

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM B. WOODWARD and U.S. POSTAL SERVICE,  
POST OFFICE, Norwich, CT

*Docket No. 00-194; Submitted on the Record;  
Issued January 26, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant's back condition was causally related to his October 19, 1995 employment injury sustained in the performance of duty.

Appellant, a 40-year-old mail carrier, filed a claim for a traumatic injury on an undated Form CA-1 which was received by the Office of Workers' Compensation Programs on October 20, 1995. He stated that on October 19, 1995 he felt tightness in his back and right leg. Appellant stopped working as of October 31, 1995.

In a supplementary statement, he stated that, on October 19, 1995, while delivering mail, he experienced pain in the back of his right leg. Appellant sought treatment at a clinic, was told he had a pulled muscle in his back and returned to work. He stated that, on October 30, 1995, while he was walking on route, the pain did not subside. The next day, he awoke and could not stand up, and continued to have great pain. Appellant submitted medical evidence to support his claim.

By decision dated January 19, 1996, the Office denied appellant's claim, stating that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability. Appellant requested reconsideration of the decision on January 31 and August 9, 1996 and November 28, 1997. The Office denied his requests for modification on April 15 and November 15, 1996 and February 13, 1998.

By letter dated February 10, 1999, appellant requested reconsideration of the Office's decision and submitted a May 5, 1998 medical report from Dr. Paul L. Filippini, an orthopedic surgeon.

By decision dated May 11, 1999, the Office denied appellant's request for modification.

The Board finds that the case is not in posture for decision.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established.

First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>1</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>2</sup>

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>3</sup> The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.<sup>4</sup>

In this case, the medical evidence which addresses causation are the reports of Dr. Michael J. Halperin, an orthopedic surgeon, dated February 2 and 19, 1996; the reports of Dr. Samuel P. Browning, an orthopedic surgeon, dated August 2, 1996, October 17 and November 13, 1997; and Dr. Filippini's May 5, 1998 report. In his February 2, 1996 report, based on a physical examination, a magnetic resonance imaging (MRI) scan, an electromyogram (EMG) and nerve conduction studies, Dr. Halperin diagnosed L5 radiculopathy on the left due to a herniated disc at L4-5. He opined that appellant's present condition was directly related to the October 19, 1995 employment injury. Dr. Halperin stated:

“While I cannot rule in or out any preexistent conditions, [appellant's] history clearly describes sudden onset of pain while he was walking. It is possible that he twisted his back in a manner that may have caused the disc to herniate. Of note was that there is no significant preexistent condition that one would expect to cause the sudden onset of [appellant]'s symptoms.”

In his February 19, 1996 report, Dr. Halperin restated the same opinion.

In his August 2, 1996 report, based on a history of injury, physical examination and the January 12, 1996 MRI scan, Dr. Browning stated that appellant had a disc rupture and protrusion and it was 99 percent chance it arose from his employment. He stated:

“It would be my interpretation of the history, physical examination and MRI [scan] that, on October 19, 1995, you sustained a disc injury with a radial tear of the annulus and that subsequent to this time, in December, the nuclear material extruded through that radial tear producing acute pain and discomfort and the appearance on the MRI [scan] of the extruded discs at [L]4-5 and [L]5-1.”

In his October 17, 1997 report, Dr. Browning stated:

“[D]iscs can and *do* (Emphasis in the original.) give way suddenly and without warning. The fact that [appellant] was walking a mail route meant that it was

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<sup>1</sup> *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>2</sup> *Id.*

<sup>3</sup> *Lourdes Harris*, 45 ECAB 545 (1984); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>4</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

during the course of his employment. I have also seen them blow out when just standing, or I have had a couple that have blown out completely while the patient was in bed. Individuals do have this occur, and [appellant] was carrying mail for 11 years so that probably the repetitive weight carrying injured the disc and then it finally gave way.”

In his November 13, 1997 report, Dr. Browning stated:

“The fact is that for 11 years [appellant] carried a mailbag which usually run between 30 and 40 pounds or more and the carrier routes are in the neighborhood of 9 [to] 13 miles. Over the last decade he was carrying a heavy bag and it was also unbalanced since the bag is carried on one shoulder. This is different from a center load; backpackers always have their loads centered. It would by my opinion that with reasonable medical probability that his materially and substantially contributed to his disc problem.”

In his May 5, 1998 report, based on appellant’s history of injury, a physical examination, and the January 12, 1996 MRI scan, Dr. Filippini diagnosed two work-related herniated discs. He opined that there was a “clear causal relationship” between appellant’s work activities on October 19, 1995 and his “subsequent and present condition.” Dr. Filippini stated:

“It is further, my opinion, that [appellant] initially injured the disc while bending and twisting to lift the 35 [to] 40 pounds. Relay bag from the relay box, but did not experience the symptoms until he started walking up the grade. He probably made some additional motion of the spine which finalized the trauma as he started to walk.”

The medical evidence of record is supportive that appellant sustained an injury in the performance of duty on October 19, 1995 while delivering mail. In his February 2 and 19, 1996 reports, Dr. Halperin opined that appellant’s L5 radiculopathy on the left was due to a herniated disc at L4-5 and his condition was directly related to the October 19, 1995 employment injury.

In his August 2, 1996 report, Dr. Browning opined that there was a “99 percent chance” that appellant’s disc rupture and the protrusion arose from his employment. In his October 17, 1997 report, he opined that, after appellant carried mail for 11 years, the repetitive weight carrying probably injured the disc and it finally gave way. In his November 13, 1997 report, Dr. Browning further explained that for 11 years appellant carried a mailbag between 30 and 40 pounds on his shoulder, and that this activity materially and substantially contributed to his disc problem.

Further, in his May 5, 1998 report, Dr. Filippini opined that appellant’s work activities on October 19, 1995 caused his present condition, and explained that appellant initially injured his disc while bending and twisting to lift the 35- to 40-pound relay bag and did not experience the symptoms until he started walking the grade. He stated that appellant probably made some additional motion of the spine, which finalized the trauma as he started to walk.

Although these reports do not contain adequate medical rationale on how appellant’s herniated disc or his L5 radiculopathy or both resulted from his October 19, 1995 employment injury, they raise an uncontroverted inference of causal relationship between appellant’s back condition and his October 19, 1995 employment injury and are sufficient to require further

development of the case record by the Office. It is well established that proceedings under the Federal Employees' Compensation Act<sup>5</sup> are not adversarial in nature<sup>6</sup> and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.<sup>7</sup> The Office has an obligation to see that justice is done.<sup>8</sup>

When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician. On remand, the Office should further develop the medical evidence by requesting that one of appellant's treating physicians submit a rationalized medical opinion on whether appellant's herniated disc or L5 radiculopathy or both resulted from the October 19, 1995 employment injury.<sup>9</sup> After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated May 11, 1999 is vacated, and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC  
January 26, 2001

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *John J. Carlone, supra* note 1 at 359.

<sup>7</sup> *Dorothy Sidwell*, 36 ECAB 699, 707 (1985).

<sup>8</sup> *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>9</sup> *Rebel L. Cantrell*, 44 ECAB 660, 666 (1993).