

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WARREN TEMPLETON and U.S. POSTAL SERVICE,
POST OFFICE, Martinez, Calif.

*Docket No. 96-1087; Submitted on the Record;
Issued March 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that his back condition is causally related to factors of his employment.

The facts in this case indicate that on March 4, 1993 appellant, then a 43-year-old letter carrier, filed an occupational disease claim, alleging that the degenerative disc disease of his lower back was causally related to his employment. He did not stop work, and on April 26, 1993 accepted a light-duty assignment with no street duties and lifting and standing restrictions. He was to work four hours a day for two weeks and then return to an eight-hour day.

The relevant medical evidence includes a February 13, 1990 x-ray of the lumbar spine that demonstrated degenerative changes. A December 6, 1990 computerized tomography (CT) scan of the lumbar spine showed mild disc bulges at every level with no stenosis or nerve root impingement and no evidence of herniation. In a May 16, 1990 treatment note, Dr. Jeffrey Klingman, a Board-certified neurologist, diagnosed sciatica, right greater than left. In a December 20, 1990 treatment note, Dr. Klingman diagnosed chronic lumbar strain syndrome. By reports dated June 2 and June 20, 1991, Dr. Jonathan Kurland, a Board-certified orthopedic surgeon, diagnosed chronic mechanical low back pain. An October 11, 1991 bone scan of the low back demonstrated degenerative disease of the cervical, midthoracic and lower lumbar spine. Dr. James B. Reynolds, a Board-certified orthopedic surgeon, provided reports dated June 12 and July 17, 1992 in which he diagnosed severe degenerative disc disease. He performed facet blocks with 50 percent relief of pain. A July 15, 1992 discogram demonstrated diffuse degeneration at L3 through S1. Dr. Alison Jacobi, a Board-certified internist, submitted a September 27, 1992 report, in which she diagnosed severe degenerative disease of the lower back and provided restrictions on appellant's physical activity. A February 19, 1993 magnetic resonance imaging (MRI) scan of the lumbar spine revealed an annular bulge at L2-3, evidence of left-sided paramedian herniated nucleus pulposa at L3-4, and annular bulging at L4-5. Dr. Klingman submitted a March 1, 1993 report, in which he noted evidence of degenerative joint disease on bone scan and advised:

“I [am] not sure what exactly is causing [appellant’s] lower back pain but it seems reasonable that physical labor would contribute to some degree of degenerative joint disease but certainly not necessarily a cause and effect relationship, *i.e.*, some patients will develop the degenerative changes without a history of heavy labor, and some patients with heavy labor do not develop degenerative disease.”

In a March 16, 1993 report, Dr. Jacobi advised that appellant’s severe degenerative disc disease was “most likely” the result of carrying heavy mail bags for years. She also submitted form reports reiterating her diagnosis. In a report dated May 19, 1993, Dr. Ronald G. Blackman, a Board-certified orthopedic surgeon, diagnosed multilevel degenerative disc disease and advised that it was difficult to identify the cause of appellant’s pain. In a July 7, 1993 report, Dr. Jacobi summarized appellant’s medical history and advised that his back condition was aggravated and probably caused by years of bending and carrying heavy mail.

By letter dated September 30, 1993, the Office referred appellant, along with a statement of accepted facts and a set of questions, to Dr. Howard Sturtz, a Board-certified orthopedic surgeon for a second opinion evaluation. In an October 27, 1993 report, Dr. Sturtz advised:

“It is my opinion that [appellant’s] back condition is not the result of his work injuries, either a specific injury or cumulative trauma. I believe that this is a naturally occurring condition that may cause some low level of back pain, increased with activities. I believe he could perform his job as a postal delivery and collection clerk, but he would have increased symptomatology at the end of the day. It should be noted that there are similar individuals of his age, height and weight and underlying degenerative changes who are performing their jobs successfully with a minimum of treatment. The records do not show any evidence of nerve root impingement to cause the level of pain he claims. A heavy day of work might cause a temporary aggravation of his underlying symptomatology. I do not believe that he requires any restrictions as to his work activities.”

Dr. Sturtz also completed a work capacity evaluation in which he advised that appellant could work eight hours a day with a lifting restriction of 20 to 50 pounds.

By decision dated November 1, 1993, the Office denied the claim, finding that appellant failed to establish that his back condition was causally related to factors of employment.

Following appellant’s timely request for a hearing, in a decision dated April 19, 1994, an Office hearing representative remanded the case to obtain a supplementary report from Dr. Sturtz to determine if appellant’s employment aggravated his underlying condition. In a June 7, 1994 report, Dr. Sturtz advised that, while appellant had naturally occurring degenerative disc disease at multiple levels, he believed appellant’s underlying condition became temporarily aggravated by his work activity but did not believe there had been any work-related disability caused by these temporary aggravations of his underlying condition.

In an April 8, 1994 report, Dr. J.I. Azalde, an internist, diagnosed severe multilevel degenerative disc disease and advised that appellant could not return to work as a full-time letter carrier.

