

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HOWARD SCOTT and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Dallas, TX

*Docket No. 99-391; Submitted on the Record;
Issued May 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

On September 3, 1997 appellant, then a 53-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained lower lumbar disc disease as a result of his employment. Appellant attributed his condition to heavy lifting and pulling over a period of years dating back to 1972. He indicated that he first realized his back condition was caused or aggravated by his employment on September 23, 1996.¹ In support of his claim, appellant submitted a November 4, 1996 return to duty form signed by Dr. Barbara L. Slee, a Board-certified family practitioner. The form noted a diagnosis of lumbar disc disease. Additionally, the return to duty form was initialed by Dr. James M. Kelly, an employing establishment physician, who further noted that the "condition is permanent." Appellant also submitted a September 17, 1997 duty status report (Form CA-17) signed by Dr. Heidi Harvey, which included findings of recurrent low back pain and a diagnosis of lumbar disc disease. Both documents submitted by claimant noted a lifting restriction of no more than 20 pounds.

By letter dated November 11, 1997, the Office of Workers' Compensation Programs advised appellant of the need for additional medical and factual information. In response, appellant provided a brief statement regarding his employment activities and his prior back injury, however, no additional medical evidence was provided.

¹ The record indicates that appellant previously sustained an employment-related back injury on March 14, 1970, which the Office of Workers' Compensation Programs accepted for lumbar strain.

In a decision dated December 16, 1997, the Office denied appellant's claim on the basis that the medical evidence was insufficient to establish that the claimed condition was caused by appellant's employment. Appellant subsequently requested reconsideration and he submitted additional medical evidence not previously considered by the Office. However, in a merit decision dated July 17, 1998, the Office denied modification of the prior decision based upon appellant's failure to submit rationalized medical evidence establishing a causal relationship between his lumbar disc disease and his employment.

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, 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 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 claimant.²

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 the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.³ Causal relationship must be established by rationalized medical opinion evidence, which 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 physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and, the claimant's specific employment factors.⁴

In the instant case, the record does not include any rationalized medical opinion evidence establishing a causal relationship between appellant's diagnosed lumbar disc disease and his employment. As previously noted, appellant alleged that his condition was due to heavy lifting and pushing over a period of years dating back to 1972. Neither the November 4, 1996 return to duty form signed by Dr. Slee nor the September 17, 1997 Form CA-17 signed by Dr. Harvey provided any information regarding the cause of appellant's lumbar disc disease. The record also includes treatment notes from Drs. Slee and Harvey covering the period June 24, 1996 through September 22, 1997. This evidence, however, merely notes that appellant originally injured his back 15 years ago and that he began to experience increased back pain in October 1996. The treatment notes do not mention appellant's employment activities. As such, this evidence is insufficient to establish a causal relationship between appellant's current condition and his employment. Lastly, Dr. Harvey submitted a February 28, 1998 report wherein she

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Id.*

⁴ *Id.*

stated that appellant initially injured his back in 1972 and that this prior injury “has been clearly documented as work related.” She opined that appellant’s present back problems are consistent with and related to his initial employment injury. Contrary to Dr. Harvey’s assertion, the record does not include documentation regarding a 1972 work-related back injury. Furthermore, it is not at all clear what information Dr. Harvey relied upon in determining the cause of appellant’s current back condition. Consequently, Dr. Harvey’s opinion is insufficient to establish a causal relationship between appellant’s lumbar disc disease and his employment as a mailhandler.⁵

Inasmuch as appellant failed to submit rationalized medical opinion evidence on the issue of whether there is a causal relationship between his diagnosed condition of lumbar disc disease and his employment, the Office properly denied appellant’s claim for compensation.

The July 17, 1998 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 2, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁵ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).