

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMIE THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 03-1926; Submitted on the Record;
Issued December 4, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty.

On April 11, 2002 appellant, then a 42-year-old casual worker/mail handler, filed a traumatic injury claim (Form CA-1). He alleged that on February 4, 2002 while unloading a mail truck, the mail container door dropped down causing injury to his neck and shoulders.¹ Appellant did not stop work, but resigned from the employing establishment on March 10, 2002 due to a personal health matter.

In an undated statement received by the Office on June 5, 2002, appellant stated that he did not report his injury within 30 days as he was fearful of termination. He indicated that on February 4, 2002 the truck door came down on his neck and shoulder which caused stiffness in his neck, shoulder and right arm and that he tried to ignore the injuries, but the pain became unbearable.

Appellant submitted emergency room treatment notes dated March 6, 2002, in which Dr. V. Cawson, an emergency room physician, provided a history that six weeks prior, appellant was loading boxes and had a box land on his right shoulder. He diagnosed a pinched nerve. Dr. Helena Leiner, Board-certified in internal medicine, ordered an April 8, 2002 magnetic resonance imaging (MRI) scan, which demonstrated a normal spinal cord which appeared normal with no abnormalities at C2-3; central and left foramina stenosis with disc disease and narrowing and anterior spur-type formation at C3-4; central bilateral foramina stenosis and degenerative disc disease at C4-5; right foramina stenosis with degenerative disc changes at C6-7; and bilateral foramina stenosis at C6-7. On April 10, 2002 Dr. Leiner indicated that appellant was hit by a "box" and this was crossed out and the word "door" was filled in. Appellant submitted a May 2, 2002 report, in which Dr. Adrian James, Board-certified in internal

¹ By letters dated April 29 and May 7, 2002, the employing establishment controverted the claim.

medicine, stated that he first examined appellant on March 4, 2002 for neck pain following an accident at the post office when a GBC door hit him in the neck. In a May 20, 2002 claim for disability insurance benefits, Dr. Leiner diagnosed cervical radiculopathy. In the history of injury section, the word “box” was crossed out and the word “door” was filled in to describe how appellant was injured.

By decision dated June 21, 2002, the Office denied the claim on the grounds that appellant failed to establish that he actually experienced the claimed event due to numerous inconsistencies in his actions following the injury.

On October 21, 2002 appellant requested a review of the written record and submitted additional evidence including treatment notes, dated March 20, 2002 from Dr. Leiner, who also stated that appellant was seen in follow up for apparent radiculopathy, work related “as a mail bin hit him on [the] shoulder, although he did not officially report it.” She diagnosed persistent cervical neuropathy with right hand numbness and cervical spondylosis. Treatment notes with an illegible signature dated November 17, 2002, provided a diagnosis of cervical foramina stenosis. Appellant provided a November 27, 2002 work restriction from Dr. Federico Castro-Moure, Board-certified in general surgery. In an undated statement, Toya Stewart, a coworker, indicated that appellant was unloading mail on February 4, 2002 when the door flew open hitting his neck and right shoulder.

By decision dated January 9, 2003, the Office hearing representative, found that the evidence was sufficient to establish that the incident of February 4, 2002 occurred. However, the medical evidence was insufficient to establish that appellant sustained an injury causally related to his employment injury.

In a letter dated January 29, 2003, appellant requested reconsideration but did not submit any additional evidence. By decision dated February 5, 2003, the Office denied reconsideration as he failed to submit new and relevant information. On April 8, 2003 appellant again requested reconsideration and submitted additional evidence.

In a November 27, 2002 report, Dr. Castro-Moure indicated that appellant’s symptoms started back in February, after an accident in which a shelf fell and hit him on the neck and his symptoms started to increase. He reviewed the results of an EMG of the upper extremities and noted that there was no significant evidence of radicular damage and that an MRI of the cervical spine performed on April 8, 2002 demonstrated significant degenerative arthritis throughout the cervical spine at every level. Dr. Castro-Moure noted that the degenerative changes were worse at C4-5 and C5-6 with resulting bilateral foramina stenosis and opined that appellant had clear signs of C5 and C6 radiculopathy on the right. He advised that a surgical decompression consisting of anterior cervical discectomy and foraminotomies and fusion at C4-5 and C5-6 would improve appellant’s symptoms.

In a December 20, 2002 report, Dr. Atul Patel, a Board-certified diagnostic radiologist, noted that appellant came in for follow up of a C4-5 and C5-6 instrumental fusion and

discectomy and indicated that appellant should return in six weeks for an x-ray of the C spine for evaluation of and removal of the collar.²

In a February 7, 2003 report, Dr. Castro-Moure indicated that appellant had surgery on December 12, 2002 and noted that he had healed well after the procedure with some improvement in his symptoms. He indicated that appellant continued to have significant neck pain and pain radiating towards both upper extremities with chronic numbness and tingling sensation. Dr. Castro-Moure opined that, although appellant did have chronic arthritis, the symptoms appeared after his injury and were most likely due to the injury and not to the chronic process as patients with chronic arthritis were more prone to suffer severe injuries when they had a cervical trauma. He indicated that, although a surgical decompression was performed, appellant's symptoms had not improved significantly and he continued to have chronic neck pain and chronic tingling and numbness sensation in the upper extremities. Dr. Castro-Moure opined that appellant would require chronic treatment with pain medication and muscle relaxants for maintenance of this pain control. In a February 14, 2003 response to questions from appellant's representative, he indicated that appellant's restrictions would continue until April 15, 2003 and that appellant would need to have a full capacity evaluation before the physician could determine in what capacity appellant could perform sedentary work.

