

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES M. ADAMS and U.S. POSTAL SERVICE,
POST OFFICE, Louisville, KY

*Docket No. 00-2652; Submitted on the Record;
Issued December 27, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained a back injury on August 27, 1996 in the performance of duty, causally related to factors of his employment.

On August 27, 1996 appellant, then a 30-year-old mailhandler, completed but did not file a claim, alleging that on that date he injured his back while lifting mail from an APC to a belt. He claimed that he experienced back pain radiating down his left side near his buttock. Appellant's supervisor indicated that he did not observe appellant being injured.

On January 28, 1999 after the claim was filed, the employing establishment controverted appellant's claim, noting that he did not seek medical treatment and did not timely forward the CA-1 claim form to the Office of Workers' Compensation Programs and that he since filed a CA-2a for a recurrence of the original injury but omitted any specific date of recurrence, had two back surgeries and had been off work for over one year.

By letter dated February 5, 1999, the Office requested further information including a detailed description of how the injury occurred, witnesses, the reason appellant delayed in seeking medical treatment and a rationalized medical report addressing causal relation.

Appellant had previously sustained a back injury during a motor vehicle accident while on active military duty on August 1, 1992 and underwent corrective surgery, which involved an L5-S1 spinal fusion on November 19, 1992 and developed pseudoarthrosis at L5-S1.

In response to the Office's request for further information, appellant submitted multiple medical records dating from December 4, 1992 to the present. By report dated December 17, 1997, Dr. Terry M. Hagan, a neurosurgeon, noted appellant's history of L4-5 discectomy with fusion and laminectomy in November 1992 following a motor vehicle accident in August 1992 and noted: "Since then, he has had some relief but within the past year, he has had a gradual onset of back pain with radiating pain into his right buttock with some tingling."

By report dated December 23, 1997, Dr. Hagan noted that x-rays showed two broken screws in his lumbosacral fusion with Grade I spondylolisthesis at L5-S1 and exaggerated lumbar lordosis.

A January 13, 1998 report diagnosed nonunion of L5-S1 fusion and noted as history that appellant had right central and left low back pain and right buttock, hip, right lateral thigh, knee and occasionally lateral lower leg and ankle pain which began in June 1997, but worsened in the prior two months.

On January 27, 1998 it was noted that x-ray films revealed Grade I anterior listhesis of S1 on S2 and fractures of the left S1 and right S2 transpedicle screws with superior migration of the right vertical rod.

A January 28, 1998 report noted that the myelogram showed broken hardware with broken screws in the instrumentation between L5-S1 and further corrective surgery was recommended.

On March 3, 1998 appellant underwent removal of instrumentation, exploration of fusion, refusion and reinstrumentation and an anterior interbody fusion at L5-S1.

By report dated December 2, 1998, Dr. Rolando M. Puno, a Board-certified orthopedic surgeon, noted that appellant was seen on January 21, 1998 with complaints of back pain and right leg pain with bilateral weakness. He noted that a myelogram revealed a pseudoarthrosis, broken hardware and a compression on his fifth nerve on the right, as well as possibly the S1 nerve root.

On January 21, 1999 appellant filed a recurrence claim, but noted that it was not a recurrence, merely another claim for the August 27, 1996 injury.

In response to a request for further information on February 26, 1999, appellant submitted answers to the questions posed. He claimed that, he was working lifting mailbags from an APC, which were very heavy and that these bags caused him to strain during lifting and his back began burning running down his legs and that there were no witnesses, he noted that he had been seeing his family practitioner, Dr. Ronald Hoff, for his back pain and other illnesses since the injury and that he was treating himself with Motrin.

By decision dated March 22, 1999, the Office rejected appellant's claim finding that he had not established causal relationship between the events of August 27, 1996 to his present condition. The Office found that appellant had failed to submit a rationalized medical opinion addressing causal relation and that the evidence submitted supported that appellant's present condition was related to the 1992 back injury repair that never fused.

By letter dated July 12, 1999, appellant requested reconsideration of the March 22, 1999 decision. In support he submitted an authorization for medical attention signed by his supervisor and the employing establishment nurse which noted that appellant "lifted bags out of APC and pain started" and indicated duty restrictions. Also included were nurse treatment notes, a health unit medical form completed by the nurse and a statement from Dr. Puno, which addressed appellant's duty restrictions.

