

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. BROWN and U.S. POSTAL SERVICE,
Jacksonville, Fla.

*Docket No. 97-2701; Submitted on the Record;
Issued May 21, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a back condition while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a back condition while in the performance of duty.

On December 18, 1995 appellant, then a mail processor, filed a claim for an occupational disease (Form CA-2) alleging that he first realized that his back condition was caused or aggravated by his employment on September 30, 1994. Appellant's claim was accompanied by factual evidence.

By letter dated January 10, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office also advised appellant to submit additional factual and medical evidence supportive of his claim.

By decision dated February 6, 1996, the Office found that appellant had failed to establish an employment-related injury.

In response to the Office's January 10, 1996 letter, appellant submitted factual and medical evidence by letter dated April 18, 1996. In a September 13, 1996 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated September 30, 1996, the Office denied appellant's request for modification based on a merit review of the claim.

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;¹ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;² and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed³ or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁵ 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,⁶ must be one of reasonable medical certainty⁷ 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

In this case, the Office found in its September 30, 1996 decision that appellant failed to present rationalized evidence of a medical condition causally related to factors of his employment. The medical evidence of record reveals disability certificates from the family care center. The July 20 and July 23, 1993 disability certificates indicated that appellant had cervical and right shoulder myalgia. The August 5, 1993 disability certificate provided that appellant had lumbar myalgia with spasms. The October 28, 1993 disability certificate revealed that appellant had an acute back strain. The June 29, 1994 disability certificate revealed that appellant had low back strain. These disability certificates are insufficient to establish appellant's burden inasmuch as they failed to discuss whether or how the diagnosed condition was caused by factors of appellant's employment.⁹

The medical evidence of record further reveals the September 30 and November 28, 1994 and March 30 and July 28, 1995 disability certificates of Dr. William L. Carriere, a Board-certified family practitioner, indicating that appellant was incapacitated due to back pain. The November 28, 1994 disability certificate from the family care center indicated that appellant

¹ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979); *John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

³ *Arthur C. Hamer*, 1 ECAB 62, 64 (1947); *Georgia R. Cameron*, 4 ECAB 311-12 (1951).

⁴ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁵ See *Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ See *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

was being treated for back pain. The December 20, 1994 disability certificate of Dr. M. Williams provided that appellant had received treatment from October 21 through 25, 1994. Dr. Carriere's July 28, 1995 prescription revealed that appellant required parafon forte for muscle spasms. These disability certificates and prescription are insufficient to establish appellant's burden because they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by factors of appellant's employment.¹⁰

Additionally, the medical evidence of record reveals a December 1, 1994 disability certificate of Lillian S. Wells, an employing establishment registered nurse and a July 28, 1995 disability certificate of Marie Odoms, also an employing establishment registered nurse. The record also reveals an April 21, 1995 report of Gene Kinnaly, a physician's assistant, indicating that appellant had been treated for acute low back strain which he reported was a result of an injury while at work and that appellant was subsequently treated for reaggravation of his lower back pain on September 30 and November 28, 1994. The Board has long held that a nurse is not considered a "physician" under the Federal Employees' Compensation Act,¹¹ therefore, a report from a nurse does not constitute as medical evidence to support a finding of disability causally related to an employment-related injury.¹² Similarly, the report from Mr. Kinnaly does not constitute competent medical evidence because a physician's assistant is not considered a "physician" under the Act.¹³

Dr. Carriere's December 1, 1995 medical report indicated that appellant sustained back injuries in 1993 and 1994. He stated that appellant's current job aggravated this condition on occasion and that it was medically necessary that appellant be able to rest for 10 to 15 minutes at a time, then he should be able to resume his work. Dr. Carriere opined that appellant would need orthopedic evaluation for his back pain. In a September 9, 1996 medical report, he opined that appellant's low back injury was exacerbated by the repetitions and sudden reaching, turning, lifting and rapid sweeping of trays of mail from the bar code sorting machine. Dr. Carriere's medical reports failed to establish appellant's burden because they do not diagnose a condition caused by factors of appellant's employment.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8101(2).

¹² *Bertha Arnold*, 38 ECAB 282 (1986).

¹³ 5 U.S.C. § 8101(2); *John H. Smith*, 41 ECAB 444 (1990).

The September 30, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 21, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member