

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

---

**BONIFACE E. REGIS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Whitestone, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 04-1122  
Issued: November 16, 2004**

*Appearances:*  
*Thomas S. Harkins, Esq., for the appellant*  
*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 March 19, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated January 15, 2004, which rejected his claim for an occupational disease commencing June 27, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established an occupational disease commencing June 27, 2000 causally related to his federal employment.

**FACTUAL HISTORY**

On August 18, 2000 appellant, then a 42-year-old mail handler, filed an occupational disease claim alleging that on June 27, 2000 he became aware that he had developed back problems due to his long process of heavy lifting and carrying heavy mailbags weighing up to 80 pounds and dumping of the heavy bags onto a belt. He stopped work on June 27, 2000 and did not return.

On a September 25, 2000 form report Dr. Surendranath K. Reddy, a Board-certified orthopedic surgeon, noted that appellant had a herniated disc at L3-4 with a degenerative disc at that same level. On October 6, 2000 he noted that the onset of his conditions was June 27, 2000 and opined that appellant was totally disabled for an undetermined period.

In a letter dated October 3, 2000, the Office requested that appellant provide further information about his implicated duties and the onset of his illness. The Office also requested that he provide information on his medical and factual history and a rationalized medical report discussing causal relationship of his condition with factors of his employment.

On November 6, 2000 appellant submitted a June 27, 2000 personal statement, in which he described his position as working the small parcel and bundle sorter machine and constant heavy lifting over 80 pounds working alone. He indicated that he pushed heavy bulk mail containers weighing approximately 800 pounds, postcons, hampers and cages and that he pulled or dragged bags or sacks and dumped them onto a belt working alone. Appellant indicated that he performed bending and stooping to pick up and dump bags and that on June 27, 2000 just before his afternoon break he felt some pain in his lower back which remained when he clocked out. He claimed that over the years his job performance contributed to his back injury.

In support of his claim, appellant submitted multiple attendance notes from Dr. Reddy which discussed the extent of his disability.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated August 10, 2000 was reported as demonstrating a degenerated L3-4 disc with small subligamentous herniation extending from midline to the right side.

In a December 11, 2000 memorandum, a supervisor, Kenneth A. Bell, noted that appellant had been assigned to the SPBS machine for six months, which presently called for him to lift and dump the contents of sacks onto a belt and that prior to this he had worked in the empty sack area for several years, lifting no more than 20 pounds. The supervisor noted that appellant was provided ample assistance to move postcons and BMC containers and had on hand motorized equipment when necessary.

The employing establishment controverted appellant's claim, finding that the evidence did not support that he sustained an injury on June 27, 2000.

By decision dated January 19, 2001, the Office rejected appellant's claim, finding that the medical evidence failed to establish that he sustained an injury as alleged. The Office found that Dr. Reddy failed to provide a rationalized statement supporting causal relationship with his employment factors.

In a letter dated February 2, 2001, appellant requested an oral hearing before an Office hearing representative. A hearing was held on June 21, 2001 at which he testified. Appellant also submitted medical evidence in the form of attendance notes contemporaneous to June 27, 2000, stating that he was totally disabled. Dr. Reddy stated on June 27, 2000 that appellant was

seen for a job-related injury on June 27, 2000, that he injured his back lifting an 80-pound bag of magazines and books and that he suffered back derangement from a herniated disc.

By decision dated September 17, 2001, the hearing representative affirmed the January 19, 2001 decision, finding that the medical evidence appellant had submitted was insufficient to establish causal relationship with the implicated factors of employment.

By letter dated December 13, 2001, appellant requested reconsideration of his claim. His representative also requested reconsideration on December 20, 2001.

Appellant submitted multiple reports from a physician's assistant and a physical therapist.

By decision dated March 18, 2002, the Office declined to reopen appellant's case for further review on its merits finding that he neither raised legal argument not previously considered, nor provided pertinent and new medical evidence not previously considered by the Office.

On August 20, 2002 appellant, through his attorney, requested reconsideration.

Appellant submitted an August 26, 2002 statement in which he claimed that his supervisor was Coy Robinson and that the supervisor who provided the December 11, 2000 comment, Mr. Bell, worked in a different area performing different tasks. He claimed that Mr. Bell worked in attendance and leave administration and not on the work room floor and that he had no help at the SPBS machine, nor did he have mechanized equipment to assist him in his duties of lifting and dumping mail.

In support of his request, appellant submitted a September 12, 2002 report from Dr. Kumar Reddy, a Board-certified orthopedist, who noted appellant's history of low back injury on June 27, 2000 and noted that he worked at the employing establishment at that time as a small parcel and bundle sorter. Dr. Reddy analyzed MRI scan results, noted that he had a herniated degenerative L3-4 disc and opined that physical therapy did not seem to help. He noted objective findings as being positive straight leg raising tests bilaterally, but without neurologic findings and noted that the low back pain of which he complained persisted. Dr. Reddy noted as follows:

“Based on my frequent evaluation of [appellant's] low back injury sustained on the job, it is my impression that the type of work that [he] has to do in the [employing establishment] is causally related to the condition of herniated lumbar disc at L3-4 levels, causing his severe low back pain and disability of [appellant] from the time of injury until this time.”

