

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS W. BOLDEN and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, TX

*Docket No. 99-2169; Submitted on the Record;
Issued November 7, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained an injury on December 30, 1997 while in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for reconsideration.

On January 5, 1998 appellant, then a 43-year-old letter carrier, filed a claim for traumatic injury (Form CA-1) alleging that on December 30, 1997 he sustained injuries to his lower left back while in the performance of duty. Appellant stated that the cause of his condition was "unknown."

In a medical report dated January 5, 1998, Dr. George Carrion, appellant's treating physician and a specialist in occupational medicine, stated that he had examined appellant for back pain and sciatica. He released appellant to modified work effective that day. In a duty status report dated the same day, Dr. Carrion stated that appellant's low back pain and sciatica occurred on December 30, 1997 while in the performance of duty.

In a medical report dated January 10, 1998, Dr. Ernesto Blanco, Board-certified in diagnostic radiology and neuroradiology, noted that a magnetic resonance imaging (MRI) scan taken that day revealed a large herniated intervertebral disc at L5-S1, a tear in the anterior aspect of the L4-5 disc, a bulging disc or a small subligamentous disc herniation at L4-5, and degenerative changes at L4-5 and L5-S2 discs.

In a medical report dated January 24, 1998, Dr. Lloyd A. Youngblood, Board-certified in neurological surgery, stated that appellant related "on-the-job low back ache over the past couple of years, but never any radicular symptoms." He then related appellant's history of his December 29, 1997 work-related injury wherein appellant alleged to have felt a sharp pain "in the left side of the low back, with subsequent radiation to the left posterior thigh and calf, down the ankle and foot," while turning to take mail across the room. Based on a physical examination and review of appellant's magnetic resonance imaging scan, Dr. Youngblood noted that

appellant had a large herniated disc at L5-S1 with left S1 radiculopathy and degenerative disc disease of the lower two levels, and sciatic pain “which substantially exceeds the low back pain.” He added that appellant also had an annular tear at L4-5.

In a duty status report dated January 24, 1998, Dr. Youngblood noted that appellant’s lumbar herniated disc pulposus was caused by a work-related injury on December 30, 1997.

By letter dated April 6, 1998, the Office requested additional information from appellant including a narrative report from him describing how the injury occurred, whether there were any witnesses to his injury, whether he had any prior similar symptoms, and a narrative report from his treating physician explaining how his present condition was causally related to the injury as reported.

In a decision dated June 8, 1998, the Office denied appellant’s claim on the grounds that he did not establish that he sustained an injury on December 30, 1997.

By letter dated July 28, 1998, appellant requested reconsideration.

By nonmerit decision dated August 11, 1998, the Office denied appellant’s request for modification on the grounds that the evidence submitted was repetitious and therefore insufficient to warrant review of its prior decision.

The Board finds that appellant has failed to meet his burden of proof to establish that he sustained an injury to his lower left back on December 30, 1997.

An award of compensation may not be based on surmise, conjecture, speculation or appellant’s belief of causal relationship.¹ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability was caused or aggravated by his employment.² As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.³ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁴ 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.⁵

In this case, there is no medical opinion evidence supporting that appellant sustained a work-related injury on December 30, 1997. In his January 5, 1998 medical report, Dr. Carrion noted that the case date was December 30, 1997 but did not provide a medical opinion based on

¹ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

² *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

³ *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁴ *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁵ *Joseph T. Gulla*, *supra* note 3.

diagnostic tests or physical examination that appellant's condition was caused by a work-related injury on December 30, 1997. Further, while Dr. Youngblood's January 24, 1998 report related appellant's narrative describing in detail his work-related injury, he stated that the injury occurred on December 29, 1997 and thus his report is of limited probative value.⁶ Further, the Board notes that, given the precise detail of appellant's narrative to Dr. Youngblood on January 24, 1998, appellant nonetheless noted "unknown" as the cause of his injury on January 5, 1998 and was also unable to provide any witnesses to the incident who would have been able to corroborate his history of injury. None of the medical reports provided a history of the December 30, 1997 employment incident, nor did they address causal relationship between a diagnosed condition and the alleged December 30, 1997 employment incident and, therefore, are insufficient to support appellant's claim.

The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁷ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.138(b)(1), the Office will deny the application for review without reaching the merits of the claim.⁸ The only evidence appellant submitted with his request for reconsideration was duplicative of the medical evidence that was submitted to the record prior to the Office's June 8, 1998 decision. Therefore, appellant failed to show that the Office erroneously applied or interpreted a specific point of law, failed to advance a relevant legal argument not previously considered by the Office, nor presented relevant and new pertinent evidence not previously considered by the Office with his request for reconsideration. Therefore, the Office properly denied his request for reconsideration.

⁶ *Joseph M. Popp*, 48 ECAB 624 (1997) (a medical opinion must be based on a complete and accurate factual and medical history).

⁷ 20 C.F.R. § 10.138(b)(1).

⁸ 20 C.F.R. § 10.138(b)(2).

The decisions of the Office of Workers' Compensation Programs dated August 11 and June 8, 1998 are hereby affirmed.⁹

Dated, Washington, DC
November 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁹ The Board notes that this case record contains evidence, which was submitted subsequent to the Office's August 11, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 (1952).