

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EUGENE J. DICKINSON and U.S. POSTAL SERVICE,  
POST OFFICE, Coppel, Tex.

*Docket No. 97-1201; Submitted on the Record;  
Issued December 4, 1998*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a lower back injury in the performance of duty on September 18, 1995.

On September 18, 1995 appellant, a 46-year-old letter carrier, filed a Form CA-1, claim for benefits based on traumatic injury, claiming that he injured his lower back on September 18, 1995 when he "turned to his left."

Appellant subsequently submitted a Form CA-16 dated September 18, 1995 from Dr. Walter M. Gaman, Board-certified in family medicine, who examined and treated appellant on September 18, 1995. Dr. Gaman stated that appellant's injury had occurred when he "twisted" while at work and stated that appellant sustained a ruptured disc in the L1 spine area. Dr. Gaman checked a box indicating that appellant had a history of preexisting injury, and placed appellant on total disability from September 18 through October 9, 1995.

By letter dated September 25, 1995, the employing establishment contradicted the claim. The employing establishment indicated there was a contradiction between appellant's description of the alleged September 18, 1995 incident and that provided by Dr. Gaman in his Form CA-16. The employing establishment contended that there were no factors of employment, such as lifting, cited as causing his ruptured disc, and that Dr. Gaman had acknowledged appellant had a history of a preexisting back condition/injury. The employing establishment specifically stated that appellant had been involved in an employment accident with his vehicle on January 5, 1995 in which he had sustained several injuries, including his lower back. The employing establishment stated that appellant had filed a claim which was accepted for contusion of lower limb and of other unspecified sites, lumbosacral sprain, neck sprain, and several surgical procedures. The employing establishment indicated that appellant had been working a limited-duty job assignment due to the effects of the January 5, 1995 injury, and noted that he was not required to perform heavy lifting or carrying. The employing establishment advised that if

appellant believed his present disability was related to the January 5, 1995 injury, he should file a recurrence claim.

In a letter to appellant dated October 17, 1995, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of his claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office also requested that appellant's physician provide a diagnosis and clinical course of treatment for the injury. The Office further requested that appellant describe in detail how the injury occurred, and provide the names and addresses of persons who witnessed the alleged incident condition. The Office informed the employee that he had 30 days to submit the requested information.

In response to the Office's request, appellant submitted a handwritten statement and responses to the Office's specific questions, dated October 19, 1995. In describing how the alleged September 18, 1995 incident occurred, appellant stated, "I just turned from my right to my left and felt the pain in back -- no lifting or bending."

By decision dated November 13, 1995, the Office found that fact of injury was not established, as appellant failed to submit sufficient evidence to support his claim that he sustained a lower back injury on September 18, 1995.

By letter dated December 5, 1995, appellant requested a hearing.

On May 16, 1996 appellant attended the hearing and testified regarding the alleged September 18, 1995 employment incident. Appellant also submitted statements from two coworkers who witnessed the alleged September 18, 1995 employment incident, in addition to two medical reports from Dr. Gaman dated November 17 and November 27, 1995. In his November 17, 1995 report, Dr. Gaman stated:

"Please be advised that [appellant] was seen on September 18, [1995]. [Appellant] twisted his back while at work and had severe lower back pain. This was totally due to this twisting at work and was a separate injury from previous injuries. There was great suspicion clinically that the patient had a ruptured disc and an MRI [magnetic resonance imaging] scan of his lower back was arranged. Fortunately there was no ruptured disc. [Appellant's] lower back was simply strained and he was started on appropriate therapy."

In his November 27, 1995 report, Dr. Gaman essentially reiterated his earlier finding and emphasized that, "after careful consideration," appellant's alleged September 18, 1995 employment injury was a new and separate injury than the one he sustained on January 18, 1995. Dr. Gaman stated that he was convinced the new injury was due to the twisting appellant did at work.

