

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS F. TUGGLE and U.S. POSTAL SERVICE,
POST OFFICE, Duluth, GA

*Docket No. 99-2380; Submitted on the Record;
Issued October 17, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained a traumatic injury while in the performance of his duties on August 15, 1997, as alleged.

On August 18, 1997 appellant, a clerk, filed a traumatic injury claim asserting that he sustained an injury while in the performance of his duties on August 15, 1997. He stated that he had injured his back in 1989 but had no major problems after returning to work until four weeks ago when his back started hurting. Pain traveled down his back to his leg. On August 15, 1997 he stated, he was fastening a security liner when he twisted his back and fell to one knee. Over the weekend his left leg started locking up. He had burning feelings on his left knee and ankle.

Appellant first obtained medical attention on August 18, 1997 and was prescribed strict bed rest. On August 21, 1997 he saw an orthopedic specialist, Dr. Jesse E. Seidman. Dr. Seidman reported that appellant had a four-week history of back pain that had started to progress to the left leg:

"The history of his current problem begins on August 15, 1997 where he did some lifting at work. At first he thought he had pulled a muscle in his back, so he went home and did some home physiotherapy exercises that he had been taught back in 1989 for a problem of herniated dis[c]. [Appellant] states that these exercises only made his pain worse. He saw a physician approximately three weeks ago who treated him with medication and continued exercises without improvement. [Appellant] eventually underwent an MRI [magnetic resonance imaging] scan and, on July 26, 1997, he was noted to have a left-sided L4-5 herniated nucleus pulposus (HNP) with compression on the left fifth nerve root. He has subsequently noted that his pain has moved from his back into his left leg. [Appellant] feels that this began just a few days ago where he began to notice pain in the left leg below the knee into the calf."

Dr. Seidman described his findings on examination and reviewed radiological tests. He reported his impression as HNP, left L4-5, with left-sided radiculopathy. In a form report dated September 19, 1997, he indicated with an affirmative mark that appellant's herniated disc condition was caused or aggravated by lifting at work on August 15, 1997.

On October 7, 1997 the Office of Workers' Compensation Programs requested that appellant submit additional information within 30 days, including a rationalized medical opinion on the causal relationship, if any, between the alleged work injury and the condition for which appellant was being treated.

On October 24, 1997 appellant wrote to clear up a few matters. He advised the Office that, although he stated on his claim form that the injury began before August 15, 1997, the twist and pull "completely caused the most damage which occurred on the 15th day of August."

In a decision dated October 31, 1997, the Office denied appellant's claim on the grounds that the evidence failed to establish fact of injury. The Office found that the initial evidence supported that appellant actually experienced the claimed event; however, the evidence did not establish that a condition was diagnosed in connection with this event.

Appellant requested an oral hearing before an Office hearing representative. He submitted additional information, including an October 27, 1997 report from Dr. Seidman. In this report Dr. Seidman indicated that he had checked the handwritten notes he took on his first examination of appellant on August 21, 1997. These handwritten notes stated that appellant admitted to four weeks of back pain prior to August 21, 1997, then he had an exacerbation of the problem on August 17, 1997. Dr. Seidman continued:

"It is very clear to me that I did not transcribe the problem of four weeks' duration in my note and I only referred to the injury of August 17, 1997. As an additional note, please check my dictation from August 21, 1997 and I had even gotten the date of his current problem wrong. I stated it was August 15, 1997, and in my own handwriting on his patient pain diagram, it is August 17, 1997. From the aforementioned statement, it is clear that my dates [are] in error, not [appellant's]."

"It is clear to me that [appellant] has a herniated dis[c] causing radiculopathy down the left leg. It is verified by his MRI scan. If I had been more complete in my transcription of my written history, there would be no discrepancy as to the dates of his injury, subsequent MRI, and visit to my office. I feel therefore it is clear to me that [appellant] should be entitled to benefits under the Federal Employees' Compensation Act and I hope this letter clarifies any issue."

At the hearing, which was held on July 29, 1998, appellant testified that he thought he had pulled a muscle at work four weeks prior to the claimed injury. He was throwing magazines "and whatever" and thought he pulled a muscle. Appellant kept working and thought it would just go away. It kept getting worse, so he went to see a doctor, who took an MRI. Dr. Seidman gave him medication and returned him to work. He continued to work until the incident in question, when he was fastening down a security line: "[A]s I pulled the twisting motion and at

that time I was not experiencing any pain down my leg, but over the weekend I experienced numbness in my left foot, numbness in my leg and pain going down my leg." Appellant testified that when he came into work on Monday he reported this to the doctor.

