

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL D. FANNING and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 98-208; Submitted on the Record;
Issued December 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained injuries to his lower back and neck in the performance of duty on August 12, 1996, as alleged.

On September 3, 1996 appellant, then a 35-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he reinjured his lower back at the L5-S1 level and his neck at the C2-3 level when he was lifting a heavy parcel and carrying it to a house on August 12, 1996.¹ Appellant stopped work on August 13, 1996. The employing establishment controverted appellant's claim, contending that appellant did not suffer an injury as alleged.²

In support of the claim, appellant submitted records from Carraway Methodist Medical Center regarding his admission to the emergency room on the date of the alleged incident, August 12, 1996. These records indicate that appellant was admitted at 8:13 p.m. and that appellant noted that this was a possible workers' compensation case. The emergency room physician noted that appellant had injured his back approximately seven months ago and that his current complaints consisted of back pain, which radiated in the left leg. The physician noted appellant was on limited duty and upon his return to full duty, began experiencing back pain. The physician diagnosed back pain. The emergency room physician released appellant to light-duty work on August 14, 1996 and full-duty work on August 16, 1996.

Also submitted was a September 3, 1996 report from Dr. H. Evan Zeiger, Jr., a Board-certified neurosurgeon, stating that appellant told him that he could not do his work, and noted

¹ By decision dated December 16, 1996, the Office of Workers' Compensation Programs denied a different claim of appellant's, finding that appellant failed to demonstrate that there was a recurrence of an October 19, 1995 injury on August 12, 1996.

² In support of its contention, the employing establishment notes, *inter alia*, that there is no mention in the emergency room records the day of the alleged injury that appellant was lifting a heavy parcel, that he did not tell his supervisor when he returned from his route that he had been injured, and that his wife did not indicate a work-related injury when she telephoned the office the next day.

that appellant complained that he could not lift and twist when handling light packages and that appellant attributed this to his workers' compensation injury, "*i.e.*, his low back and his left sciatica." Dr. Zeiger further notes that he explained to appellant that workers' compensation had declined to cover this, and that this was not a work-related injury.

In response to the Office's September 30, 1996 request for further information, appellant submitted claims for continuing compensation on account of disability, Form CA-8, for the period August 12 through October 14, 1996. He also submitted an attending physician's supplemental report from Dr. Zeiger, Form CA-20a, dated October 22, 1996, in which Dr. Zeiger diagnosed herniated lumbar disc and a herniated cervical disc, stated that he did not know whether the conditions were caused by employment and concluded that appellant was totally disabled for work. Dr. Zeiger stated that appellant needed surgery. Finally, appellant submitted another narrative statement.

On October 1, 1996 the employing establishment submitted a letter stating that appellant gave differing addresses for where the injury occurred, along with a copy of a letter from appellant to support this contention. In the letter, appellant attempted to explain the discrepancies.

By decision dated October 29, 1996, the Office denied appellant's claim on the grounds that he did not establish fact of injury.

By letter dated November 3, 1996, appellant requested reconsideration, asking that his claim for benefits for the injury dated August 12, 1996 be treated as a new injury, and asking if the Office needed any further information. Appellant attached an October 3, 1996 report from Dr. Zeiger, in which he stated that appellant's original injury occurred on October 19, 1995 when he was delivering mail, and he hit his head on an air conditioner, twisting his neck and then fell backwards landing on his buttocks and his back. Dr. Zeiger stated that because appellant's initial pain was more severe in his back and the left leg than it was in his head and neck, his back was evaluated first. Dr. Zeiger noted that appellant was found to have a herniated nucleus pulposus, however, as that has healed, his neck pain became more prominent and he was subsequently found to have a cervical disc herniation. Dr. Zeiger opined that the cervical disc herniation is directly related to his on-the-job injury.

By decision dated January 6, 1997, the Office denied appellant's request for modification of the October 29, 1996 decision.

On January 7, 1997 appellant again requested reconsideration. Appellant subsequently submitted a January 15, 1997 report from Dr. Zeiger, which revealed that he released appellant to return to work on August 12, 1996 following a prior back injury, that appellant's on-the-job injury precipitated worsening of the cervical disc herniation at C-6 and necessitated the surgery. He concluded that appellant sustained a 10 percent permanent partial-impairment rating to the body as a whole, based on his cervical disc rupture and subsequent surgery. Dr. Zeiger noted that, "[t]he fact that [appellant] is so improved and ready to return to work and full duty indicates to me that this was a legitimate work-related injury."

Additionally, appellant submitted a medical note from Dr. Michael Benson of the Birmingham Pain Center, Birmingham, Alabama, indicating that appellant returned to work on January 30, 1997 and noted the limited duty.

