U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALEXANDER R. MACQUARRIE and U.S. POSTAL SERVICE, POST OFFICE, Oklahoma City, OK

Docket No. 98-2278; Submitted on the Record;
Issued April 21, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

On February 18, 1998 appellant, then a 59-year-old mailhandler, filed an occupational disease claim (Form CA-2), alleging that he sustained a herniated disc from performing his duties. On the reverse side of the form, the employing establishment stated that appellant did not stop work.

Accompanying the claim form, the employing establishment submitted a June 15, 1992 report by Dr. Rodney J. Miles, a general practitioner. He stated that he first saw appellant on March 20, 1992 and several occasions thereafter, for complaints of low back pain. At that time, Dr. Miles diagnosed lower back strain. He also stated:

> "This started after [appellant] had been sitting in a chair for an extended period of time. He reports being quite stiff. Since then he has progressively worsened. The date of [injury] is March 19, 1992. I saw him March 20, 1992. His findings were consistent with low back strain. [Appellant] was placed on medication and rest. He was given a couple of days off and told to report back to us if there was no improvement.
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> "On March 25, 1992 [appellant] continued to have low back pains, having difficulty bending, even standing at that time. Arrangements were made for the patient to receive some physical therapy at Tinker for the next week as well as the particular week off. He was to continue the medications."

Dr. Miles stated that he saw appellant on April 14, May 19 and June 2, 1992, and that appellant was undergoing physical therapy and was allowed to return to work with restrictions of lifting no more than 10 pounds and limited bending or twisting. He stated his findings were consistent with lumbosacral strain. Dr. Miles noted that a March 27, 1992 x-ray of appellant's

lumbosacral spine was basically normal with minimal degenerative changes present. He stated that "[i]n my opinion [appellant's] duties at the [employing establishment] aggravated his back condition. I feel the problem is work related."

Also submitted were December 15, 1997 and February 2, 1998 progress notes by Dr. Houshang Seradge, a Board-certified orthopedic surgeon. In the December 15, 1997 progress note Dr. Seradge stated:

> "[Appellant] is doing better with his back. His back occasionally bothers him and radiates to the right hip; otherwise, it has improved some. He had two epidural injections out of three, and he has one more to go. He is in water exercises and doing better. His MRI [magnetic resonance imaging] study clearly documented that he has a herniated disc at the L4-5 level.
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> "[Appellant] asked me about the possibility of his disc herniation with the type of work that he had done, and my answer was that it can possibly be related to his work, but it depends on what he had done and what kind of documentation has been available. He will look into that and will let me know later."

In his February 2, 1998 progress notes, Dr. Seradge stated that he saw appellant for a follow-up evaluation, that appellant was having worsening lower back pain with pain radiating from his lower back into the right buttock and lower extremity. He noted:

> "[Appellant] is furthering inquiries as to the possibility of his lower back pain being causally related to his work activities. He is providing me with a detailed description of his job activities as a letter carrier and, based on the history of the onset of his lower back pain and in the absence of any history of previous trauma, either recent or remote, my opinion is that his lower back condition should be considered causally related to his work activities."

By letter dated March 2, 1998, the Office of Workers' Compensation Programs requested detailed factual and medical information from appellant. Appellant was requested to provide a detailed description of the employment-related activities which he believed contributed to his condition, and how often he performed these activities, a description of all outside activities, and a comprehensive medical report which described his symptoms, treatment provided, test results and a rationalized medical opinion on the cause of his condition. By another letter dated March 2, 1998, the Office requested factual information from the employing establishment.

On March 17, 1998 the record was supplemented with the employing establishment's March 16, 1998 response to the Office's March 2, 1998 request for information. The employing establishment stated that appellant's mailhandler job involved continuously lifting up to 70 pounds and standing, intermittently walking, bending, stooping, twisting, pushing, grasping, fine manipulation and reaching above the shoulder. It was also stated that "since December 1994 [appellant] has been assigned to (RPO) repairing damaged mail. He sits intermittently for approximately seven and a half hours. [Appellant] stands/walks for one-half hour and pushes a

U cart with no more than five pounds of mail. He does not climb, twist, pull or bend at all." Also submitted was appellant's position description and a preemployment medical evaluation.[1]

On March 20, 1998 the record was supplemented with appellant's March 17, 1998 response to the Office's March 2, 1998 request for additional information. Appellant stated:

> "The mailhandler position with the [employing establishment] is the most physically demanding position in the [employing establishment] for which they hired me for in October 1982. My initial duties were working on the docks, unloading trucks loaded with mail sacks and pouches, weighing up to 70 pounds and sorting same to various locations. I did these duties until about late February 1983 when they assigned me light duties due to tendinitis of both wrists. I returned to full duty in August 1984 after surgery on both wrists.
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> "On full duty I did the following: pushing, pulling general purpose mail containers (GPMC's) dock trucks, wire tainers, hampers and U-carts of first class mail, sacks of parcels, letter bundles, bulk mail, newspapers, magazines and bulk business mail, from one floor operation to another. Dumping mail sacks, pouches and buckets of mail onto a culling belt. These mail containers weigh from 10 to 70 pounds. Sometime exceeding 70 pounds…. These duties require the constant use of hands, arms, back and legs. They require constant lifting, pushing, stooping, bending, reaching, stretching and so forth, for an 8-hour period, interrupted by two 10-minute breaks and a ½ hour lunch break, 5 and 6 days a week….
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> "As of February 1994 I have been on limited duty involving letter sorting, repairing damaged light mail and picking up damaged letter mail from automation machines, which involves bending. This limited duty requires fine manipulation, bending, walking and sitting. Lifting requirements are limited to 10 to 12 pounds. As of February 2, 1998 my duties remain the same except I am restricted from bending, squatting, climbing, kneeling and twisting."