In a report dated July 31, 1998, Dr. Seidman attempted to clarify a discrepancy between appellant's description of the injury and the description appearing in his own treatment notes. Dr. Seidman stated that he spoke with appellant and obtained a clear description of exactly what occurred on the date of injury:

"[Appellant] describes twisting, I describe lifting. It is very clear to anyone who treats patients with back injuries that lifting and twisting maneuvers almost always occur together and are nearly synonymous with the cause for back injuries and back pain. To deny a claim because of a difference in description between twisting and lifting, is in my opinion foolish and in the case of the patient is certainly putting him through unnecessary hassle.

"[Appellant] described to me lifting and twisting to secure a security liner. He described injuring his back when he fastened a security liner on an APC. According to the patient this maneuver always requires a combination of lifting and twisting to secure the strap."

In a decision dated September 22, 1998 and finalized on September 24, 1998, the hearing representative affirmed the denial of appellant's claim. She noted that appellant had consistently described his injury on August 15, 1997 as a twisting injury, while Dr. Seidman described it as a lifting injury. Although Dr. Seidman explained that appellant's twisting injury necessarily encompassed lifting, appellant did not claim he was lifting. The hearing representative found that Dr. Seidman did not base his diagnosis on an accurate history of injury, did not address appellant's condition weeks before the claimed injury, did not explain how the incident of August 15, 1997 caused a condition that was diagnosed less than three weeks earlier and did not consider the fact that an MRI in 1989 showed a herniated disc at L4-5 in 1989.

Appellant requested reconsideration. He submitted copies of documents previously submitted as well as a July 22, 1997 report from Dr. William Craven, an orthopedic surgeon. Dr. Craven reported that appellant had a long history of back pain and was diagnosed with a herniated disc six years earlier. He stated: "About three weeks ago all of a sudden he had an acute onset of lower back pain and left leg pain." Dr. Craven assessed sciatica and recommended an MRI.

In a decision dated April 19, 1999, the Office reviewed the merits of appellant's claim but denied modification of its prior decision.

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury while in the performance of his duties on August 15, 1997, as alleged.

An employee seeking benefits under the Act¹ has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.²

Although the evidence in this case has raised a question about the mechanism of injury, the Board finds that this question is not so significant as to cast serious doubt on the validity of appellant's claim.³ Indeed, after Dr. Seidman's August 21, 1997 report raised the issue of twisting versus lifting, the Office issued a decision on October 31, 1997 accepting that appellant actually experienced the claimed event.

After the issue of twisting versus lifting was brought to appellant's attention, Dr. Seidman spoke with appellant and obtained a clear description of exactly what occurred on the date of injury. It is apparent from his report of July 31, 1998 that Dr. Seidman has given his opinion with a clear understanding of the incident in question. The history he reported on August 21, 1997 is consistent with appellant's account in every respect except for when appellant's current problem began. Remove the date of August 15, 1997 and everything Dr. Seidman reported follows the history that has been developed in this case, from the diagnosis of herniated disc in 1989 to the lifting appellant performed in July 1997 to the MRI taken prior to the date of the claimed injury.

The question for determination, then, is whether the incident of August 15, 1997 caused or aggravated appellant's diagnosed back condition.

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶

¹ 5 U.S.C. §§ 8101-8193.

² See generally *John J. Carbone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease or illness" defined).

³ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see *George W. Glavis*, 5 ECAB 363 (1953).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

Dr. Seidman's affirmative opinion is supportive of appellant's claim, but it is of diminished probative value because he has not provided sound medical rationale explaining how the incident of August 15, 1997 caused or aggravated appellant's back condition. Dr. Seidman did not demonstrate to the Office a clear understanding of appellant's long history of back pain, including any significant prior injuries and relevant clinical findings and diagnoses. After relating appellant's medical background, Dr. Seidman did not explain from an orthopedic point of view how fastening a security liner onto an APC on or about August 15, 1997 caused or aggravated appellant's diagnosed condition.

It is well established that medical conclusions unsupported by rationale are of little probative value.⁸ Without sound medical rationale based on an accurate medical background, Dr. Seidman's opinion, while supportive, is insufficient to discharge appellant's burden of proof.

The September 22, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 17, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁷ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *George Randolph Taylor*, 6 ECAB 968 (1954).