

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE A. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Memphis, TN

*Docket No. 01-451; Submitted on the Record;
Issued August 30, 2001*

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 causally related to factors of his employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

The Board has duly reviewed the case record in the present appeal and finds that this case is not in posture for decision.

On March 16, 1999 appellant, then a 49-year-old mailhandler, filed a traumatic injury claim, alleging that on February 24, 1999 he hurt his lower back while picking up loose mail from the floor. He stopped work on February 25, 1999. In support of his claim, appellant submitted reports from Dr. Michael C. Holliman, a chiropractor, dated February 25 and March 1, 1999 and a magnetic resonance imaging (MRI) report dated March 2, 1999. By letter dated April 5, 1999, the Office informed appellant of the type information needed to support his claim. In response, in a letter dated April 15, 1999, appellant further described the February 24, 1999 incident, indicating that he felt a sharp pain in the left side of his lower back when he bent down to pick up letters from the floor. He stated that he informed his supervisor and went to the doctor the next day. He also submitted another report from Dr. Holliman dated February 25, 1999 and a report dated April 8, 1999 from Dr. Maurice M. Smith, a neurosurgeon. Appellant also requested authorization for surgery.

By decision dated May 19, 1999, the Office denied the claim finding that appellant failed to establish that he experienced the claimed incident at the time, place and in the manner alleged. Appellant timely requested reconsideration and submitted additional medical evidence. In a decision dated August 2, 1999, the Office denied modification of the prior decision. On January 20, 2000 appellant again requested reconsideration and submitted additional medical evidence. By decision dated February 28, 2000, the Office modified the prior decision to establish fact of injury but found that appellant failed to establish that his back condition was causally related to the February 24, 1999 incident. On August 15, 2000 appellant, through

counsel, requested reconsideration and resubmitted medical reports previously of record. In a September 11, 2000 decision, the Office denied the request finding the evidence submitted repetitious and, therefore, insufficient to warrant merit review. The instant appeal follows.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.⁷

Causal relationship is a medical issue,⁸ and the medical evidence required to establish a causal relationship 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.⁹ Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

In this case, appellant established that he sustained a back injury of February 24, 1999. The medical evidence relevant to whether his disc herniation and subsequent surgery were

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.115 (1999).

³ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁶ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *Robert A. Gregory*, 40 ECAB 478 (1989).

⁸ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁹ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 6.

¹⁰ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

causally related to the February 24, 1999 injury includes treatment notes from Dr. Holliman, a chiropractor, who noted examining appellant that day.¹¹ He recorded a history of injury consistent with appellant's description, indicated that this was the "mechanism of onset," diagnosed subluxation by x-ray and referred appellant for an MRI.¹² In a March 1, 1999 attending physician's report, Dr. Holliman diagnosed disc displacement, lumbar radiculitis, neuritis and myalgia and checked the "yes" box, indicating that the condition was employment related. A March 2, 1999 MRI of the lumbar spine demonstrated degenerative disc disease at L4-5 with a large fragment of disc material extending to the left laterally and degenerative disc disease at L5-S1 with minimal diffuse bulge.

In a report dated April 8, 1999, Dr. Smith, a neurosurgeon, reported the history of injury, noted findings on examination, and diagnosed L4 and L5 radiculopathy, secondary to "a huge disc herniation" at L4-5 which caused significant spinal stenosis and extended to compress the L4 nerve root. Dr. Smith concluded that appellant had significant weakness in both his L4 and L5 musculature, as well as sensory deficits in both of these dermatomes with recalcitrant pain. He recommended left-sided hemilaminectomy of L4 with decompression of both L4 and L5 nerve roots. Surgery was performed on May 25, 1999, and Dr. Smith continued to see appellant in follow-up care. In a report dated December 31, 1999, Dr. Smith advised:

"I initially saw [appellant] on April 8, 1999 at which time [he] stated that he was in his normal state of good health until February 24, 1999 at which time he states he hurt himself at work while bending over to pick up some letters. He immediately felt excruciating back pain at that time. He subsequently developed left-sided leg pain and was treated by a chiropractor who treated his back pain well, but he remained with significant radiculopathy. [He] gave no further history of any other trauma or events that could have caused his disc herniation. [This] clearly appears to be a causal relationship between his work injury of February 24[, 1999] and his disc herniation."

In this case, the Board finds that the December 31, 1999 report from Dr. Smith, together with the reports from Dr. Holliman,¹³ constitute sufficient evidence in support of appellant's claim to require further development by the Office as these reports provide a consistent history of injury and indicate that appellant's condition was related to the February 24, 1999 employment injury. While these reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that his herniated disc and subsequent surgery were caused or aggravated by

¹¹ The Board notes that the Office, in its May 19, 1999 decision, stated that the record indicated that Dr. Holliman saw appellant on February 23, 1999, the day before the employment injury. Dr. Holliman, however, consistently and clearly indicated that he examined appellant on February 25, 1999.

¹² Section 8101(2) of the Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2); see *Sheila A. Johnson*, 46 ECAB 323 (1994).

¹³ The Board notes, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship; see *Ruth S. Johnson*, 46 ECAB 237 (1994).

employment factors, this does not mean that this report may be completely disregarded by the Office. It merely means that its probative value is diminished.¹⁴ In the absence of medical evidence to the contrary, the report is sufficient to require further development of the record.¹⁵ It is well established that proceedings under the Act are not adversarial in nature,¹⁶ and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.¹⁷ On remand, the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion on the relationship of appellant's back condition and his federal employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.¹⁸

The decisions of the Office of Workers' Compensation Programs dated August 11 and February 28, 2000 are hereby vacated and the case is remanded to the Office for further proceedings.

Dated, Washington, DC
August 30, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹⁴ See *Delores C. Ellyett*, *supra* note 6.

¹⁵ *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation

¹⁶ See, e.g., *Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

¹⁷ See *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹⁸ In view of the Board's finding on the first issue in the instant appeal, the issue of whether the Office, in its August 11, 2000 decision, abused its discretion in denying merit review is moot.