Appellant also stated that, "none of my off duty activities involve strenuous physical involvement," and indicated that he requested that his treating physician, Dr. Seradge, provide a medical report.

On April 3, 1998 the record was supplemented with a March 17, 1998 report by Dr. Seradge. Dr. Seradge stated that he initially saw appellant on October 13, 1997 for complaints of low back pain radiating into his leg. He also stated that appellant noticed a gradual worsening of his condition over the past year but intermittently had the symptoms for the past two years. Dr. Seradge stated that appellant works as a mailhandler and that his duties require repairing damaged mail and picking up damaged letter mail from automation machines which requires repetitive bending. He noted that appellant worked for the employing establishment for approximately 15 years and other positions required pushing and pulling, loading and unloading and handling mail containers weighting from 10 to 70 pounds.

[1] The preemployment medical evaluation does not indicate that it relates to appellant nor does it provide any results.

Dr. Seradge stated that appellant's past medical history included problems with his thoracic spine for which he received treatment from other physicians. He reported his findings on examination as essentially unremarkable. Dr. Seradge stated that x-rays of the lumbar spine revealed evidence of anterior longitudinal narrowing of the L4-5 disc space and increased calcification of the L4-5 facet joint level. He stated that appellant was seen on November 10, 1997 after an October 21, 1997 MRI of the lumbosacral spine which revealed extrusion of the disc at L4-5 for which appellant was referred for lumbar epidural steroid injections. Dr. Seradge diagnosed lumbar disc disease with radiculopathy He stated:

> "Based on the history given by the patient and in the absence of any other contributing factors, my opinion is that the condition for his lumbar disc disease should be considered causally related to his work activities as previously described. This is in the absence of any other history of trauma or contributing factors given by the patient."

By decision dated April 15, 1998, the Office denied appellant's claim finding that the evidence of record failed to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 filed within the applicable time limitations 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 is causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (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 claimant 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 claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which

[2] 5 U.S.C. § 8101.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.[5]

In the instant case, there is insufficient rationalized medical opinion evidence to support a causal relationship between the factors of employment identified by appellant and his diagnosed condition of herniated disc. The medical evidence submitted, a June 15, 1992 report by Dr. Miles, a general practitioner, discussed a problem appellant was having with his back in 1992. At that time, Dr. Miles diagnosed lower back strain. He noted that a March 27, 1992 x-ray was basically normal with minimal degenerative changes present. Dr. Miles' report failed to address a causal relationship between appellant's factors of employment and any herniated disc as a herniated disc was not diagnosed. Therefore, his report is insufficient to establish appellant's occupational disease claim.

Also submitted were December 15, 1997 and February 2, 1998 progress notes by Dr. Seradge, a Board-certified orthopedic surgeon. On December 15, 1997 Dr. Seradge noted that an MRI clearly documented that appellant had a herniated disc at the L4-5 level. On February 2, 1998 Dr. Seradge noted that appellant inquired about the possibility that his back pain was causally related to his work activities. He noted that he could not say until he was provided a detailed description of appellant's job activities. Dr. Seradge's December 15, 1997 and February 2, 1998 progress notes noted a diagnosis of herniated disc. However, they failed to address a causal relationship between the diagnosed condition and the factors of employment identified by appellant because appellant had not yet provided such information to the doctor. Dr. Seradge's progress notes are insufficient to establish appellant's occupational disease claim.

Also submitted was Dr. Seradge's March 17, 1998 report. He diagnosed a herniated disc based on an October 21, 1997 MRI study.[6] Dr. Seradge described appellant's duties as repairing damaged mail and picking up damaged letter mail from automation machines which required repetitive bending. He also noted that for approximately 15 years while in other positions with the employing establishment appellant was required to push, pull, load and unload containers of mail weighting 10 to 70 pounds. Dr. Seradge also stated that based on the history given by appellant and the absence of any history of previous trauma, that appellant's back condition is causally related to his work activities. He provided a diagnosis, and causally related appellant's herniated disc to the factors of employment as identified by appellant, in particular repetitive bending. However, appellant was on light duty since December 1994 (February 1994 according to appellant) which according to the employing establishment required no climbing, twisting pulling or bending at all, but required up to seven and one half hours of sitting and one half hour of standing/walking and pushing a U-cart with no more than five pounds of mail. Dr. Seradge failed to explain how performing the specific duties identified by appellant caused a herniated disc or how the more physical requirements of a mailhandler job which appellant had not performed for more than three years could have caused appellant's herniated disc in 1997.

[5] *Id.*

[6] The MRI report is not part of the record.

Dr. Serage's March 17, 1998 report is based on an inaccurate factual history as bending was not a requirement of appellant's light duty. Therefore, the report is of diminished probative value. The March 17, 1998 report is insufficient to establish appellant's occupational disease claim.

The decision of the Office of Workers' Compensation Programs dated April 15, 1998 is affirmed.[7]

Dated, Washington, D.C.
April 21, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] The Board notes that appellant submitted factual and medical evidence after the Office issued its decision and with his appeal. As this evidence was not considered by the Office prior to its decision of April 15, 1998, it represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(a). Appellant may submit this evidence to the Office, together with a request for reconsideration.