

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE M. STEVENS and U.S. POSTAL SERVICE,
POST OFFICE, South Hackensack, NJ

*Docket No. 99-1060; Submitted on the Record;
Issued May 23, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof in establishing that he sustained a herniated disc due to factors of his federal employment.

On April 25, 1997 appellant, then a 43-year-old mailhandler, filed a notice of occupational disease alleging that he developed a herniated disc as a result of moving heavy rolling equipment in the course of his federal employment.

On April 3, 1997 Dr. Arthur C. Rothman, appellant's treating physician and a Board-certified-internist, treated appellant for lower back pain radiating to the right buttocks, and then laterally and posteriorly into the knee. Dr. Rothman's physical examination rendered normal results, except for a diminished right ankle jerk. Consequently, he ordered further diagnostic tests.

On April 10, 1997 Dr. Rothman diagnosed S1 radiculopathy due to a herniated disc at L5-S1. He indicated that he based his diagnosis on a magnetic resonance imaging (MRI) scan of the lumbar spine, nerve conduction studies and electromyography. Dr. Rothman placed appellant on restrictive duty from April 11 through May 11, 1997. He indicated that appellant could not bend, squat, lift, lift above the shoulders, push or pull. Dr. Rothman also stated that he could walk for 1 hour, with 15-minute rest intervals, for 4 hours per shift. He further indicated that appellant could stair climb for 15 minutes, with 5-minute rest intervals, for 6 hours per shift. Finally, Dr. Rothman stated that appellant could lift, lift above shoulder, lift from the floor to knees, push and pull a maximum of 15 pounds.

On June 9, 1997 the Office of Workers' Compensation Programs requested that Dr. Rothman provide additional information, including an opinion supported by medical rationale explaining how the reported work incident caused or aggravated the claimed injury.

By decision dated November 14, 1997, the Office denied appellant's claim because the medical evidence failed to establish that his condition was caused by his federal employment. The Office indicated that the record was devoid of any medical evidence even implying that there was a connection between appellant's back condition and his federal employment.

On November 6, 1997 Dr. Rothman again stated that he treated appellant for progressive symptoms of lower back pain radiating into the right buttocks and then posteriorly to the knee. He recorded appellant's statement that for the past 12 years he had pushed and pulled equipment weighing 300 to 1,200 pounds on a daily basis. He further recorded that appellant indicated that he moved between one and five 200-pound pieces per night, and noticed that he then could not sit comfortably. Dr. Rothman also recorded appellant's statement that he picked up 35- to 70-pound bags of mail using only his back. He noted that on examination appellant demonstrated a diminished right ankle jerk consistent with an S1 radiculopathy. Dr. Rothman stated that on April 3, 1997 he felt that the S1 radiculopathy was consistent with a herniated disc at L5-S1. He stated that his April 10, 1997 electrodiagnostic study was consistent with chronic right-sided S1 radiculopathy. He stated that his MRI scan revealed a disc herniation at L5-S1 centrally and to the right with impression on the S1 nerve root. Dr. Rothman stated that he continued to treat appellant's symptoms on June 24, October 30 and November 6, 1997 and recommended treatment such as epidural injections or surgery.

In a letter received December 8, 1997, appellant requested a written review of the record.

By decision dated April 16, 1998, an Office hearing representative denied appellant's claim because the record was devoid of medical opinion evidence establishing that the diagnosed condition was caused or aggravated by any employment factor. In particular, the hearing representative stated that Dr. Rothman did not provide an opinion supporting a causal relationship between appellant's low back condition and the implicated employment factors.

On July 31, 1998 appellant requested reconsideration. In support, appellant submitted a letter from Dr. Rothman dated July 7, 1998. Dr. Rothman stated that, "[W]ithin a reasonable degree of medical probability, I believe [appellant's] employment, as described in my previous letter, dated November 6, 1997, caused his lower back problems, including a herniated disc at L5-S1, his radiculopathy, and subsequent surgery and continuing symptoms."

By decision dated October 30, 1998, the Office reviewed the merits of the case and found that the evidence was insufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office stated that Dr. Rothman's July 7, 1998 letter was conjectural because he gave his opinion "within a reasonable degree of medical probability." The Office further found that Dr. Rothman failed to provide a rationale for his July 7, 1998 opinion.

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the

¹ 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period 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 are causally related to the employment injury.²

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;³ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁴ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed⁵ or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁷ 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 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.⁸

In the present case, Dr. Rothman, appellant’s treating physician and a Board-certified internist, provided an unequivocal opinion on July 7, 1998 stating that “within a reasonable degree of medical probability” appellant’s employment caused his lower back problems, including his herniated disc at L5-S1 and radiculopathy. Dr. Rothman referred to specific employment factors enumerated in his November 6, 1997 report such as the daily pushing and pulling of equipment weighing 300 to 1,200 pounds, moving one to five 200-pound pieces of equipment per night and picking up 35- to 70-pound bags of mail. Although Dr. Rothman failed to provide an explanation for his opinion relating appellant’s back condition to the employment factors and, therefore, did not offer a rationalized medical opinion,⁹ the Board finds that this

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *See John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Walter D. Morehead*, 31 ECAB 188, 194 (1979); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁵ *See Georgia R. Cameron*, 4 ECAB 311, 312 (1951); *Arthur C. Hamer*, 1 ECAB 62, 64 (1947).

⁶ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁷ *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *Jean Culliton*, 47 ECAB 728 (1996).

evidence is sufficient to require further development of the record.¹⁰ The Board also notes that there is no medical evidence refuting causal relationship in this case.¹¹

Consequently, although the medical evidence submitted by appellant is not sufficient to meet his burden of proof, the medical evidence of record raises an uncontroverted inference of causal relationship between appellant's back condition and his specific employment duties, and is sufficient to require further development of the case record by the Office.¹²

On remand, the Office should further develop the medical evidence by obtaining a rationalized medical opinion on whether appellant's herniated disc and radiculopathy is causally related to identified factors of his federal employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated October 30 and April 16, 1998 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
May 23, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *See Earnest Reese, Jr.*, 32 ECAB 1508, 1510 (1981).

¹² *Reba L. Cantrell*, 44 ECAB 660 (1993).