In a February 21, 2003 report, Dr. James noted appellant's history of surgery on December 12, 2002. He reported findings on physical examination that included decreased extension of the neck and pain with palpation and right and left rotation. Dr. James opined that appellant's prognosis was fair and appellant's work restrictions included no heavy lifting, no prolonged sitting or standing, no heavy pushing or pulling and noted that pain interfered with appellant's concentration. Dr. James indicated that appellant was disabled and unable to be gainfully employed at this time and at least for 12 more months.

By decision dated June 25, 2003, the Office found that the evidence was insufficient to establish that appellant's cervical condition was causally related to the accepted employment incident.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether

² The physician did not provide his middle initial and there were approximately 11 Board-certified Atul Patels in the directory, none of which were in California. Therefore, the designation was selected based on the report.

³ 5 U.S.C. § 8101-8193.

the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ 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, as well as any attendant disability claimed and the employment event or incident, 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 the present case, the Office found that the February 4, 2002 incident occurred at the time, place and in the manner alleged. However, the Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury due to that incident.

The relevant medical evidence includes a May 15, 2002 report, in which Dr. Claudine Dutaret, a Board-certified neurologist, indicated that she could not perform an electromyography (EMG) study until appellant's insurance status was changed. She also failed to provide an opinion on causal relationship. Appellant provided a nursing care plan. However, health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.⁸

In a November 27, 2002 report, Dr. Castro-Moure indicated that appellant was injured when an object fell off a shelf and hit him on the neck. He did not fully describe the incident,

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *Id*

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *Jan A. White*, 34 ECAB 515, 518 (1983).

and his diagnosis does not comport with appellant's description of injury. Dr Castro-Moure noted degenerative change of the cervical spine at C4-5 and C5-6 with foramina stenosis. However, he did not provide an explanation as to how the incident of February 4, 2002 would cause or contribute to appellant's degenerative cervical condition. The record also contains reports from Dr. Leiner that are of little probative value as they do not provide a rationalized opinion on causal relationship. Moreover, her reports were changed without explanation in the description of injury or history of injury sections from "box" to "door" and it is unclear as to whether she was aware of the circumstances surrounding employment incident.

Appellant provided a December 20, 2002 neurosurgery report, in which Dr. Patel indicated that he was seen for follow up of his C4-5 and C5-6 fusion and discectomy. He did not offer any opinion on causal relationship and his report is of limited probative value.

In a February 7, 2003 report, Dr. Castro-Moure repeated his earlier description of appellant's injury, describing it as a heavy object hitting appellant's neck and shoulders and he indicated that appellant's injury occurred in February 2001 instead of 2002. Medical evidence based on inaccurate factual or medical history is of diminished probative value.⁹ He noted that appellant had surgical decompression surgery on December 12, 2002 and indicated that the symptoms he was having appeared after his injury and opined that they were most likely due to his injury and not to chronic degenerative processes. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, is insufficient, without supporting rationale to establish causal relation.¹⁰ Dr. Castro-Moure failed to explain how the February 4, 2002 incident would aggravate any developing degenerative disease. He responded to a request for additional information regarding appellant's restrictions on February 14, 2003 and opined that he would have restrictions until April 15, 2003. Dr. Castro-Moure stated that he could not answer whether appellant could perform sedentary work without a full capacity evaluation. The Board finds that the reports of his are not well rationalized and do not provide a consistent history of injury or medical opinion addressing causal relationship.

In a February 21, 2003 report, Dr. James indicated that he initially saw appellant in September 2000 following a chief complaint of neck pain secondary to an accident which occurred at the employing establishment. He described the injury as secondary to a GBC door hitting him on the neck. Dr. James reviewed diagnostic reports and x-rays showing that appellant had a moderately narrowed C4-5 disc, osteophyte spurring and mild bilateral foramina narrowing. He noted that appellant underwent anterior fusion of C4-5 and C5-6 on December 15, 2002 and opined that his prognosis was fair. Dr. James indicated that appellant was disabled and unable to work for at least 12 months; however, he did not provide an explanation regarding how the February 2002 incident caused the condition for which appellant underwent surgery.¹¹ He did not provide an explanation regarding how the February 4, 2002

⁹ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁰ *John F. Glynn*, 53 ECAB ____ (Docket No. 01-1184, issued June 4, 2002).

¹¹ In a November 12, 2002 physician statement, Dr. James diagnosed cervical neuropathy but did not offer an opinion on causal relationship. He offered the same findings in a September 6, 2002 physical.

incident caused or contributed to appellant's degenerative cervical condition. The Board has long held that medical opinions not containing rationale on causal relationship are of diminished probative value.¹² Further, he did not differentiate the September 2000 injury from the February 4, 2002 incident and his report is, therefore, insufficient to show causal relationship.

The medical evidence of record fails to adequately address the causal relationship between the diagnosed condition and the employment incident of February 4, 2002.¹³ As appellant has not submitted the requisite medical evidence needed to establish his claim, he has failed to meet his burden of proof.

Appellant has not established that he sustained an injury in the performance of duty on February 4, 2002.

The decisions of the Office of Workers' Compensation Programs dated June 25, February 5 and January 9, 2003 are hereby affirmed.¹⁴

Dated, Washington, DC
December 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹² *Carolyn F. Allen*, 47 ECAB 240 (1995).

¹³ *Id.*

¹⁴ The Board notes that the February 5, 2003 decision the Office denied appellant's request for a merit review of his claim. However, the Office subsequently reviewed the merits of appellant's claim in the June 25, 2003 decision. Appellant did not appeal the February 5, 2003 decision. Therefore, the Board will not separately address the issue of whether the Office properly refused to reopen his case for further review of the merits in its February 5, 2003 decision.