

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KAREN L. McCLARAN and U.S. POSTAL SERVICE,  
POST OFFICE, Nashville, TN

*Docket No. 99-2080; Submitted on the Record;  
Issued November 29, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that her back condition was causally related to an employment incident on September 27, 1993.

This case is on appeal to the Board for the second time.<sup>1</sup> On the first appeal, the Board reviewed three decisions dated December 15, 1994 and November 21 and August 23, 1995, by which the Office of Workers' Compensation Programs determined that appellant had not established fact of injury. In the December 15, 1994 decision, the Office hearing representative stated that appellant's hearing testimony established that she "sustained a distinct injury on September 27, 1993, while lifting a tray of mail and she filed a notice of same on that date." The hearing representative found, however, that because the medical evidence, particularly the reports of Dr. G. William Davis, a Board-certified orthopedic surgeon, failed to mention the September 27, 1993 employment incident and how it contributed to her back condition, appellant failed to establish entitlement to benefits.

In the August 23, 1995 decision, which denied appellant's request for modification, the Office determined that the additional reports appellant submitted from Dr. Davis dated October 25 and December 21, 1993 did not cure the defect in his earlier reports. In the November 21, 1995 decision, which denied appellant's request for reconsideration, the Office determined that a medical report dated October 9, 1995 from Dr. Davis was repetitive of his prior reports in the record and the evidence of a February 11, 1987 employment injury was not relevant to whether appellant sustained a work-related injury on September 27, 1993. The Board found that the Office had properly reviewed the medical evidence and affirmed its three decisions.

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<sup>1</sup> Docket No. 96-534 (issued January 15, 1998). The facts and history surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

Subsequent to the Board's decision, appellant repeatedly requested reconsideration and submitted additional medical evidence. The Office denied appellant's requests for modification on April 6, June 5, July 21 and December 16, 1998 and March 30, 1999.<sup>2</sup>

The Board finds that the medical evidence is insufficient to establish that appellant sustained an injury causally related to her employment on September 27, 1993.

An employee seeking benefits under the Federal Employees' Compensation Act 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 limitation 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.<sup>3</sup> 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.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

An award of compensation may not be based on surmise, conjecture, speculation of appellant's belief of causal relationship.<sup>7</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.<sup>8</sup>

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<sup>2</sup> Because appellant filed her appeal to the Board on June 8, 1999, the Board has jurisdiction only of the latest three decisions. See *Kathy P. Roberts*, 46 ECAB 646, 649 (1995).

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>5</sup> *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *William S. Wright*, 45 ECAB 498, 503 (1994).

<sup>8</sup> *Ern Reynolds*, 45 ECAB 690, 695 (1994); *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

The mere manifestation of a condition during the period of employment does not raise an inference of causal relationship.<sup>9</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>10</sup>

In support of her March 24 and May 18, 1998 requests, appellant submitted medical evidence from Dr. Davis including reports dated February 11 and April 23, 1998, a surgical report dated March 2, 1994, progress notes dated from October 25, 1993 through August 17, 1994 and a medical record dated October 25, 1993. The evidence she submitted either did not address the September 23, 1993 employment incident or did not discuss it in detail. For instance, in his February 11, 1998 report, Dr. Davis stated that appellant told him that she injured herself working on the job on September 27, 1993 but he did not describe any details of the injury. In his April 23, 1998 report, Dr. Davis referred to a major precipitating injury occurring in September 1993 but again did not provide any details. In the other medical evidence, no mention is made of the September 23, 1993 employment incident.

In support of her June 27, 1998 request for reconsideration, appellant submitted a duty status report, Form CA-17, dated January 20, 1994 and an attending physician's report, Form CA-20, dated December 8, 1993 from Dr. Davis. On the December 8, 1993 Form CA-20, he listed appellant's history of injury as "low back pain radiating down into lower extremity. See medical record." In the January 20, 1994 Form CA-17, Dr. Davis stated that appellant injured her back lifting. He did not relate appellant's back pain to her employment in either report.

With her request for reconsideration received by the Office on October 15, 1998, appellant submitted a medical report dated September 29, 1998 from Dr. Davis who stated that his understanding of appellant's September 1993 employment incident was that she lifted a tray of mail. He added that he performed surgery on appellant's back to remove the disc herniation at L4-5 and that appellant had translaminar screws still in her back. While Dr. Davis indicated that he was willing to answer questions and "try to clarify all the circumstances" of appellant's case, he provided no opinion connecting her disc herniation and surgery to the 1993 employment incident.

In support of her January 21, 1999 request for reconsideration, appellant submitted a report dated January 7, 1999 from Dr. Davis in which he stated that the September 1993 injury resulted in the March 1994 surgery which revealed a large disc herniation of L4-5 on the left. He stated that appellant was asymptomatic prior to the February 1987 employment injury and subsequently had increased back pain.

The Board has held, however, that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting medical rationale, to demonstrate causal relationship.<sup>11</sup> Dr. Davis' January 7, 1999 report is therefore insufficient to establish the

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<sup>9</sup> *William S. Wright, supra note 7; Edward E. Olson, 35 ECAB 1099, 1193 (1984).*

<sup>10</sup> *Bruce E. Martin, 35 ECAB 1090, 1093 (1984).*

<sup>11</sup> *Thomas R. Horsfall, 48 ECAB 180, 183 (1996).*

requisite causal connection. Inasmuch as the medical evidence of record does not demonstrate a causal relationship between appellant's back condition and the September 27, 1993 employment incident, appellant has failed to establish her claim.

The decisions of the Office of Workers' Compensation Programs dated March 30, 1999, December 16 and July 21, 1998 are affirmed.

Dated, Washington, DC  
November 29, 2000

David S. Gerson  
Member

Priscilla Anne Schwab  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member