By decision dated October 21, 1999, the Office denied modification of the March 22, 1999 decision, finding that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found that causal relationship had not been established and that the medical evidence of record indicated that failure of appellant's 1992 back fusion, "nonunion," was the cause of his back pain and eventual surgery.

By letter dated December 30, 1999, appellant again requested reconsideration of the March 22 and October 21, 1999 decisions. In support appellant submitted a November 18, 1999 report from Dr. Puno, which noted that appellant had one injury in 1992 while he was still in the Marines, wherein he underwent an instrumented fusion between L5 and S1 and had a second injury on August 27, 1996 while working for the employing establishment. He noted that although appellant was able to go back to work, his fusion never healed and the injury of August 27, 1996 aggravated his back condition which required a second surgery. In a November 22, 1999 report from Dr. Puno, which noted that following appellant's 1992 surgery, he was able to go back to work until December 1997 and he had a quiescent period, followed by another injury which aggravated his preexisting condition. He stated that appellant's nonunion from his previous surgery, which was quiescent, was aggravated by the second injury and resulted in the second surgery 18 months earlier. Further, appellant submitted a December 22, 1999 functional capacity evaluation, which noted the date of injury as August 1, 1992.

By decision dated May 19, 2000, the Office denied modification of the October 21 and March 22, 1999 decisions, finding that the evidence submitted was insufficient to warrant modification. The Office found that Dr. Puno did not see appellant until January 21, 1998 and at that time did not acknowledge any August 27, 1996 injury. The Office further noted that appellant's prior injury was quiescent until December 1997, 15 months after the alleged August 27, 1996 injury, with no explanation of the time lapse. He also stated that appellant was doing well until 9 to 12 months prior to November 22, 1999, which would have been September or November, 1998. Dr. Puno referred to the chronology of events as supporting causal relation but that was extremely limited as he did not see appellant until 18 months after the alleged August 27, 1996 reinjury and his report did not contain a complete and accurate description of the alleged 1996 injury. He manifested no knowledge of the chronology of those intervening events and he failed to explain how the 1996 injury aggravated a 1992 preexisting nonfusion of the spine. The Office also found that the medical reports of record did not even mention low back pain until September 12, 1997, more that a year after the alleged 1996 injury. The Office found that appellant had not met his burden of proof to establish his claim through rationalized medical evidence supporting causal relation.

The Board finds that appellant has not established that he sustained a back injury on August 27, 1996 in the performance of duty, causally related to factors of his employment.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship

between the injury claimed and factors of his federal employment.¹ Causal relationship is a medical issue that can be established only by medical evidence.² The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.³ The Board further notes that mere conclusions, such as those contained in Dr. Puno's reports, without supporting explanation or rationale, are of little probative value.⁴

In the instant case, appellant had not met this burden of proof, as the medical evidence submitted was not based on a complete and accurate factual and medical history, did not contain an accurate statement describing the alleged events of August 27, 1996 and lacked any explanation or medical rationale explaining how those events of August 27, 1996 caused an aggravation of appellant's 1992 spinal nonfusion, which evidently did not become symptomatic until summer 1997 and which was not operated on until 1998. Dr. Hagan noted that during the year preceding December 17, 1997 appellant experienced a gradual onset of back pain radiating into his right buttock. No causative traumatic incident on August 27, 1996 was identified. Additionally, Dr. Juno noted that appellant's condition was causally related to his employment because his condition was quiescent prior to the alleged 1996 injury. The Board has frequently explained that a medical opinion is of diminished probative value when it is based only on the fact that appellant was asymptomatic prior to the alleged incident.⁵

Appellant has not submitted rationalized medical evidence explaining how and why his preexisting spinal nonfusion was aggravated by the unspecified events of August 27, 1996 but did not become symptomatic until the summer of 1997.

Therefore, appellant had not met his burden of proof to establish his claim.

¹ *Steven R. Piper*, 39 ECAB 312 (1987). Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant. See *Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976).

² *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

³ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

⁴ See *Richard Giordano*, 36 ECAB 134 (1984).

⁵ *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996); *Kimper Lee*, 45 ECAB 565 (1994); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989)

Accordingly the May 19, 2000 and October 21, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member