By decision dated August 25, 1994, the Office, crediting the opinion of Dr. Sturtz, denied the claim on the grounds that the evidence of record did not establish that appellant sustained a medical condition causally related to factors of employment.

Appellant again requested a hearing, and submitted a July 11, 1994 x-ray of the cervical spine that revealed mild to moderate degenerative changes with mild encroachment at C6-7. He also submitted form reports from Drs. Azalde and Jacobi in which they reiterated their previous findings.

At the hearing, held on May 18, 1995, appellant testified that he sustained employment injuries in 1984 and 1989,¹ that he had no history of back problems prior to federal employment, and that his condition had worsened over the course of 23 years of federal employment. At the hearing appellant submitted a January 5, 1994 report in which Dr. Blackman disagreed with Dr. Sturtz's opinion. Dr. Blackman noted that test results were positive and that multilevel disc disease was not normally found in a man appellant's age. He further noted that such a condition was rarely caused by a one-time significant injury, but rather the result of multiple events such as excessive bending, twisting, and load carrying which are consistent with appellant's work duties. In a May 11, 1995 report, Dr. Jacobi recounted Dr. Blackman's argument and concluded that appellant could not work "at the position he has been doing." In a June 6, 1995 report, Dr. Blackman advised that he "had no idea as to the exact etiology" of appellant's multilevel degenerative disc disease but that it was aggravated by lifting, twisting, bending, carrying and "such like." He continued, "if these activities are truly those that a mail carrier does, then I think it is reasonable to assume that these activities have aggravated his back condition and led to an increase in pain, discomfort and inability to perform normal activities." By report dated July 27, 1995, Dr. Allan Bushnell, a Board-certified psychiatrist, advised that appellant was permanently disabled due to his multilevel degenerative disc disease.

On July 28, 1995 appellant submitted a claim, alleging that he sustained a recurrence of disability on July 25, 1995 when he stopped work. He returned to work on July 28, 1995.

By decision dated November 6, 1995, the hearing representative denied the claim, finding that appellant's condition was not causally related to factors of employment. The hearing representative noted that the medical evidence submitted by appellant was speculative and unrationalized. He credited the opinion of Dr. Sturtz, stating that the physician provided a definitive opinion that appellant's underlying condition of degenerative disc disease was not, in any material fashion, affected by the day-to-day performance of his assigned duties. The instant appeal follows.

The Board finds that appellant did not establish that his degenerative disc disease is causally related to factors of employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim³ including the fact that the

¹ Other than appellant's assertion, the record does not contain evidence of these injuries.

² 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ 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.⁶ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷ However, an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁸ This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based upon a proper factual and medical background.⁹

Causal relationship is a medical issue,¹⁰ and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical 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.¹¹ Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹² Nonetheless, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹³

There is no question that appellant has multilevel degenerative disc disease. While he submitted medical reports from his treating Board-certified internist, Dr. Jacobi, who opined on

³ See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

⁴ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁷ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ See *Robert A. Gregory*, 40 ECAB 478 (1989).

⁹ See *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827 (1994).

¹⁰ *Mary J. Briggs*, 37 ECAB 578 (1986).

¹¹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 7.

¹² *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

¹³ *Larry Warner*, 43 ECAB 1027 (1992).

March 16, 1993 that appellant's degenerative disc disease was most likely the result of carrying heavy mail bags for years, this opinion is speculative¹⁴ and is outweighed by the majority of the medical opinions of record. In a March 1, 1993 report, Dr. Klingman, a Board-certified neurologist, advised that there was not necessarily a cause and effect relationship between physical labor and degenerative disc disease. In a comprehensive report dated October 27, 1993, Dr. Sturtz, the Board-certified orthopedic surgeon who provided a second opinion evaluation for the Office, opined that appellant's condition was naturally occurring. Finally, by report dated June 6, 1995, Dr. Blackman, a Board-certified orthopedic surgeon, advised that he had no idea as to the exact etiology of appellant's multilevel degenerative disc disease. Appellant, therefore, failed to establish that his underlying degenerative disease was caused by factors of employment.¹⁵

The Board, however, finds, that the medical evidence of record establishes that employment factors caused an aggravation of appellant's underlying degenerative disc disease. In a July 7, 1993 report, Dr. Jacobi advised that appellant's back condition was aggravated by years of bending and carrying heavy mail. Likewise, on June 6, 1995 Dr. Blackman advised that appellant's condition was aggravated by lifting, twisting, bending, carrying and "such like." Furthermore, in his supplementary report dated June 7, 1994, Dr. Sturtz, who had provided a second opinion evaluation for the Office, stated that appellant's underlying condition was temporarily aggravated by his work activity. Hence, appellant is entitled to compensation for periods of disability, if any, related to this aggravation.¹⁶ The case will, therefore, be remanded to the Office to determine the extent and duration of any such period.

The decision of the Office of Workers' Compensation Programs dated November 6, 1995 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

¹⁴ See generally *Ern Reynolds*, 45 ECAB 690 (1994).

¹⁵ *Supra* note 11.

¹⁶ See *Larry Warner*, *supra* note 13.

Dated, Washington, D.C.
March 27, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member