

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAQUEL NAVEDO-CRUZ and U.S. POSTAL SERVICE,
POST OFFICE, Bronx, N.Y.

*Docket No. 96-1558; Submitted on the Record;
Issued May 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established an aggravation of preexisting degenerative disc disease due to her work duties on December 15, 1994.

The Board has duly reviewed the record in the present appeal and finds that appellant has not established an aggravation of preexisting degenerative disc disease due to her work duties on December 15, 1994.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³ As part of this burden, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ Rationalized medical evidence is evidence which relates a work

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ The Office of Workers' Compensation Programs' 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).

⁴ *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

incident or factors of employment to a claimant's condition, with stated reasons of a physician.⁵ The opinion of the physician must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of relationship of the diagnosed condition and the specific employment factors or employment injury.⁶

The Board has held that where an employee claims an aggravation of preexisting arthritis, the employee must provide a rationalized medical opinion discussing the nature of the condition, including its natural or traditional course, and how the underlying condition was affected by the employment with reference to medical records.⁷

On December 20, 1994 appellant, then a 60-year-old postal clerk, filed a notice of a recurrence of total disability on December 15, 1994, citing an injury she sustained 10 weeks earlier. The record shows a history of employment-related back claims, which were denied by the Office on the grounds that the diagnostic tests showed a preexisting degenerative joint disease condition.⁸ Appellant contended that while assigned to sort mail in the registry cage on December 15, 1994, a task she normally did not perform, she felt a snap in her back as she placed the carrier route keys away, and felt a shooting pain down her legs which persisted. Appellant obtained treatment from the hospital the following date, and was evaluated by Dr. Ludmila Feldman, a resident, who noted a diagnosis of lumbar radiculopathy with degenerative joint disease.

The Office assigned appellant's claim to claim number A2-691928, and requested further medical information to support her claim. Subsequent to the receipt of two reports by

⁵ *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).

⁶ *Id.*

⁷ *Newton Ky Chung*, 39 ECAB 919 (1988); *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). An employee's entitlement to compensation for an established employment-related aggravation, is limited to the period of disability caused by the aggravation. An employee who is found medically disqualified to continue in employment because of the effect that the employment factors might have on the underlying condition does not qualify for compensation; see *Gaeten F. Valenza*, 39 ECAB 1349 (1988); *James L. Hearn*, 29 ECAB 278 (1978).

⁸ Appellant filed a claim for a lumbosacral strain on August 7, 1982, developed under claim number A2-507415. The record is not clear whether the Office accepted appellant's claim for a back strain on August 7, 1982 as employment related. Appellant filed a second claim for a back condition she related to falling on ice on March 15, 1993. The record indicates that appellant's claim was denied, but that she was provided with a light-duty job after this date, on account of her preexisting back condition. Under claim number A2-669844 the Office denied appellant's claim for a further back and right knee injury on December 14, 1993. She filed a subsequent claim for a back injury while performing light-duty work on October 7, 1994, when she felt her back snap with epidural block treatment provided two days later. The Office denied appellant's claim for an October 7, 1994 injury under claim number A2-688028.

Dr. Lawrence Samkoff, a Board-certified neurologist, the Office denied appellant's claim for a work-related injury or aggravation on December 15, 1994.⁹

