

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL P. DICKERSON and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, Ga.

*Docket No. 97-1137; Submitted on the Record;
Issued March 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on October 3, 1996.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

In order to determine whether an employee sustained an injury in the performance of duty, the Office of Workers' Compensation Programs begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.¹ The second component is whether the employment incident caused a personal injury.² This latter component generally can be established only by medical evidence. To establish a causal relationship between the claimed condition, as well as any attendant disability, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *Id.*

³ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

In its January 30, 1997 decision, the Office accepted the incident alleged on October 3, 1996.⁴ The Office further noted that the medical evidence established a diagnosis of spondylolesthesis, spina bifida, discogenic sclerosis and degenerative disc disease. The Office, however, denied appellant's claim on the grounds that the medical evidence of record failed to demonstrate that the claimed condition or disability was causally related to the injury of October 3, 1996.

In support of his claim, appellant initially submitted an October 25, 1994 bone scan, a computerized tomography scan and magnetic resonance imaging scan, both dated October 29, 1996. Appellant also submitted treatment notes from Georgia Orthopaedics and Sports Medicine, covering the period of October 21 through November 14, 1996. The treatment notes for October 21, 1996 indicate that appellant experienced "a lot of discomfort in his hip going down the calf of his leg" when he was "picking up a hand cart and was putting it inside a mail truck ... about two to three weeks ago." Appellant's treating physician, Dr. Tapan K. Daftari, M.D., first examined him on October 23, 1996, and reported an initial impression of lumbar spondylolesthesis, aggravated by injury, probable disc herniation and mobile dynamically unstable L5-S1 segment. In a letter dated December 2, 1996, Dr. Daftari explained that appellant "suffered a work-related injury with probable disc herniation, progression of his spondylolesthesis of L5-S1, and impingement of the nerve roots." He further explained that due to the failure of conservative treatment, appellant was a candidate for surgical lumbar decompression and fusion. In conclusion, Dr. Daftari stated that appellant's "medical condition has been aggravated by his work-related injury." He subsequently operated on appellant's back on December 17, 1996. Dr. Daftari also submitted on appellant's behalf Forms CA-16, CA-17, CA-20 and CA-20a, wherein he consistently attributed appellant's current condition to the work-related injury of October 3, 1996.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁵ Although the reports from Dr. Daftari are insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current back condition is causally related to his October 3, 1996 employment injury, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁶ The medical evidence submitted by appellant is not contradicted by any other medical evidence of record.

On remand, the Office should refer appellant, the case record, and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical

⁴ In his Form CA-1, appellant stated that on October 3, 1996, he pulled a muscle in his hip while taking a hand cart out of his postal vehicle. Appellant further stated that while putting the cart back into the vehicle, he experienced pain down his left lower side. The record does not include any evidence contradicting appellant's statement regarding the incident of October 3, 1996.

⁵ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁶ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

opinion on whether appellant's back condition is causally related to the accepted employment injury of October 3, 1996. After such development of his case record as the Office deems necessary, a *de novo* decision shall be issued.

The January 30, 1997 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
March 17, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member