By decision dated April 24, 1997, the Office denied appellant's request for modification as the application was not sufficient to warrant modification of the prior decision. The Office explained that appellant's account of the facts and circumstances surrounding the alleged incident was inconsistent.

By letter dated September 30, 1997, appellant again sought reconsideration. Attached therewith was a September 23, 1997 report by Dr. Stephen K. Gremmels, a chiropractor, who noted that appellant was initially treated on August 9, 1996 for injuries he received as a result of a work-related injury on October 19, 1995, and that at that time appellant related neck and low back pain. Dr. Gremmels further noted that appellant was seen by him on August 12, 1996, when he complained that while at work he bent over at the waist to move a box and felt a "pop" in his neck and immediate pain, and also noted an increase in low back pain and leg pain. He noted that at that time he felt that it was an exacerbation of his previous condition, although he had reinjured himself on that date. Also attached was a medical report dated February 5, 1997 from Dr. Michael G. Gibson, a surgeon, with permanent restrictions limiting appellant to occasional walking, stair climbing and lifting. Dr. Gibson further noted that as his condition is degenerative and will not improve with treatment, these restrictions should be viewed as permanent.³

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing 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.⁵ 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.⁶

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 experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

³ Appellant filed his appeal with the Board on October 7, 1997. By decision dated November 10, 1997, the Office denied appellant's request for reconsideration noting that the evidence presented was insufficient to require modification of the Office's prior decision, as the factual and medical evidence of record did not establish fact of injury. The Office's November 10, 1997 decision is null and void as both the Board and the Office cannot have jurisdiction over the same issue in the same case. *Douglas E. Billings*, 41 ECAB 880 (1990); 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *John J. Carlone* 41 ECAB 354 (1989).

establish that the employment incident caused a personal injury.⁸ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical 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.⁹

In this case, appellant provided sufficient evidence to establish the first component, that the incident occurred on August 12, 1996, as alleged. In his Form CA-1, appellant contended that he suffered an alleged injury on August 12, 1996 when he lifted a heavy parcel and delivered it to a house. Although there are certain discrepancies in the record as to the exact place the incident occurred, appellant adequately explained these discrepancies when he noted in his letter dated January 7, 1997 that he was new to this particular route and he initially made a guess as to the location of the house. He further explained that he later gave the correct location. As appellant has provided a reasonable explanation for initially providing the incorrect location of the house, the Board finds that the August 12, 1996 employment incident occurred as alleged.

However, the Board finds that the case is not in posture for a decision with respect to whether appellant sustained an injury as a result of the employment incident of August 12, 1996.

The emergency room records of Carraway Methodist Medical Center support the fact that appellant sustained an injury on August 12, 1996, as alleged. Although these records do not set forth the specific details as to how appellant injured himself, they are sufficient to establish that appellant injured his back which necessitated that he visit the emergency room on that date. During his intake interview, appellant stated that this was a possible workers' compensation claim. The intake report also notes that appellant stated that the back pain had increased since he returned to full duty. Furthermore, on October 22, 1996, Dr. Zeiger noted that he released appellant to return to work on August 12, 1996 following another back injury seven months prior and diagnosed appellant's condition as herniated lumbar disc and herniated cervical disc. Later, in a report dated January 15, 1997, Dr. Zeiger clearly states, "In my opinion, this [picking up heavy parcel during employment] precipitated worsening of the cervical disc herniation at C5-6 and necessitated the surgery." He went on to state that since appellant had improved from his prior injury and was able to resume full duty "indicates to me that this was a legitimate work-related injury."

Although this medical evidence may not be sufficient to meet appellant's burden of proof, the medical evidence of record raises an uncontroverted inference of a causal relationship between appellant's back condition and his August 12, 1996 employment incident and is sufficient to require further development of the case record by the Office.¹⁰ It is well established that proceedings under the Act are not adversarial in nature, and while appellant has the burden

⁸ *Id.* For a definition of the term "injury" see *Elaine Pendleton*, *supra* note 5 at 148-49.

⁹ *Id.*

¹⁰ *John J. Carlone*, *supra* note 7 at 354, 358.

to establish entitlement to compensation, the Office shares responsibility in the development of evidence.¹¹ The Office has an obligation to see that justice is done.¹²

The Office should refer the case record and appellant, if necessary, to an appropriate specialist for a rationalized opinion on the issue of whether appellant's diagnosed back conditions are causally related to the August 12, 1996 employment incident. Following this and any necessary further development, the Office shall issue a *de novo* decision.

The decisions of the Office of Workers' Compensation Programs dated April 24, January 6, 1997 and October 29, 1996 are hereby reversed in part and the case is remanded for further action consistent with this opinion.

Dated, Washington, D.C.
December 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ *Id.* at 359-60.

¹² *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).