

**United States Department of Labor  
Employees' Compensation Appeals Board**

CASSANDRA S. GRISSOM, Appellant	)	
	)	
and	)	<b>Docket No. 04-337</b>
	)	<b>Issued: March 26, 2004</b>
U.S. POSTAL SERVICE, Whichita, KS,	)	
Employer	)	
	)	

*Appearances:*  
Cassandra S. Grissom, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 21, 2003 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated September 17, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the decision.

**ISSUE**

The issue is whether appellant's hip condition is causally related to factors of her federal employment.

**FACTUAL HISTORY**

On April 16, 2003 appellant, then a 55-year-old letter carrier, filed an occupational claim alleging that on March 19, 2003 she became aware that she had work-related hip pain. She stated that she felt her hip pain increase as she carried a heavier load in her satchel and as she twisted and turned while making curbside deliveries. Appellant's job duties included sorting and delivering mail along a prescribed route. The physical requirements included standing 3 to 6 hours daily, walking 3 to 5 hours daily, lifting up to 70 pounds intermittently, sitting 2 to 6 hours

daily plus bending, twisting and reaching up to 8 hours daily. Appellant began light-duty work on March 31, 2003 and has not worked since April 11, 2003.<sup>1</sup>

In a supplemental statement, appellant stated that in the summer of 1999 she saw her treating physician, Dr. Edward J. Lind, a Board-certified family practitioner, for left hip pain and was diagnosed with greater trochanteric bursitis. He prescribed physical therapy. Appellant stated that on September 18, 2002 she visited Dr. Lind due to severe knee pain and increased hip pain. He again prescribed physical therapy, but because it did not eliminate her problem, appellant saw the chiropractor, Dr. Ronald J. Barth. Appellant stated that after several sessions she saw slight improvement and felt that carrying a satchel full of mail on her left shoulder was impeding her chiropractic care and physical therapy.

In his March 4, 2003 report, Dr. Barth noted that appellant had myospasm and tenderness in the lumbar and lower extremity areas. He found that there was objective evidence of aberrant joint function which was indicative of subluxations in the lumbar and sacral region. Dr. Barth prescribed light-duty work. In another report dated March 4, 2003, he noted that the x-rays showed a “subluxation complex” at the sacrum, left sacroiliac joint and at L5-S1.<sup>2</sup>

In a report dated April 7, 2003, Dr. Barth stated that appellant’s previous health history had been confirmed by review of the health records which were generated prior to her seeking care at the clinic. He stated that the health history indicated that the condition which appellant presented was an exacerbation of an existing condition. Dr. Barth stated that with a reasonable degree of certainty the conditions identified were not related to the events of an accident, but were of a chronic condition. He continued to prescribe light-duty work and opined that appellant’s chronicity would cause acceleration of degenerative processes such as disc disease and arthritis and predispose her to reinjury and prevent her from being employed in many positions due to her physical limitations.

In a report dated May 1, 2003, Dr. Robert L. Eyster, a Board-certified orthopedic surgeon, considered appellant’s history and noted that her most “recent irritation occurred in September and appears to be related to her work activities, where she works in the postal service department.” He stated that appellant carried a bag and had to work many times with stress to her left shoulder and drawing her left side over in a flexed position. Dr. Eyster reviewed a magnetic resonance imaging (MRI) scan, which showed a bulging L4-5 disc which correlated with her symptomatology. He performed a physical examination. Dr. Eyster concluded that appellant’s MRI scan was positive for an L4-5 disc and he diagnosed degenerative disc disease with bulging present. He opined that appellant had a combination of a degenerative condition of the lower back and work-related aggravation as a result of that degenerative condition “because of what is required for carrying a bag and the bending inherent in the job.”

In a report dated May 21, 2003, Dr. Barth reviewed the accident of approximately January 1, 2000 as related by appellant to him. He stated that the frequency of care was

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<sup>1</sup> Appellant’s claim for right lateral epicondylitis was accepted on December 24, 2002.

<sup>2</sup> Since Dr. Barth demonstrated subluxations by x-ray, he is a physician within the meaning of the Act. 5 U.S.C. § 8101(2). *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

necessary due to the instability of the injured area and the complications arising from appellant's need to continue working. Dr. Barth stated that the duration of the care was directly related to exacerbations and the healing time of the tissues that were injured. He considered appellant's statement that carrying her mailbag up and over curbs, moving in and about the mail jeep and carrying an uneven load distribution continued to throw appellant's left hip and lower left back out of alignment. Dr. Barth stated that the joints of the lower left back and hip and tissues continued to stay inflamed and aggravated due to the above stated issues. He opined that appellant's job duties with the stated issues contributed to her disability and would continue to aggravate her condition. Dr. Barth stated that continued aggravation had and would continue to cause degenerative joint disease and greater disability. Appellant wrote on the report that she did not tell Dr. Barth that she had an accident on January 1, 2000. She stated that he must have got that date from her telling him that she had problems for about three years. Appellant did not know why he said "accident" and noted that he did not state that in his first report.

In a report dated September 18, 2002, Dr. Lind stated that an x-ray of the lumbosacral spine did not reveal any evidence of spondylolisthesis or x-ray visible sacroiliac joint problems. He diagnosed trochanteric bursitis, greater on the left and iliotibial band pain of the left knee. In a report dated April 15, 2003, Dr. Lind noted that appellant had persistent hip pain and reiterated his diagnoses in his prior report. He recommended additional diagnostic tests. In a report dated May 23, 2003, Dr. Lind additionally opined rotator cuff tendinitis. An MRI scan dated April 17, 2003 showed a disc bulge at L4-5 and no disc herniation or bony stenosis.

