

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of SHERRI L. SPENCER and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, Ohio

*Docket No. 96-2151; Submitted on the Record;  
Issued July 16, 1998*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish an employment-related back condition in the performance of duty on November 30, 1996, as alleged.

On January 4, 1996 appellant, a letter carrier, filed a claim for a back injury on November 30, 1995, when she pulled a postal vehicle door which was stuck. Appellant submitted form reports from Dr. James Kolp, an osteopathic general practitioner, who examined her on December 6, 1995 and recommended on week off from work due to a lumbar strain from attempting to open a door at work. Appellant worked her regular duties from December 11 until December 20, 1994 when she stopped work on account of her pain. On January 2, 1996 she was evaluated by Dr. P. Robert Schwetschenau, a Board-certified neurosurgeon, who approximately a year and a half earlier, had performed a lumbar laminectomy and discectomy for a herniated disc at the right side of L4-5 which the Office approved based on a prior employment-injury claim.<sup>1</sup> At the time of his January 2, 1996 evaluation, Dr. Schwetschenau noted the existence of a left-sided herniated disc, noted a history of a fall in November 1995, and recommended total disability with physical therapy treatment beginning on January 11, 1996.

The Office assigned appellant's claim for the November 30, 1995 injury as number A9-411006. In response to a request for further factual information, appellant submitted a letter in which she indicated that she did not fall at work, but instead had difficulty opening a vehicle door on November 30, 1995 and felt unable to continue to work after December 20, 1995. Appellant submitted a January 29, 1996 report by Dr. Schwetschenau, who corrected his history of the employment incident, noting that the emergency room records from early December

---

<sup>1</sup> Under claim number A9-377197, the Office accepted a claim for a back strain due to lifting at work in March and April 1993. Diagnostic tests on April 7 and September 4, 1993, and July 29, 1994 confirmed the presence of a herniated disc at L4-5 and a disc bulge at L5-S1. Following a review by an Office medical adviser, who interpreted the results to show herniated discs at both levels, the Office approved surgery. Dr. Schwetschenau performed the surgical lumbar laminectomy at the L4-5 level only. Two months later, appellant returned to a light-duty assignment beginning October 26, 1994, for a six-month period.

referred to a pulling of a door as the incident which caused appellant pain. He noted, however, that he did not know if the diagnosis was a herniated disc or a back strain.

Based on the lack of a firm diagnosis to establish a work-related condition or total disability due to the condition, the Office denied appellant's claim by decision dated February 22, 1996.

Appellant requested reconsideration based on further diagnostic testing performed March 13, 1996. She submitted the diagnostic test results which showed a "moderate right paracentral disc protrusion ... significantly more prominent on the present, than on the previous exam[ination] at the right L4-5 level, associated with moderate imprint upon the right anterolateral aspect of the adjacent thecal sac." In addition, the results showed the left paracentral disc protrusion at L5-S1 "unchanged in appearance when compared with the previous exam[ination], associated with mild posterior displacement of the adjacent left S1 nerve root."

By decision dated March 29, 1996, the Office found the medical evidence insufficient to establish a causal relationship between appellant's diagnosed herniated disc condition and the work duties on November 20, 1996.

The Board finds that appellant has met her burden of proof to establish a back strain in the performance of duty on November 30, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury due to one single incident, or an occupational disease due to events occurring over a period of time.<sup>4</sup> As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>5</sup> Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.<sup>6</sup>

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> The Office's regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift. See 20 C.F.R. §§ 10.5(a)(15), (16).

<sup>5</sup> See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

<sup>6</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

In this case, appellant was diagnosed previously with a right-sided herniated disc at the L4-5 level and a disc protrusion at the L5-S1 level. The medical evidence submitted by appellant related her herniated disc to her employment activities in the spring of 1993. Appellant underwent surgery in August 1994, approved by the Office under claim number A9-377197. Under a separate claim, assigned to claim number A9-411006, appellant claimed that she reinjured her back on November 20, 1995 when she pulled a vehicle door which was stuck.

Both the reports of Dr. Kolp, an osteopath, and Dr. Schwetschenau, a neurosurgeon, support appellant's claim that she sustained a back strain on November 30, 1995 due to her employment. Accordingly, the Board finds that the case must be remanded to the Office to determine the extent of disability due to the back strain.

With respect to the claim for a recurrent herniated disc, the Board notes that the evidence does not contain an opinion establishing the relationship between the diagnosed recurrent herniated disc and appellant's work duties on November 30, 1995. For this reason appellant has not established that her herniated disc is related to her federal employment.

The decisions of the Office of Workers' Compensation Programs dated February 22 and March 29, 1996 are hereby set aside; the case is remanded to the Office for further development on the period of disability and the extent of the injury, as directed by the Board.<sup>7</sup>

Dated, Washington, D.C.  
July 16, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

---

<sup>7</sup> Appellant submitted an April 18, 1996 request for reconsideration before the Office, and submitted a March 28, 1996 report by Dr. Ayse L. Lee, a Board-certified physiatrist, and an April 16, 1996 report by Dr. Schwetschenau. The Office issued a decision on June 26, 1996, which was the same date appellant's appeal was docketed at the Board pursuant to her representative's letter dated June 21, 1996. The Board has held that the Office does not have jurisdiction to issue a decision on petition for a request for reconsideration while the case is pending before the Board on the same issue; see *Russell E. Lerman*, 43 ECAB 779 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990). Because appellant had filed an appeal with the Board, following her April 18, 1996 request for reconsideration before the Office, the Board finds that the Office improperly issued its June 26, 1996 decision and that the decision is null and void. The Board notes further that it is unable to review the additional medical evidence submitted by appellant as part of her request for reconsideration before the Office. Under section 501.2(c) of the Board's *Rules of Procedure* (20 C.F.R. § 501.2(c)), the Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision.