his care at the Scott & White Clinic in Killeen Texas from March 4 until May 5, 1995. Dr. Paul Crumpler, a Board-certified family practitioner at the clinic, reported in a March 4, 1995 treatment note, a history of back pain intermittently since October 1994 with a recent increase in back pain and radicular symptoms "over [the] last couple of weeks." Appellant underwent a computerized tomography (CT) scan on March 8, 1995 which showed a significant bulge at L4-5, and he remained off work until the date of his next visit, March 17, 1995. He was evaluated on March 17 and March 24, 1995 by Dr. Steven Smith, a Board-certified family practitioner, who reviewed the results of the CT scan and referred appellant to physical therapy treatment. The first mention in the medical records of an employment injury was in the physical therapy treatment notes on March 21, 1995, when a physical therapist reported appellant's history of injury occurring three weeks prior to that date, from his difficulty in opening a gate at work. In a follow-up report on March 24, 1995, Dr. Smith noted a slight improvement in the right-sided sciatica from the physical therapy treatment, and noted a reevaluation in three or four weeks. Subsequent treatment notes, however, indicate that appellant was examined by Dr. David Lemper at the Scott & White clinic in Temple, Texas, that he completed physical therapy on April 4, 1995, and was released by Dr. Lemper to return to work in early May 1995.⁹ The record contains the disability notes from Dr. Smith who released appellant to work at the end of March

⁵ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

⁶ *See Dorothy Kelsey*, 32 ECAB 998 (1981).

⁷ *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

⁸ *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

⁹ The Board notes that Dr. Lemper is not listed in the American Medical Association's Directory of Physicians.

1995 and a March 28, 1995 disability note from Dr. Lemper who continued total disability from work for three weeks.

By decision dated May 3, 1995, the Office accepted that the claimed incident as alleged occurred on March 1, 1995, but found the medical evidence insufficient to establish a medical condition as a result of the work incident.

Upon request for reconsideration, appellant identified the physician who treated him at the Veteran's Hospital on March 2, 1995 and noted that he did not file his claim initially because he thought his pain on March 2, 1995 was due to arthritis. He stated, however, that Dr. Crumple indicated he had "pulled or lifted something" and had pulled a disc in his back causing the nerve to compress. Appellant submitted a report from Dr. Lemper, who noted evaluations of appellant on March 28 and May 5, 1995 and related appellant's pain to picking up the rack at work on March 2, 1995. He diagnosed lumbar disc disease at L4-5 and indicated that the force of picking up the rack at work produced the condition.

By decision dated June 2, 1995, the Office denied appellant's claim on the basis of the inconsistencies of his claim.

Appellant requested reconsideration, and submitted a report by Dr. Lemper, identifying March 1, 1995 as the date of injury and noting the lack of immediate pain often associated with a disc herniation. Appellant also submitted a report from Dr. Crumpler, who stated that he recalled appellant describing his work without being able to identify a serious back injury when the symptoms began. Dr. Crumpler noted that the x-rays taken on March 6, 1995 revealed chronic L4-5 disc space narrowing and other degenerative changes, with the CT scan showing degenerative changes at the L4-5 level, as well as other levels. Appellant also submitted a report from Dr. Smith, who stated that he recalled appellant giving a history of pain following a lifting incident at work, and that it was an oversight not to have recorded this history in his initial treatment note dated March 17, 1995. Dr. Smith noted that appellant was treated at the clinic previously in 1992 for a low back strain, as opposed to any history of treatment in 1994 as previously provided by Dr. Crumpler. He stated that appellant's prior low back strain had nothing to do with his current condition, which was "low-back disease" and a herniated disc as a result of the lifting incident.

By decision dated February 8, 1996, the Office reviewed appellant's claim on the merits and denied modification of the prior Office decision.

The Board notes that the initial history of injury claimed by appellant is provided in the physical therapist's March 21, 1995 report, which cites the work incident occurring three weeks prior to that date. As a physical therapist is not considered a physician under the Act, the March 21, 1995 report from the physical therapist is not medical evidence.¹⁰ The initial medical report on March 2, 1995 from the emergency room of the Veteran's Affairs' medical center, contained an illegible signature from a physician appellant identified as Dr. Luis Garcia.

¹⁰ See 5 U.S.C. § 8101(2); see also, *Barbara J. Williams*, 40 ECAB 649 (1988).

Medical treatment notes lacking proper identification are not probative evidence.¹¹ Nor did the physician who examined appellant provide a history of injury to establish that appellant's back pain and radicular symptoms were due to an incident at work the day before. Instead, in his March 4, 1995 report, Dr. Crumpler provided a history of back pain and radicular symptoms "over [the] last couple of weeks" with a previous history of a condition in 1994. While reports were submitted by appellant to correct the lack of an identifiable incident at work, and to provide a history of the incident on March 1, 1995 as the cause of appellant's condition, Dr. Crumpler did not explain his prior history of back pain for the weeks prior to his examination on March 4, 1995. In addition, he noted that appellant described his work, but was unable to identify a serious injury in connection with his symptoms. This is inconsistent with the statement of Dr. Smith, who indicated that upon his evaluation on March 17, 1995, appellant provided a history of the injury on March 1, 1995, but he failed to record the history. Furthermore, the reports from Dr. Lemper, a physician at the clinic's other location who examined appellant on March 28 and May 5, 1995, contain a history of picking up a rack at work on March 1, which he later changed to March 2 1995, while the history provided by appellant involved a struggle to open a stuck gate, followed by the picking up of a item to pry loose the stuck gate. His opinion that the force of picking up the rack at work caused the L4-5 lumbar disc disease is therefore insufficient to correct the deficiencies in the claim, and is unrationalized in that it fails to explain the nature of the condition and the incident at work. While he noted that diagnostic tests revealed the existence of a bulge or disc herniation which could produce symptoms more than one day after an incident, this explanation is inconsistent with the injury occurring on March 1, 1995, followed by symptoms the following day. Furthermore, mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment, as the work activities may produce symptoms revelatory of an underlying condition.¹² The Board finds, therefore, that appellant has not met his burden of proof in establishing his claim for a back condition due to the work incident on March 1, 1995.

¹¹ *Merton J. Sills*, 39 ECAB 572 (1988).

¹² *Edward E. Olson*, 35 ECAB 1099 (1984).

The decision of the Office of Workers' Compensation Programs dated February 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 3, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member