

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS A. FABER and U.S. POSTAL SERVICE,
POST OFFICE, Skokie, IL

*Docket No. 97-2212; Submitted on the Record;
Issued September 28, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant sustained a herniated disc causally related to his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied his claim for continuation of pay.

On March 10, 1997 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that on June 12, 1996 he sustained a back injury when he bent over to pick up a bundle of mail. On the reverse of the claim form, appellant's supervisor stated that the employing establishment did not receive notice of appellant's claimed injury until March 12, 1997 and, therefore, the claim was not filed within a 30-day period required for continuation of pay.

In a report dated March 4, 1997, Dr. Carl Lang, a Board-certified internist, stated his opinion that appellant's disc herniation "could" have been caused by his work as a letter carrier for 15 years, a job which required repetitive walking, bending, lifting and carrying mail. He stated:

"Also, in June 1996, [appellant] had a specific event while working that caused him increased pain and symptoms. As he was bending to remove mail from a storage letter box ... he felt a sharp pain in his lumbar spine as he began to rise and turn from a stooped position. In my opinion this event could have been a cause of the disc herniation at L3-4. I note that [appellant] had symptoms of back pain before June 1996 but the etiology of the pain was at lower levels of the spine L5-S1."

Appellant submitted copies of clinical notes dated May 6, 1993 through October 30, 1996, from Dr. Michael Jacker, a Board-certified orthopedic surgeon, and associates of Dr. Jacker. In notes dated June 20, 1996, Dr. Jacker related that appellant had done well with his back symptoms until the past few weeks when he had experienced some lower back pain. He

provided findings on examination and diagnosed symptoms related to disc degeneration at L5-S1. Dr. Jacker did not mention the claimed incident on June 12, 1996 and did not provide an opinion as to the cause of the condition other than to note it was degenerative in nature. In notes dated October 7, 1996, Dr. Jay L. Levin, a Board-certified orthopedic surgeon, related that appellant had been experiencing back pain since 1993 and that in June 1996 he had low back pain and pain in his buttocks and legs. Dr. Levin did not provide an opinion as to the cause of appellant's back symptoms.

In an undated letter, appellant stated that when he sustained his claimed injury in June 1996, neither his doctors nor he realized that he had a herniated disc and thought that he only had a back strain. He stated that he continued to work all summer but that the pain worsened. Appellant stated that he used sick leave several times during the summer of 1996 in order to obtain medical treatment or physical therapy and that on October 22, 1996 he underwent surgery for a herniated disc and was off work until February 1, 1997.

By decision dated April 14, 1997, the Office denied appellant's claim for continuation of pay on the grounds that he had not filed a claim within 30 days of the date of injury.

By letter dated April 29, 1997, received by the Office on May 5, 1997, appellant requested reconsideration of the Office's decision denying his claim for continuation of pay.

Appellant submitted copies of medical notes dated October 22, 1996 through April 6, 1997. There was no mention in any of the notes of a June 12, 1996 injury and no medical opinion provided as to the cause of appellant's back condition.

Appellant also submitted a letter dated April 22, 1997, in which Dr. Lang stated:

"On June 12, 1996 [appellant] had a specific event while working that caused him increased pain and symptoms. As he was bending to remove mail from a storage letter box on his route he felt a sharp pain in his lumbar spine as he began to rise and turn from a stooped position. In my opinion this accident of June 12, 1996 was the cause of the disc herniation at L3-4."

By decision dated May 15, 1997, the Office denied appellant's claim for an injury on June 12, 1996 on the grounds that the evidence of record failed to establish that he sustained an injury on that date causally related to factors of his employment.

By decision dated May 21, 1997, the Office denied appellant's request for reconsideration of the denial of his claim for continuation of pay.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a back injury causally related to his employment.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.¹ The Board has held that the mere fact that a disease or

¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.² Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.³ While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,⁴ neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁵

In this case, appellant alleged that he sustained a back injury on June 12, 1996 which he attributed to his employment. He provided medical evidence in support of his claim.

In notes dated June 20, 1996, Dr. Jacker provided findings on examination and diagnosed symptoms related to disc degeneration at L5-S1. He did not mention the claimed incident on June 12, 1996 and did not provide an opinion as to the cause of the condition other than to note it was degenerative in nature. Therefore, these notes are not sufficient to discharge appellant's burden of proof.

In notes dated October 7, 1996, Dr. Levin related that appellant had been experiencing back pain since 1993 and that in June 1996 he had low back pain and pain in his buttocks and legs. He did not provide an opinion as to the cause of appellant's back symptoms.

In a report dated March 4, 1997, Dr. Lang stated his opinion that appellant's disc herniation could have been caused by his work as a letter carrier for 15 years and that the lifting incident on June 12, 1996 could have caused the disc herniation. However, his opinion that appellant's disc herniation was employment related was speculative as he stated that the job "could" have caused the condition. Furthermore, Dr. Lang provided insufficient medical rationale explaining how the June 12, 1996 incident or job duties caused the herniated disc. Due to these deficiencies, this report is not sufficient to establish that appellant sustained a herniated disc causally related to factors of his employment.

In an April 22, 1997 letter, Dr. Lang stated his opinion that the lifting incident on June 12, 1996 caused his disc herniation. However, he provided insufficient medical rationale explaining how this incident caused the herniated disc. This rationale is particularly important in light of the fact that in his previous report Dr. Lang stated only that the June 1996 incident "could" have caused appellant's herniated disc. Therefore, this letter is not sufficient to

² *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

³ *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ *See Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

⁵ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

discharge appellant's burden of proof to establish that he sustained an employment-related back injury on June 12, 1996.

The Board further finds that the Office properly denied appellant's claim for continuation of pay on the grounds that he failed to give written notice of his injury within the time specified by the Federal Employees' Compensation Act.

Section 8118(a) of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."⁶ Section 8122(a)(2) provides that written notice of the injury shall be given "within 30 days."⁷ The context of section 8122 makes clear that this means within 30 days of the date of the injury.⁸

The document in the case record that serves as a claim for continuation of pay is the CA-1 form filed by appellant on March 10, 1997 and marked as received by the employing establishment on March 12, 1997. As this claim was filed more than 30 days after appellant's alleged June 12, 1996 injury, his claim for continuation of pay is barred by statute.

The May 21, May 15 and April 14, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 28, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁶ 5 U.S.C. § 8118(a).

⁷ 5 U.S.C. § 8122(a)(2).

⁸ *Robert E. Kimzey*, 40 ECAB 762, 763-64 (1989).