

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KEITH A. SINGLETON and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, New Orleans, LA

*Docket No. 98-2614; Submitted on the Record;  
Issued May 10, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant sustained a lower back injury causally related to his federal employment.

On November 18, 1996 appellant, then a 34-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay, Form CA-1, alleging that, on October 28, 1996, he sustained a back injury while bending over at work. Appellant stopped work on October 28, 1996 and returned to work on November 9, 1996.

In support of his claim, appellant provided a disability certificate dated October 29, 1996 from Dr. Ciro R. Cerrato, an internist, who indicated that appellant could return to work on November 10, 1996. By letter dated November 21, 1996, the employing establishment controverted the claim.

Appellant also provided treatment notes from Dr. Cerrato dated July 30 and October 29, 1996. In the July 30, 1996 note, Dr. Cerrato diagnosed acute back pain, which appellant told him began four days before after moving objects at work. He reported a history of a motor vehicle accident and a prior magnetic resonance imaging (MRI) test. The October 29, 1996 treatment notes indicated lumbar back tenderness and sprain.

On November 15, 1996, at the request of Dr. Cerrato, appellant was examined by Dr. Michael Wilensky, a Board-certified neurologist. Dr. Wilensky reported a history of low back pain and right leg pain beginning two weeks before. Appellant also indicated that "he has had increased pain with stiffness since the injury in a motor vehicle accident in 1993." He reported that the 1993 MRI revealed a mild herniated disc. Dr. Wilensky diagnosed right leg pain, low back pain, rule out sciatica and lumbar radiculopathy. He performed an electromyography (EMG) test which revealed right L5-S1 radiculopathy and recommended a new MRI. In a duty status report, Form CA-17, dated November 26, 1996, Dr. Wilensky diagnosed right leg pain and lower back injury and opined that appellant could not resume work.

An MRI of the lumbar spine performed on November 29, 1996 revealed bulging L4-5 at L5-S1 disc. In a follow-up note on December 2, 1996, Dr. Wilensky recommended neurosurgery or orthopedic spine consultation. In a treatment note also of that same date, Dr. Wilensky diagnosed a ruptured disc in appellant's back and repeated his conclusion that appellant could not yet return to work.

In an attending physician's report, Form CA-20, dated January 30, 1997, Dr. Cerrato reported a history of acute low back pain after lifting and bending at work on October 28, 1996. Regarding appellant's preexisting conditions, Dr. Cerrato indicated that appellant had been in a car accident in 1993 and on July 30, 1996, sustained acute lower back pain. He diagnosed herniated disc and degenerative arthritis. In response to the question whether the condition was caused or aggravated by an employment activity, Dr. Cerrato stated: "I do n[o]t know."

Dr. Lucien S. Miranne, Jr., a Board-certified neurosurgeon, performed a lumbar myelogram on March 26, 1997. The examination was consistent with disc herniation with nerve root compression, L5/S1 right and slight central disc bulge, with some mild spinal stenosis at 4-5.

By decision dated October 3, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that his back condition was causally related to factors of his employment.

By letter dated April 6, 1998, appellant requested reconsideration and submitted a February 16, 1998 report from Dr. Miranne who stated that he first evaluated appellant on February 17, 1997 at the request of Dr. Cerrato. At that time, appellant presented with a history of low back and right leg pain, which had started about three months before. Dr. Miranne recounted a motor vehicle accident in 1994 and "more recently some back pain and worsening symptoms by working at the [employing establishment]." He diagnosed right S1 radiculopathy and recommended repeating a lumbar MRI scan. Dr. Miranne saw appellant on several more occasions and on April 3, 1997, he underwent surgery. Since his surgery, Dr. Miranne diagnosed mechanical low back pain, post-laminectomy, secondary to degenerative lumbar disc disease and facet disease. Dr. Miranne recommended that appellant not perform heavy physical labor and seek a light-type occupation.

By decision dated May 15, 1998, the Office conducted a merit review and found that the newly submitted evidence was insufficient to warrant modification of the October 3, 1997 decision. The Office found that none of the medical evidence established a causal relationship between appellant's back condition and his federal employment.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained a back injury causally related to his employment.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.<sup>1</sup> The Board has held that the mere fact that a disease or

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<sup>1</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.<sup>2</sup> 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.<sup>3</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause of the etiology of a disease or condition to an absolute certainty,<sup>4</sup> neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>5</sup>

In the instant case, appellant has submitted no rationalized medical evidence specifically addressing whether work factors caused or aggravated his claimed condition or otherwise establishing that the diagnosed condition was causally related to employment factors or conditions.<sup>6</sup> As noted above submission of such medical evidence is part of appellant's burden of proof. In a January 30, 1997 report, Dr. Cerrato indicated that he did not know whether appellant's lumbar condition was caused or aggravated by the factors of his federal employment. While Dr. Miranne opined that appellant experienced back pain and worsening symptoms by working at the employing establishment, the physician did not provide a rationalized medical opinion, based upon reasonable medical certainty, that there was a causal connection between appellant's condition and any specific workplace factors.<sup>7</sup> For example, Dr. Miranne did not provide medical reasoning explaining how his job caused or aggravated a specific medical condition.<sup>8</sup> Dr. Wilensky diagnosed right leg pain and low back syndrome but also failed to provide a rationale linking the medical condition with his employment. As appellant has failed to present a rationalized medical opinion, he has therefore failed to meet his burden of proof in establishing that his back condition was sustained in the performance of duty.<sup>9</sup>

The decisions of the Office of Workers' Compensation Programs dated May 15, 1998 and October 3, 1997 are affirmed.

Dated, Washington, D.C.  
May 10, 2000

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<sup>2</sup> *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

<sup>3</sup> *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

<sup>4</sup> *See Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

<sup>5</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>6</sup> *Thomas A. Faber*, 51 ECAB \_\_ (Docket No. 97-2212, issued September 28, 1999).

<sup>7</sup> *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

<sup>8</sup> *Id.*

<sup>9</sup> *Thomas A. Faber*, *supra* note 6.

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member