

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE W. FUSELIER, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Eunice, LA

*Docket No. 03-2104; Submitted on the Record;
Issued March 2, 2004*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury causally related to his federal employment.

This is the third appeal in this case before the Board. By order dated August 17, 2001, the Board dismissed appellant's appeal as it was untimely filed.¹ In a decision dated April 17, 2003, the Board found that the Office of Workers' Compensation Programs abused its discretion in an August 22, 2000 decision, which denied appellant's request for reconsideration. The Board noted that the delay between the time the Office received appellant's request for reconsideration and the date of its decision precluded appellant from seeking a merit review before the Board. The Board instructed the Office to reopen appellant's case for a merit review and evaluate the evidence submitted in conjunction with appellant's requests for reconsideration.² The facts and history of the prior appeal are hereby incorporated by reference.

By decision dated August 12, 2003, the Office conducted a merit review and denied modification of its earlier denial of appellant's claim.

To summarize the facts, on August 7, 1995 appellant, then a 48-year-old distribution and window clerk, filed an occupational disease claim (Form CA-2), alleging that he sustained injuries to his back, right arm and hand associated with his federal employment. Appellant listed the date of first awareness as April 16, 1992.

In an October 25, 1994 note, Dr. S.J. Manuel, an internist, indicated that he treated appellant, prior to August 1993, for upper and lower back disease which, in his professional opinion, was aggravated by the work appellant did for the employing establishment. He noted

¹ *George W. Fuselier, Jr.*, Docket No. 00-2693 (issued April 17, 2001).

² *See id.*, Docket No. 02-181 (issued April 17, 2003).

that in August 1993 appellant had L4 to S1 laminectomies and bilateral L4, left L5, left S1 nerve root decompressions procedures.

Appellant submitted a medical report and numerous progress notes from Dr. Louis C. Blanda, Jr., a Board-certified orthopedic surgeon. In a February 23, 1995 report, Dr. Blanda indicated that appellant complained of neck, right shoulder and low back pain. On March 28, 1995 Dr. Blanda reviewed results of appellant's magnetic resonance imaging scan, which showed mild stenosis at L4-5 and L5-S1 as well as L3-4. In the cervical region, appellant had a small bulging disc at C5-6 with a herniated disc at C6-7 and right-sided nerve compression consistent with his right arm pain and numbness and weakness. On May 9, 1995 Dr. Blanda noted some slight improvement as a result of physical therapy. He stated, "If his history is correct that he did have pain since the time of the injury, I would say that it is probably work related as well." Dr. Blanda indicated in progress notes, dated June 20 and July 20, 1995, that appellant was getting worse.

Dr. Joe E. Turk, a chiropractor, indicated on July 27, 1995 that appellant was treated for approximately two months commencing June 12, 1992 for complaints of pain between the shoulders, radiating to the right arm and headaches.

In a note dated January 23, 1996, appellant discussed his federal job duties. He noted that, as part of his federal employment, he would separate the mail and was constantly bending over to review the mail and lift packages and sacks that weighed from 15 to 17 pounds. He was constantly on his feet lifting, pushing, pulling, bending and stooping.

In a February 15, 1996 report, Dr. Blanda indicated that appellant was still experiencing pain in his back and neck and that the physicians were agreed that he had a cervical disc-type syndrome. He stated:

"As far as causation is concerned I think it is certainly possible the repetitive wear and tear with his employment at the [employing establishment] could have caused the dis[c] to herniate."

As noted above, the Office denied modification of its prior decisions on August 12, 2003.

The Board finds that appellant has not established that he sustained an injury causally related to his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³

³ Victor J. Woodhams, 41 ECAB 345, 352 (1989).

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.

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 claimant,⁴ must be one of reasonable medical certainty⁵ 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.⁶ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁷ An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁸

The record supports appellant's description of his job duties as a mail clerk. However, the medical evidence of record is not sufficient to establish that appellant's back conditions are causally related to his federal employment duties. Dr. Manuel indicated that appellant's upper and lower back disease was aggravated by appellant's employment, but he did not provide a rationalized medical explanation for his opinion on causal relationship. He noted generally that appellant worked for the employing establishment; but did not explain how appellant's job duties caused or aggravated his back condition. Dr. Blanda stated that it was "possible" that the repetitive wear and tear of appellant's employment could have caused the cervical disc to herniate. However, the physician did not provide a full medical explanation for his opinion. His opinion on causal relationship is couched in speculative terms that appellant's employment at the employing establishment could have caused his disc to herniate. His use of the phrase "certainly possible" in phrasing his statement on causal relationship does not constitute a definitive opinion that such work duties caused the back condition. No other medical evidence of record address the relationship of appellant's back conditions to his federal employment.

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

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

⁶ *William E. Enright*, 31 ECAB 426, 430 (1980).

⁷ *Manual Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

⁸ *See Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

The decision of the Office of Workers' Compensation Programs dated August 12, 2003 is hereby affirmed.

Dated, Washington, DC
March 2, 2004

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member