In a report dated September 5, 2003, the referral physician, Dr. Lee R. Dorey, an orthopedic and spine surgeon, considered appellant's history of injury, performed a physical examination and reviewed the April 17, 2003 MRI scan. He stated that, while there might be a slight bulge at L4-5, it was not impressive and the films did not show any abnormality other than perhaps a mild loss of signal strength. Dr. Dorey reviewed chiropractic films dated March 4, 2003 of the lumbar spine which suggested disc space narrowing at L4-5 and osteoporosis. He also reviewed x-rays dated August 26, 1999, which were normal. Dr. Dorey diagnosed osteoporosis by history and lumbar spine pain with left lower extremity radiculitis, chronic antedating employment as a letter carrier. In response to the Office's question regarding causation, Dr. Dorey stated that he did not think that any of his diagnoses had been caused, aggravated, accelerated or precipitated by exposure to factors of federal employment. He opined that further treatment was not necessary and appellant was capable of performing the date-of-injury job.

By decision dated September 17, 2003, the Office denied appellant's claim, stating that she did not establish that the claimed condition was related to the established work-related duties.

### **LEGAL PRECEDENT**

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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. The medical evidence required to establish causal relationship, generally, is rationalized medical 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 appellant'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 appellant.<sup>3</sup>

The mere fact that a disease 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 disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>4</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup> If the opinion of the specialist is sufficiently well rationalized and based on a proper factual background, it must be given special weight.<sup>6</sup>

### ANALYSIS

In this case, in his report dated September 18, 2002, appellant's treating physician, Dr. Lind, stated that the results of the x-ray were normal and did not reveal any evidence of spondylolisthesis or sacroiliac joint problems. He diagnosed trochanteric bursitis, greater on the left and iliotibial band pain of the knee. In his April 15, 2003 report, he made the same diagnoses and in his May 23, 2003 report he additionally diagnosed rotator cuff tendinitis. Because, however, Dr. Lind did not provide an opinion on causation, his opinion is of diminished probative value.<sup>7</sup>

A conflict exists, however, between the opinions of the referral physician, Dr. Dorey and the opinions of appellant's other treating physicians, Dr. Barth and Dr. Eyster, regarding whether her hip and back conditions are work related. In his September 5, 2003 report, Dr. Dorey found

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<sup>3</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>4</sup> *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985)

<sup>5</sup> *Henry W. Sheperd, III*, 48 ECAB 382, 385 n.6 (1997); *Wen Ling Chang*, 48 ECAB 272, 273-74 (1997).

<sup>6</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

<sup>7</sup> See *Caroline Thomas*, 51 ECAB 451, 456 n.10 (2000).

that the April 7, 2003 MRI scan showed what might be a light bulge at L4-5, but was otherwise normal except for a possible mild loss of signal strength. He found that the March 4, 2003 chiropractic films suggested disc space narrowing at L4-5 and osteoporosis. Dr. Dorey found the August 26, 1999 x-rays were normal. He diagnosed osteoporosis by history and chronic lumbar spine pain with left lower extremity radiculitis which antedated appellant's employment as a letter carrier. Dr. Dorey opined that none of his diagnosed conditions had been caused, aggravated, accelerated or precipitated by appellant's exposure to factors of federal employment.

In his March 4, 2003 report, Dr. Barth found that the x-rays showed a subluxation complex at the sacrum, left sacroiliac joint and at L4-S1. In his April 7, 2003 report, he stated that appellant's medical history indicated that her hip and back conditions were an exacerbation of an existing condition. In his May 21, 2003 report, Dr. Barth stated that the duration of appellant's medical treatment was directly related to exacerbations and the healing time of the injured tissues. He considered that appellant's work involved carrying a mailbag with an uneven load distribution up and over curbs and moving in and about the mail jeep and opined that the joints and tissues of her lower left back and hip continued to stay inflamed and aggravated due to that activity. Dr. Barth opined that appellant's job duties contributed to her disability.<sup>8</sup>

In his May 1, 2003 report, Dr. Eyster opined that the MRI scan was positive for an L4-5 disc and consistent with appellant's symptomatology. He diagnosed degenerative disc disease with bulging present. Dr. Eyster opined that appellant had a degenerative condition of the lower back which was aggravated by her duties at work of carrying a bag and bending.

To resolve the conflict in the medical evidence, the case must be remanded for the Office to refer appellant, with a case record and the statement of accepted facts, to an impartial medical specialist to determine whether her physical condition was caused or aggravated by factors of her federal employment. If there was an aggravation of a prior condition, the impartial medical specialist should determine the length of the aggravation, *i.e.*, whether the aggravation is continuing or if it ceased and if it ceased, the date it ceased. The impartial medical specialist should address whether there is any relationship to appellant's prior accepted condition of epicondylitis and her current condition. After any further development that it deems necessary, the Office should issue a *de novo* decision.

### **CONCLUSION**

Because there is a conflict in the medical evidence, the case is not in posture for decision. The case must be remanded for the Office to refer appellant to an impartial medical specialist to resolve the conflict in the evidence.

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<sup>8</sup> Although in his May 21, 2003 report, Dr. Barth referred to an accident appellant had in 2000, he consistently opined that her job duties caused or aggravated her condition and that her conditions were not related to an accident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 17, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: March 26, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member