With a request for reconsideration, appellant submitted a September 29, 1994 hospital report which detailed her work restrictions beginning in 1994, with a reference to the fall at work in the spring of 1993. In reports dated June 7 and July 10, 1995, Dr. Michael Daras, a Board-certified neurologist, noted that he examined appellant twice since March 1994, the date she began treatment at that clinic, and that he felt appellant's osteoarthritis had worsened since her injury in 1993 based on the lack of any similar injuries to account for the condition.¹⁰ Dr. Daras reviewed diagnostic studies performed between July and October 1994, which documented the severity of her degenerative disc disease and scoliosis. In an October 23, 1995 report, Dr. Scholmo Piontkowski, a Board-certified orthopedic surgeon, noted the history of injury on December 15, 1994, when appellant turned to get a key and felt pain in her lower back which was going down her legs since that time. He reviewed results from a computerized tomography (CT) scan and x-rays, noting that a magnetic resonance imaging (MRI) scan had been performed the prior year, with results not presented to him for review. Dr. Piontkowski recommended a repeat MRI to evaluate better the questionable herniation of the disc, and noted that he felt appellant had degenerative arthritis of the lumbosacral spine with multiple herniated discs. He recommended continued epidural block treatments. In an undated report, Dr. Samkoff provided a history of back pain beginning in February 1993 when appellant fell to the ground, and noted the results of x-rays performed more than a year later which showed mild generalized osteoporosis and moderate spondylosis involving the L3 and L4 vertebral bodies. He stated "[o]ur initial impression was that [appellant] suffered from musculoskeletal low-back pain as a result of her original work-related injury and chronic osteoarthritis, which was also related to long-standing heavy duties required of her on the job." Dr. Samkoff stated that appellant was provided with analgesics and was referred for physical therapy treatment. He noted that because of the minimal relief, further diagnostic studies were performed which showed a disc bulge at the left L2-3 level, and confirmed a left L5 radiculopathy. Dr. Samkoff reported that appellant was evaluated in the neurology clinic on September 1, November 15 and November 28, 1994 with some improvement in her back pain, and that appellant then suffered another work-related injury on December 15, 1994 which exacerbated her symptoms. He noted that after several days of inpatient treatment for her symptoms, she was discharged and that she returned to the neurology clinic on January 5, March 9 and June 15, 1995, with continued inability to tolerate moderate exertion which exacerbates her symptoms. Dr. Samkoff diagnosed chronic lumbosacral osteoarthritis which developed over many years of work, and which has been exacerbated by her injuries sustained at her job in February 1993 and in December 1994.

By decision dated March 6, 1996, the Office denied appellant's claim for a work-related injury on December 15, 1994.

⁹ Dr. Samkoff noted an initial treatment date of February 1, 1994 and related appellant's lumbar osteoarthritis to her fall at work in the Spring of 1993.

¹⁰ Dr. Daras noted incorrectly that appellant sustained a work injury in February 1993, as opposed to the alleged injury in March 1993.

The Board notes that the issue before the Board is limited to whether appellant established a work-related injury on December 15, 1994, including an aggravation to her preexisting lumbar condition. Since the Office has not combined the prior claims, which appear to have been rejected, with the current claim for an injury on December 15, 1994, the Board is unable to address whether appellant has met her burden of proof to establish an aggravation of her condition due to the work incidents prior to December 15, 1994.¹¹ With respect to the work incident on December 15, 1994, the circumstances involving the claimed injury involve a reaching incident where appellant went to retrieve or put back carrier keys and felt severe back pain with radicular symptoms. The medical reports she submitted indicate that she had been treated for the past 11 months by neurologists, who had diagnosed an L5 radiculopathy due to severe disc bulges thought to represent possible herniations. While the reports by Dr. Samkoff, a Board-certified neurologist, and Dr. Piontkowski, a Board-certified orthopedic surgeon, provide reports of recurrent back pain on December 15, 1994 and not appellant's work activities which involved reaching, neither physician explains how the reaching aggravated appellant's underlying condition. The Board notes the fact that a condition manifests itself or worsens during a period of employment, or that work activities produce symptoms revelatory of an underlying condition, does not raise an inference of causal relationship between a claimed condition and employment factors.¹² It remains appellant's burden to demonstrate how the work incident caused or aggravated an underlying condition, to establish entitlement to compensation benefits for a work-related injury.

¹¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within no more than one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c), 501.3(d)(2). In its final decision dated March 6, 1996 the Office limited its decision to whether appellant established an employment-related aggravation of a preexisting condition due to the work incident on December 15, 1994.

¹² *Ruby I. Fish*, 46 ECAB 276 (1994); *Jerry D. Osterman*, 46 ECAB 500 (1995).

The decision of the Office of Workers' Compensation Programs dated March 6, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 1, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member