

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD W. McLEAN and U.S POSTAL SERVICE,
POST OFFICE, Oakdale, PA

*Docket No. 98-347; Submitted on the Record;
Issued November 10, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained an injury on July 13, 1990 in the performance of duty causally related to factors of his federal employment.

On January 3, 1995 appellant, then a 53-year-old rural letter carrier, filed an occupational disease claim alleging that on July 13, 1990 he sustained a back condition which he attributed to his employment. He alleged that his condition was caused by two previous work-related back injuries on February 3 and February 24, 1987 and his job duties performed after those injuries and required surgery on January 2, 1991.¹

In a report dated December 28, 1994, Dr. Charles J. DeNunzio, Jr., a general surgeon, related that appellant had sustained work-related injuries on February 3 and February 24, 1987. He stated:

“With any degree of medical certainty the injuries that [appellant] suffered from February 3 to February 24, 1987 were the cause of this lumbar discogenic disease. Work-related activities since the injuries of February 24, 1987 such as pulling, pushing, lifting 70 [pounds], bending, stooping, twisting, turning, standing on concrete daily, loading and delivering mail aggravated [appellant’s] lower back pain necessitating his back surgery on January 2, 1991.”

¹ The record shows that appellant’s earlier claim of a recurrence of disability on July 4, 1990 due to the February 3 and February 24, 1987 employment injuries (multiple contusions and low back strain, respectively) was denied by the Office of Workers’ Compensation Programs by decisions dated October 10, 1990, April 29, 1991, January 24, 1992, June 22, 1993 and June 7, 1994. The case on appeal was not consolidated with the two 1987 claims or the July 4, 1990 claim and the medical reports referred to in these decisions are not of record.

In a two-page report dated June 6, 1995, Dr. DeNunzio related that appellant had sustained two work-related low back injuries in February 1987. He stated that appellant returned to his regular job but was unable to perform his duties due to increasing pain in the lower back. Dr. DeNunzio related that appellant's duties included handling mail trays weighing up to 20 pounds; sorting mail at or above his shoulder level; loading tubs of mail into his delivery vehicle; standing and walking on concrete floors; pivoting, twisting, bending, stooping and lifting up to 70 pounds on occasion; using repetitive motions of opening mailboxes; stretching and placing mail into mailboxes; and occasionally delivering packages weighing up to 70 pounds to residences. He stated that all these duties increased the pain in appellant's lower back. Dr. DeNunzio diagnosed lumbar disc disease and stated his opinion that this condition was caused by his job duties.

By decision dated July 18, 1995, the Office denied appellant's claim.

By letter dated October 4, 1995, appellant requested an oral hearing before an Office hearing representative.

In a report dated January 3, 1996, Dr. DeNunzio stated his opinion that appellant's February 24, 1987 injury caused a disc herniation in his lumbar spine at the L3-4 level and that the mechanism of injury was that the nucleus pulposus of the intravertebral disc herniated out of the annulus fibrosis and exerted pressure on nerve root in the intravertebral foramen. He stated that appellant's job duties aggravated the disc herniation and he noted that these duties included lifting mail trays and bags, twisting, bending and stooping, lifting weights up to 70 pounds on occasion and that the herniated disc further irritated the nerve root causing pain and dysfunction in appellant's lower extremities necessitating surgery on his lumbar spine.

On January 30, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated April 15, 1997, the Office hearing representative affirmed the Office's July 18, 1995 decision. The Office noted that Office hearing representatives, in decisions dated April 22, 1991 and June 7, 1994 regarding his two 1987 claims, had determined that appellant did not have any residual disability causally related to his two February 1987 employment injuries. The Office stated that the medical evidence provided in the instant case, did not establish that appellant's claimed recurrence of disability on July 13, 1990 was causally related to his February 3 or February 24, 1987 employment injuries or to factors of his employment.

By letter dated June 19, 1997, appellant requested reconsideration of the denial of his claim and submitted additional evidence. He stated that he was no longer claiming that the two 1987 employment injuries contributed to his claimed injury on July 13, 1990, rather that his work duties caused or aggravated his claimed back injury.

Appellant submitted a two-page report dated June 23, 1995 from Dr. DeNunzio which was substantially similar to his two-page June 6, 1995 letter.

By decision dated September 18, 1997, the Office denied modification of its April 15, 1997 decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury on July 13, 1990 in the performance of duty causally related to factors of his employment.

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.² Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.³ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁶

In this case, appellant alleged that he sustained a back injury on July 13, 1990 which he attributed to his two February 1987 employment injuries and to his job duties. Following two Office decisions denying his claim, he stated that he was no longer alleging that the 1987 injuries contributed to his claimed July 13, 1990 injury. He stated that his injury was caused by his job duties.

In a report dated December 28, 1994, Dr. DeNunzio, a general surgeon, related that appellant had sustained work-related injuries on February 3 and February 24, 1987. However, this report is not based upon a complete and accurate factual background as the record shows that the Office had determined in several previous decisions relating to his 1987 employment injuries that appellant had no residuals from the two 1987 employment injuries, multiple contusions and low back strain, as of July 4, 1990 and Dr. DeNunzio provided insufficient medical rationale explaining how these 1987 injuries caused the lumbar discogenic disease which he diagnosed in 1994. He also provided insufficient medical rationale explaining how appellant's job duties caused or aggravated the discogenic disease condition. Therefore, this report is not sufficient to establish that appellant sustained an employment-related injury on July 13, 1990.

In a two-page report dated June 6, 1995, Dr. DeNunzio related that appellant had sustained two work-related low back injuries in February 1987. He stated that appellant returned to his regular job but was unable to perform his duties due to increasing pain in the lower back. Dr. DeNunzio described appellant's job duties which included handling mail trays weighing up to 20 pounds; sorting mail at or above his shoulder level; loading tubs of mail into his delivery

² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

³ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁶ *Joseph T. Gulla*, *supra* note 4.

vehicle; standing and walking on concrete floors; pivoting, twisting, bending, stooping and lifting up to 70 pounds on occasion; using repetitive motions of opening mailboxes; stretching and placing mail into mailboxes; and occasionally delivering packages weighing up to 70 pounds to residences increased the pain in appellant's lower back. He diagnosed lumbar disc disease and stated his opinion that this condition was caused by the job duties. However, he provided insufficient medical rationale explaining how the job duties caused or aggravated the lumbar disc disease. Therefore, this report is not sufficient to discharge appellant's burden of proof.

In a report dated January 3, 1996, Dr. DeNunzio stated his opinion that appellant's February 24, 1987 injury caused a disc herniation in his lumbar spine at the L3-4 level and that the mechanism of injury was that the nucleus pulposus of the intravertebral disc herniated out of the annulus fibrosis and exerted pressure on nerve root in the intravertebral foramen. He stated that appellant's job duties aggravated the disc herniation and he noted that these duties included lifting mail trays and bags, twisting, bending and stooping, lifting weights up to 70 pounds on occasion. However, this report is not based upon a complete and accurate factual background in that the Office has not accepted that the February 24, 1987 employment injury caused a herniated disc and Dr. DeNunzio has not provided sufficient medical rationale explaining how the herniated disc was caused by the February 24, 1987 back strain. He also did not provide sufficient rationale explaining how appellant's job duties aggravated the herniated disc. Due to these deficiencies, this report is not sufficient to discharge appellant's burden of proof.

The September 18 and April 15, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
November 10, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member