By decision dated March 3, 2003, the Office denied modification of the prior decision finding that the medical evidence submitted in support was insufficient to warrant modification. The Office found that Dr. Reddy based his opinion on an inaccurate factual and medical history because he was under the impression that appellant had to push 400- to 1,000-pound containers and lift bags of mail weighing from 80 to 100 pounds.

On May 27, 2003 the Office received appellant's job description and a notice of removal for nonattendance. He also submitted another report from a physician's assistant.

By decision dated January 15, 2004, the Office conducted a merit review and denied modification of appellant's claim, finding that the evidence submitted in support of his request was insufficient to warrant modification. The Office found that the medical reports did not explain the causal relationship between appellant's activities and his diagnosed conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim, including the fact that he 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 is causally related to the employment injury.<sup>2</sup>

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;<sup>3</sup> (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>4</sup> 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.<sup>5</sup> The medical evidence required to establish 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 the claimant,<sup>6</sup> must be one of reasonable medical certainty<sup>7</sup> 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.<sup>8</sup> The mere fact that a condition manifests itself or worsens during a period of

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Ronald K. White*, 37 ECAB 176, 178 (1985).

<sup>4</sup> *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

<sup>5</sup> *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

employment does not raise an inference of causal relationship between the condition and the employment.<sup>9</sup> Such a relationship must be shown by rationalized medical evidence demonstrating causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.<sup>10</sup>

To be of probative value to an employee's claim, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.<sup>11</sup> Medical opinions which are predicated on an unsubstantiated diagnosis, an inaccurate history of continuing symptoms or injury, or an exaggerated medical history are of little probative value.<sup>12</sup>

Further, medical reports from nonphysicians, such as physicians' assistants or physical therapists, have no probative value as they cannot render probative medical opinions under the Act.<sup>13</sup>

### ANALYSIS

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

In this case, appellant submitted medical evidence from Dr. S. Reddy dated September 25 and October 6, 2000 which noted appellant's diagnosis as herniated disc at L3-4 with a degenerative disc disease and noted that its onset was June 27, 2000. Although these reports provide a diagnosis and support of date of onset of appellant's claim, they fail to detail or implicate any specifically involved factors of appellant's employment and fail to provide any medical rationale explaining a causal relationship with identified specific factors of his employment. As these reports lacked identification of any specific employment factor implicated in causing appellant's condition and omitted any discussion of causal relationship with only factors of his employment, they are insufficient to establish appellant's claim.

Appellant also submitted several medical treatment notes stating that appellant was under Dr. S. Reddy's care, but not providing a diagnosis or any opinion as to any causal relationship with his employment factors. Magnetic resonance imaging (MRI) scans revealed degenerative changes at the L3-4 spinal level but neither Dr. S. Reddy's nor Dr. Kumar Reddy discussed what precipitated this degeneration and over what period of time it occurred. Therefore, the Board

---

<sup>9</sup> *Juanita Rogers*, 34 ECAB 544 (1983).

<sup>10</sup> *See Edgar L. Colley*, 34 ECAB 1691 (1983).

<sup>11</sup> *Lucrecia M. Nielsen*, 42 ECAB 583 (1991). *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (Where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>12</sup> *See Billie C. Rae*, 43 ECAB 192 (1991).

<sup>13</sup> *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Robert J. Krstyen*, 44 ECAB 227 (1992); *John H. Smith*, 41 ECAB 444 (1990). *Barbara J. Williams*, 40 ECAB 649 (1988).

finds that these notes are insufficient to establish causal relationship with factors of appellant's employment.

Following an initial denial of his claim, appellant submitted a September 12, 2002 report from Dr. K. Reddy, which noted that appellant worked sorting small parcels and bundles and noted that his MRI scan showed a degenerated L3-4 disc with positive objective symptomatology of positive straight leg raising bilaterally, with bilateral pain but without neurologic findings. Dr. K. Reddy, however, did not discuss or explain the causal relationship between appellant's activities, his physical findings and the employment tasks implicated. Dr. K. Reddy opined that based on his frequent evaluation of appellant's low back injury, it was his impression that the type of work appellant had to do in the employing establishment was causally related to the condition of a degenerated herniated lumbar disc at the L3-4 level, causing his severe low back pain disability. However, his opinion was speculative. Dr. K. Reddy did not explain in detail any causal relationship between appellant's employment duties and the development over time of his herniated and degenerated lumbar spinal disc at L3-4, the Board finds that his opinions are insufficient to establish appellant's claim.

The Board, therefore, appellant has failed to meet his burden of proof.

#### **CONCLUSION**

The Board finds that appellant has failed to submit sufficiently probative medical evidence to meet his burden of proof to establish his claim that he sustained an occupational illness commencing June 27, 2000 causally related to his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 15, 2004 is hereby affirmed.

Issued: November 16, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member