

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRIS E. FULTZ and U.S. POSTAL SERVICE,
POST OFFICE, St Louis, MO

*Docket No. 01-1130; Submitted on the Record;
Issued February 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained a back injury on January 19, 1999 in the performance of duty.

On January 4, 2000 appellant, then a 41-year-old mail equipment handler and operator, filed a notice of occupational disease alleging that he sustained a back injury on January 19, 1999 as a result of lifting a number three sack of bundles. He stopped work on January 20, 1999 and returned to work on approximately February 1, 1999. Appellant underwent back surgery on December 20, 1999 and returned to light duty on February 7, 2000.

In narrative statements submitted in support of his claim, appellant stated that on January 3, 1999 while shoveling snow at home, he experienced an exacerbation of back pain and had to stop. He called in sick on January 4, 1999 and requested leave for back pain. Appellant returned to work on January 19, 1999 and while bending over to lift a sack out of a box, felt something move in his lower back, accompanied by extreme pain in his lower extremities. He stated that he exclaimed that he thought he had just messed up his back and then went to the restroom to lie down on the floor in hopes of obtaining some relief. Appellant stated that he did not report the incident to his supervisor, fearing her temper and hoping that the pain would soon subside. He stated that the following day he was unable to move without severe pain and at that time called in and reported his injury to the acting supervisor. Appellant explained that he waited nearly a year to file his claim, as he was uncertain how to fill out the form and did not realize the severity of his injury.

By letter dated February 8, 2000, the Office of Workers' Compensation Programs requested additional medical and factual evidence from appellant stating that the initial information submitted was insufficient to establish that he sustained a back injury on January 19, 1999 in the performance of duty. In response to the Office's request, appellant submitted additional medical and factual evidence.

In a decision dated March 13, 2000, the Office denied appellant's claim as the medical evidence was not sufficient to establish that appellant sustained an injury in the performance of duty, as required by the Federal Employees' Compensation Act.¹ The Office found that there was no medical evidence submitted which discussed the causal relationship between appellant's diagnosed back condition and his employment.

By letter dated March 23, 2000, appellant requested an oral hearing before an Office hearing representative. At the hearing, appellant testified that in addition to the January 3, 1999 snow shoveling back injury in 1980, while employed as a construction worker in the private sector, he suffered a serious back injury and underwent a surgical laminectomy. Appellant stated that when he was hired by the employing establishment in 1983, he was actually designated as a handicapped worker. He further testified that subsequent to his return to work following his January 19, 1999 injury he sustained a second employment-related back injury on March 14, 2000 for which he filed a separate claim.² The oral hearing was limited to a discussion of the January 19, 1999 injury.

In a decision dated December 15, 2000, an Office hearing representative affirmed the Office's prior finding that appellant failed to meet his burden of proof to establish that he sustained an injury on January 19, 1999 causally related to his employment. By letter dated January 22, 2001, appellant requested reconsideration and submitted additional evidence in support of his claim. In a decision dated February 12, 2001, the Office found the additional evidence insufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to establish that he sustained a back injury on January 19, 1999 in the performance of duty as alleged.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every

¹ 5 U.S.C. §§ 8101-8193.

² On June 8, 2000 appellant filed a claim for traumatic injury, Form CA-1, alleging that on March 14, 2000 he injured his lower back when he stooped down to place a tray of mail on a low rack. This claim was designated claim number 11-180284. In a decision dated August 9, 2000, the Office denied appellant's claim for a March 14, 2000 injury on the grounds that the medical evidence was insufficient to establish that appellant sustained an injury as a result of the March 14, 2000 incident. By letter dated August 16, 2000, appellant requested an oral hearing before an Office representative. The Board notes, however, that this letter was associated with the record file for appellant's January 19, 1999 injury claim, number 11-176728 and, therefore, the Office has not yet issued a determination on appellant's request. While on February 13, 2001 appellant's January 19, 1999 and March 14, 2000 injury claims were doubled into the same case file, master claim number 11-176728, the Board notes that in his letter of appeal, appellant specifically requests that the Board review only the Office's February 12, 2001 decision on the issue of his January 19, 1999 injury. In addition, as there remains an outstanding hearing request with respect to the Office's August 9, 2000 decision, the Board finds that the August 9, 2000 decision of the Office remains in an interlocutory posture and is not ripe for appeal; *see Charles H. Compton*, 40 ECAB 1141 (1989).

