U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of ELVIRA HANCOCK and U.S. POSTAL SERVICE,
HEMET POST OFFICE, San Diego, CA

*Docket No. 98-167; Submitted on the Record;*
*Issued October 12, 1999*

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DECISION and ORDER

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

The issue is whether appellant met her burden of proof in establishing that she sustained a back condition in the performance of duty causally related to factors of her federal employment.

On July 16, 1997 appellant, then a 33-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that she strained her lower back muscle by repeated work-related bending, stooping and twisting on June 20, 1997. The employing establishment controverted appellant's claim, contending that appellant stated that she hurt herself at home. The record reveals that appellant stopped work on June 10, 1997 and returned on June 30, 1997.

On the same date, an employing establishment official conducted an interview with appellant in which appellant answered various questions pertaining to her accident. The report revealed that appellant stated that she failed to report the "accident" on June 20, 1997 because she thought it would get better, and that she did not tell John Negrete and Frank Jakie that she sustained the injury at home.

In support of her claim, appellant submitted a medical note dated June 30, 1997, in which Dr. Albert Y. Li, an internist, restricted appellant to light-duty work for two weeks, with no excessive bending or stooping. Dr. Li also noted that appellant was not to engage in prolonged sitting or standing, or any lifting above 15 pounds.

On July 7, 1997 Dr. Li released appellant to light-duty work for six hours a day, with instructions that she rotate between sitting and standing. He also noted that the previous restrictions were to be continued until July 22, 1997.

In a letter dated July 15, 1997, appellant's supervisor stated that on July 3, 1997, appellant telephoned in on her day off, said she was going to the doctor, and requested a form for

light duty. The letter states that appellant informed her supervisor that she hurt herself at home some time ago, and had hurt herself again. He further reported that the following week appellant stated that casing and lifting something she should not have worsened her condition.

Also submitted with the claim is a note from a coworker dated July 16, 1997, which states that approximately two weeks before, appellant told him that the injury occurred at home. A similar undated note from a second coworker reveals that on July 1, 1997, when asked about the elastic back brace she was wearing, appellant replied, "Oh. Don't worry. It did n[o]t happen here. It happened at home."

In a letter to the Office of Workers' Compensation Programs dated July 28, 1997, an injury compensation specialist for the employing establishment, noted that the employing establishment would challenge this claim on the basis that the injury did not occur in the manner or time alleged by appellant.

In an Office memorandum of a telephone conference dated August 19, 1997, an office claim's examiner noted that he talked to appellant on that date on the telephone, at which time appellant indicated that there had been some confusion as to whether she should file the claim as a traumatic injury or an occupational disease. The memorandum indicated that she felt her injury was the result of a cumulative process of her job duties, which included bending over to put mail in mail boxes, bending over to take parcels out of tubs, placing trays of mail in tubs and taking trays of mail out of tubs and putting them in her vehicle. Appellant reiterated that she never told Mr. Negrete or Mr. Jakie that she sustained her injury at home.

In response to the Office's August 20, 1997 request for further information, appellant submitted a report dated July 24, 1997, in which Dr. Li indicated that appellant had been a patient of his since 1994, and that she came to him on June 20, 1997 complaining of a one-week history of low back pain, with no specific history or injury or trauma. Dr. Li found that the back pain was muscular in origin and "is most likely work related, aggravated by excessive bending, stooping and lifting." Dr. Li recommended that appellant continue her light-duty work.

By decision dated September 15, 1997, the Office, processing appellant's case as an occupational disease claim, denied appellant's claim on the grounds that appellant failed to establish that a medical condition exists for which compensation is claimed, as there was no medical diagnosis with reference to her opinion.

The Board finds that appellant has failed to meet her burden of proof in establishing that her lower back injury was causally related to factors of her federal employment, and, therefore, her lower back injury is found not to have been sustained in the performance of duty.

An employee seeking benefits under the Federal Employees Compensation Act[1] 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 an injury was sustained in the performance of the duty alleged and/or specific condition for which

[1] 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.[2] 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.[3]

To establish that an injury was sustained in a the performance of duty in an occupational disease claim, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is alleged; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the appellant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the appellant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant'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 appellant, 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 appellant.[6]

In the instant case, the only medical evidence submitted before the Office supporting a causal relationship between appellant's alleged lower back condition and her employment was the report from Dr. Li dated July 24, 1997. Although Dr. Li states that appellant's back pain "is most likely work related, aggravated by excessive bending, stooping and lifting," his opinion is speculative as it fails to establish within a reasonable degree of medical certainty that there is a causal connection between appellant's low back pain and her employment. Furthermore, Dr. Li does not explain, with reference to medical evidence, why he came to this conclusion. To be of probative value to appellant's claim, Dr. Li's rationale must address the specifics, both factual and medical, of appellant's case.[7] The Board has held that medical opinions unsupported by medical rationale are of little probative value.[8] For the foregoing reasons, Dr. Li's letter lacks sufficient probative value to discharge appellant's burden of proof.

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[2] *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] The Office's regulations clarify that a traumatic injury refers to 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 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] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] *Ern Reynolds*, 45 ECAB 690 (1994).

[6] *Kathy Marshall*, 45 ECAB 827, 832 (1994).

[7] *Victor Woodhams, supra* note 4.

[8] *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipatated or aggravated by his employment is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated September 15, 1997 is hereby affirmed.[10]

Dated, Washington, D.C.
October 12, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[9] *Victor J. Woodhams, supra* note 4.

[10] Accompanying his request for appeal, appellant submitted additional medical evidence. Evidence may not be reviewed for the first time on appeal that was not before the Office at the time it issued the final decision, in this case, September 15, 1997. 20 C.F.R. § 501.2(c); *Donald Jones-Booker*, 47 ECAB 785, 786 (1996); *George A. Hirsch*, 47 ECAB 520, 526 (1996).