By decision dated September 10, 1996, an Office hearing representative affirmed the Office's previous decision finding that fact of injury was not established. The hearing representative accepted the fact that appellant experienced severe symptoms of back pain while in the course of his employment on September 18, 1995, but found that appellant failed to submit

sufficient probative medical evidence to establish that these symptoms resulted from factors of his employment. The hearing representative indicated that there was a contradiction between appellant and his treating physician, Dr. Gaman, regarding the description of how the September 18, 1995 employment injury occurred. The hearing representative stated that Dr. Gaman had indicated that appellant sustained a strained back as a result of having twisted it at work, while appellant had consistently stated that he experienced pain while turning at the moment of injury and had never indicated he was twisting his back when the onset of symptoms occurred. The hearing representative stated that appellant, during his hearing testimony, had specifically denied having twisted his body at the time of the September 18, 1995 employment incident. The hearing representative therefore found that Dr. Gaman's opinion did not support a causal relationship between appellant's back condition and his employment because it was not based on an accurate history of the September 18, 1995 employment incident. He therefore denied benefits.

In a letter received by the Office November 21, 1996, appellant requested reconsideration of the Office's previous decision. Appellant also submitted an October 22, 1996 report from Dr. Gaman, who stated:

"Please be advised in regards to [appellant], in his mind turning of his back in fact is what any other physician would call twisting of his back. In a lay person's mind twisting and turning is the same thing and it does seem rather capricious and without logic to at least not explore the difference in [appellant's] mind between twisting and turning...."

By decision dated November 25, 1996, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually

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

<sup>2</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup> The medical evidence required to establish causal relationship is usually 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 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.<sup>6</sup>

In the present case, appellant experienced an incident at work in which he turned to the left and experienced low back pain.<sup>7</sup> The Office hearing representative found that Dr. Gaman's opinion lacked probative value because of the difference in descriptions of how the September 18, 1995 incident occurred, noting Dr. Gaman had stated that appellant was injured when he "twisted" his back at work, as opposed to appellant's account that he had experienced pain in his back when he "turned" his body to his left. The Board finds that appellant's description of turning while at work is of sufficient probative value and is not substantially refuted by the evidence submitted by Dr. Gaman.

The Board further finds that the medical evidence appellant has submitted in the present case; *i.e.*, the November 17 and November 27, 1995 reports from Dr. Gaman, contain a history of the development of a low back strain and a medical opinion that the low back strain was consistent with the history of development, which, given the absence of any opposing medical evidence, is sufficient to require further development of the record.<sup>8</sup> Dr. Gaman specifically stated in his November 17, 1995 opinion that appellant twisted his back while at work on September 18, 1995 and sustained a low back strain which was attributable to the September 18, 1995 incident. He reiterated in his November 27, 1995 report that the September 18, 1995 incident was distinct from the January 18, 1995 injury.

Although the medical evidence submitted by appellant is not sufficient to meet his burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's lower back strain and his September 18, 1995 employment injury, and is sufficient to require further development of the case record by the Office.

The Board finds that appellant is entitled to reimbursement for or payment of expenses incurred for medical treatment for the period from September 18, 1995, the date the employing establishment official signed the Form CA-16, authorization for examination and/or treatment, to

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<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>6</sup> *Id.*

<sup>7</sup> See *John J. Carlone*, *supra* note 4.

<sup>8</sup> *Id.*

November 17, 1995, 60 days from the official's signature (as such authorization was not terminated before that period). By Form CA-16, authorization for examination and/or treatment, signed by an employing establishment official on September 18, 1995, the employing establishment authorized Dr. Gaman to provide medical care for a period of up to 60 days from that date. The employing establishment's authorization for appellant to obtain medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment and emergency surgery regardless of the action taken on the claim.<sup>9</sup>

The decisions of the Office of Workers' Compensation Programs dated November 25 and September 10, 1996 are set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, D.C.  
December 4, 1998

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> *Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.