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident or engaged in the employment activities alleged to have occurred.⁵ In this case, it is undisputed that appellant's job duties involved lifting bundles of mail and that on January 20, 1999 appellant called in sick complaining of back pain for which he subsequently sought medical treatment.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment incident or activity, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

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, 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 the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

In this case, while it is not disputed that appellant's employment duties involved lifting bundles of mail and that on January 20, 1999 he called in sick complaining of back pain and that on December 20, 1999 underwent repeat back surgery, the medical evidence is insufficient to establish that appellant's employment duties caused his diagnosed condition. The medical evidence of record consists of a series of treatment notes from appellant's treating physicians. In a report dated January 27, 1999, Dr. George E. Mendelsohn stated that he was treating appellant for a back disorder and that appellant would be off work from January 20 to February 1, 1999. In a treatment note dated June 11, 1999, Dr. Mendelsohn stated that appellant was under his medical care and that he was instructed to remain off work from June 3, to June 14, 1999 due to his medical condition. In a report dated September 8, 1999, Dr. Mendelsohn stated that he first

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *James Mack*, 43 ECAB 321 (1991).

treated appellant for a back condition in January 1999, diagnosed lumbar spinal stenosis and stated that appellant was totally disabled from August 31 to September 15, 1999. The record also contains a lumbar myelogram and computerized tomography scan dated September 14, 1999 showing a large herniated disc at L5-S1. In a report dated November 9, 1999, Dr. James J. Coyle stated that appellant complained of back pain of long-standing duration and noted that a magnetic resonance imaging (MRI) was necessary to determine the exact nature of appellant's problems. An MRI performed on November 18, 1999 also revealed the large herniated disc L5-S1, as well as recurrent disc herniation at L4-5 and spinal stenosis at L3-4. In a report dated December 14, 1999, Dr. Coyle noted that appellant was scheduled for a surgical revision discectomy at L4-5 and L5-S1 and would be totally disabled until further notice. Surgery was performed on December 20, 1999. In a report dated February 1, 2000, Dr. Coyle released appellant to light-duty work, four hours a day. On March 6, 2000 he released appellant to full duty, with lifting up to 45 pounds. In a report dated March 16, 2000, Dr. Coyle noted that appellant had revision surgery on December 20, 1999, for a two level recurrent lumbar disc herniation, but that unfortunately, when he went back to work he was put in a position which required repetitive bending at the waist, twisting and lifting, all of which put him at significant risk for future back injuries. In a report dated May 4, 2000, Dr. Coyle stated that appellant was seen on March 16, 2000 complaining that he had reinjured his back at work on March 14, 2000. Neither Drs. Mendelsohn nor Coyle offered any opinion as to the cause of appellant's diagnosed back condition.

The remaining medical evidence of record either pertains solely to appellant's treatment following his 1980 nonemployment-related back injury, or pertains to appellant's back condition subsequent to his second back injury on March 14, 2000, neither of which are the subject of the current claim.

The Board notes that as the record contains no medical evidence which contains a rationalized medical opinion on the causal relationship, if any, between appellant's work duties, his January 19, 1999 work incident and his diagnosed herniated discs, taking into consideration his 1980 nonemployment-related back injury and January 3, 1999 back injury shoveling snow, the medical evidence of record is insufficient to establish causal relationship⁸ and, therefore, insufficient to meet appellant's burden of proof.

⁸ *Lucrecia M. Nielsen*, 41 ECAB 583, 594 (1991).

The decisions of the Office of Workers' Compensation Programs dated February 12, 2001, December 15 and March 13, 2000 are hereby affirmed.

Dated, Washington, DC
February 4, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member