

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OMAR M. RUIZ and U.S. POSTAL SERVICE,
POST OFFICE, San Juan, PR

*Docket No. 00-1458; Submitted on the Record;
Issued April 3, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of his duties on September 14, 1999.

On February 18, 1993 appellant, then a 31-year-old flat sorting machine operator, filed an occupational disease claim asserting that his central L4-5 herniated disc was the result of lifting and pushing heavy equipment on or before January 14, 1993. The Office of Workers' Compensation Programs accepted his claim for herniated nucleus pulposus (HNP) at the L4-5 level and authorized surgery.

On September 17, 1999 appellant filed a claim stating that on September 14, 1999 he sat down in a chair to rest his back when the chair "went down fast," after which he felt pain in his lower back.¹ Appellant stated that the chair was broken and that when he sat down it went "all the way to the floor," but did not hit the floor. The motion of falling down suddenly strained his lower back, which he began to feel later that night and in the following days.

The Office requested additional information, including a statement from any witnesses and a physician's opinion supported by a medical explanation on how the reported work incident caused or aggravated the claimed injury.

Appellant submitted a November 7, 1999 statement from Rafael Ojeda:

"The purpose of this letter is to let you know that on the night of September 14, 1999 more or less about 8:30 p.m. I was talking with [appellant] about some paperwork that was done wrong and suddenly he fell back almost hitting the floor. After this day he started to complain of having pain in his lower back when he

¹ Appellant filed this claim as a recurrence of disability, but because the claimed disability did not spontaneously occur but resulted from a distinct incident on September 14, 1999, the Office properly treated the claim as one for a new injury.

was sitting down working. This high back chair gray color the supervisor knows is not working properly.”

Appellant also submitted a November 18, 1999 report from Dr. Héctor J. Cases Gallardo, who stated:

“This is to certify that the above patient underwent L4-5 laminectomy/discectomy for an L4-5 HNP [herniated nucleus pulposus]. Since the operation the patient has had numerous and frequent lower back pain exacerbations. A lumbar MRI [magnetic resonance imaging] done on February 1995 postoperatively showed a recurrence in the L4-5 HNP as well as post-surgical changes engulfing the nerve roots. A repeat lumbar MRI on October 4, 1999 revealed again the recurrent L4-5 HNP partially narrowing both neural foramina at times level and compressing the nerve roots at this level. [Appellant] is currently on Vioxx, Panlor, Flexeril with only mild relief. It is my opinion that this patient is permanently disabled and has not further indications for surgery due to the presence of scar tissue engulfing the nerve roots.”

In a decision dated November 29, 1999, the Office denied appellant’s claim on the grounds that fact of injury was not established. The Office noted that appellant had not explained exactly how he was injured by the high-back chair. Further, Dr. Gallardo did not state in his report that appellant’s condition or disability was connected with the reported incident of September 14, 1999.

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained an injury on September 14, 1999.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim.³ 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.⁴

In this case, appellant provided several statements to the Office explaining what occurred on September 14, 1999. Although these statements vary in details, they are consistent. Appellant also submitted the statement of a witness, Mr. Ojeda, who supported his account of events. Appellant sat down in a gray high-back chair to talk with Mr. Ojeda about some paperwork. When appellant attempted to rest his back, the back of the chair gave way, falling nearly to the floor and causing appellant to fall back suddenly. Appellant stated that the chair was broken, and Mr. Ojeda indicated that the chair was not working properly.

² 5 U.S.C. §§ 8101-8193.

³ See *Margaret A. Donnelley*, 15 ECAB 40 (1963).

⁴ See generally *John J. Carlone*, 41 ECAB 354 (1989).

Because there are no inconsistencies in the factual evidence to cast serious doubt on appellant's uncontradicted account of events, the Board finds that he has established a specific incident occurring at the time, place and in the manner alleged.⁵ The remaining issue, therefore, becomes whether this specific incident caused an injury.

Causal relationship is a medical issue,⁶ 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,⁷ must be one of reasonable medical certainty⁸ 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.⁹

Appellant has submitted no such medical opinion. Dr. Gallardo reported on November 18, 1999 that appellant underwent surgery and had numerous exacerbations of low back pain. He noted a recurrent L4-5 HNP and post-surgical changes. He further reported that appellant was permanently disabled. Dr. Gallardo, however, made no mention of the employment incident that occurred on September 14, 1999 and made no attempt to connect this incident to appellant's diagnosed low back condition or disability for work.

The evidence fails to establish the element of causal relationship. Dr. Gallardo did not demonstrate an understanding of what happened to appellant on September 14, 1999, nor provide a sound medical explanation for how this incident caused or aggravated or otherwise contributed to appellant's diagnosed condition and disability for work. Without such a reasoned medical opinion on causal relationship, appellant has failed to meet his burden of proof.

⁵ See *Virgil R. Clark*, 40 ECAB 575, 584 (1989); *Robert A. Gregory*, 40 ECAB 478, 482-83 (1989) (value of the employee's statement).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

The November 29, 1999 decision of the Office of Workers' Compensation Programs is reversed insofar as it denied appellant's claim for failure to establish the incident alleged and is otherwise affirmed.

Dated, Washington, DC
April 3, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member