

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

C.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pueblo, CO, Employer**

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**Docket No. 07-88
Issued: March 23, 2007**

Appearances:

Timothy Quinn, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 11, 2006 appellant filed a timely appeal of a September 20, 2006 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an injury causally related to factors of her federal employment.

FACTUAL HISTORY

On September 3, 2004 appellant, then a 46-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained herniated discs as a result of her federal employment. She indicated that she believed her condition was causally related to employment activities such as lifting, carrying, bending and repetitive motion. Appellant reported awareness of the condition in February 2004 and its relationship to employment in July 2004.

An employing establishment supervisor stated in a September 3, 2004 letter that appellant was involved in a motor vehicle accident on May 5, 2004 while not in the performance of duty. The supervisor indicated that appellant was off work from May 6 to 8, 2004.

In a report dated November 22, 2004, Dr. Kenneth Kurica, an orthopedic surgeon, stated that appellant was initially seen in August 2004. He stated that appellant had experienced back and leg pain for approximately a year and her current diagnosis was herniated disc L5-S1 and degenerative disc disease. Dr. Kurica noted that appellant was involved in a motor vehicle accident on May 5, 2004 while on her way to an appointment with Dr. Pamela Aschenbrener for her back. However, appellant did not feel the accident exacerbated the underlying condition. Dr. Kurica opined that the condition was "related to work from both aggravation and precipitation, as it had never been present before and there is no related other reason for it."

By decision dated December 2, 2004, the Office denied the claim for compensation. Appellant requested reconsideration, which was denied without review of the merits in a January 10, 2005 decision. She again requested reconsideration and submitted a February 14, 2005 report from Dr. Kurica who indicated that appellant needed surgery for the herniated disc and that she also had instability at L4-5 and L5-S1 with foraminal stenosis.

In a report dated February 6, 2006, Dr. Kurica stated that he had reviewed the job requirements of a rural carrier and his office notes. He opined that the repetitive nature of the lifting and bending "is medically probable to have resulted in the condition that required surgery." Dr. Kurica also stated that appellant may have exacerbated a preexisting degenerative condition.

By merit decision dated March 20, 2006, the Office denied modification of its determination that appellant had not established an injury causally related to federal employment.

Appellant again requested reconsideration and submitted a June 13, 2006 report from Dr. Kurica who responded to the specific findings by the Office in the March 20, 2006 decision with respect to the medical evidence. Dr. Kurica noted that, while appellant received medical treatment for her back in 1998, there was no history of persistent back pain prior to 2003. He reported that appellant was able to return to work after the May 2004 accident and it was only after returning to work that she had increased symptoms and saw Dr. Aschenbrener six weeks after the accident. Dr. Kurica indicated that patients with an acute herniated disc generally have acute pain after the event, but appellant did not have exacerbation until after she returned to work. He opined, "I fully confirm that I believe that it is medically probable that the term nature of her position, which did require repetitive lifting and bending indeed did result in ultimately herniated disc that required surgical intervention." Dr. Kurica stated that his opinion was based on a combination of the medical history and diagnostic tests.

By decision dated September 20, 2006, the Office again denied modification. It found that there were "inconsistencies in the time lines of your claimed injury," noting that appellant was able to continue working after February 15, 2004. With respect to medical evidence, the Office found the statement regarding "medically probable" was an equivocal statement. The Office concluded that appellant had "met the fact of injury component in your case. However,

your case remains denied as you have failed to establish the causal relationship element in your case.”

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.²

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying 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 diagnosed condition is causally related to the employment factors identified by the claimant.³

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴ A physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁵ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factors.⁶

ANALYSIS

Appellant filed an occupational claim alleging that job duties such as lifting and bending contributed to a back condition. Although the September 20, 2006 Office decision refers to inconsistencies in the claim, there are no factual inconsistencies. Appellant identified the work factors she believed contributed to her condition and there is no evidence disputing that she

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. § 10.115(e), (f) (2005); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

³ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ See *Robert G. Morris*, 48 ECAB 238 (1996).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

performed the identified activities. The issue is whether the medical evidence establishes a diagnosed condition causally related to the identified work factors.⁷

The Office determined that Dr. Kurica's June 13, 2006 report provided an equivocal opinion. Dr. Kurica provided a report that responded to the deficiencies in his prior report as outlined by the Office in its March 20, 2006 decision. He explained his opinion that the diagnosis of herniated disc was causally related to employment factors and not to a motor vehicle accident in May 2004. Dr. Kurica noted the medical history and appellant's job duties, and his opinion was neither speculative nor equivocal. The Board finds that he provided probative medical evidence in support of the claim.

While the evidence is not yet sufficient to establish the claim, it is sufficient to require further development.⁸ The case will be remanded to the Office for further development of the medical evidence and referral to an appropriate specialist for a rationalized opinion on causal relationship between a diagnosed condition and the identified work factors. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The case is remanded to the Office for further development of the medical evidence.

⁷ The Office stated that appellant had met the "fact of injury component" of her claim. This appears to be a finding that appellant submitted evidence of a diagnosed condition. It is well established that "fact of injury" requires that appellant submit sufficient evidence to establish an injury in the performance of duty. *See Caroline Thomas*, 51 ECAB 451 (2000). It is evident from the September 20, 2006 decision that the Office did not accept that appellant sustained a diagnosed condition causally related to work factors.

⁸ *See Allen C. Hundley*, 53 ECAB 551 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 20, 2006 is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: March 23, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board