

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL WEBB and U.S. POSTAL SERVICE,
POST OFFICE, Covington, KY

*Docket No. 00-1190; Submitted on the Record;
Issued February 27, 2001*

DECISION and ORDER

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

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on September 28, 1997.

On December 14, 1998 appellant, then a 54-year-old postal driver, filed a notice of traumatic injury (Form CA-1) alleging that he injured his neck, shoulder and back when he was hit by a defective roll away BMC cart on September 28, 1997. He stated that he was knocked 10 to 12 feet from the place of impact. Appellant provided a note from his supervisor dated September 28, 1997 indicating that appellant had reported the injury. He also submitted a disability note dated December 21, 1998 from Dr. R. Scott Heath, a Board certified psychiatrist and neurologist, who stated that appellant should remain off work until December 28, 1998 for medical reasons.

By letter dated January 5, 1999, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical information.

The Office received a response from appellant on January 14, 1999. Appellant submitted a narrative response, a computerized tomography (CT) and magnetic resonance imaging (MRI) scans dated December 11, 1998 and a note from Dr. Michael S. Cohen dated November 14, 1998.¹ In his response appellant stated that he waited so long to file his claim because he did not realize that his head and neck pains were associated with the accident until he went to see the neurologist. The results of the MRI and CT scans were interpreted as showing cervical spurring on several levels. In his November 14, 1999 report, Dr. Cohen stated: "[Appellant] has been experiencing headaches since June 1998 most likely secondary to cervical spine degeneration as verified by CAT [computerized axial tomography] scan of the cervical spine."

¹ The date of the report is handwritten November 14, 1999, but appears to have been prepared on November 14, 1998.

By decision dated February 1, 1999, the Office found that the factual evidence did establish that the incident occurred on September 28, 1997; however, appellant's claim for compensation was denied as the medical evidence was not sufficient to establish that his condition was caused by the injury, as required by the Federal Employees' Compensation Act.

By letter dated February 4, 1999, appellant requested an oral hearing.²

In support of appellant's request, appellant's representative submitted a medical report from Dr. P. Robert Schwetschenau, a Board-certified neurological surgeon, dated August 2, 1999. Dr. Schwetschenau diagnosed appellant with "degenerative disc disease at L5-S1 with osteophytic spurring and lumbar radiculopathy." He also stated: "In my initial examination, I did not get a history that his low back pain and cramping in his legs occurred in conjunction with his workplace injury in 1997, therefore, I cannot relate these complaints to his workplace injury."

By decision dated January 11, 2000, the hearing representative affirmed the Office's February 1, 1999 decision finding that there was no rationalized medical evidence in support of the claimant's contention that the employment incidents he described caused or aggravated his condition.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on September 28, 1997.

An employee seeking benefits under the Act³ 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 timely filed within the applicable time limitation period 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 are causally related to the employment injury.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁶ 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.⁷ An employee may establish that an injury

² The request for an oral hearing was later changed to a review of the written record. There is no formal evidence of this in the record, but it is referred to in the decision of the hearing representative dated January 11, 2000.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁸

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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

In this case, appellant submitted various medical reports, but the reports did not establish a causal connection between appellant's condition and the work-related incident on September 28, 1997. He submitted a CT and MRI scans, both of which showed cervical spurring on several levels, yet offered no opinion on the issue of whether appellant's employment caused the condition. Appellant also submitted a note from Dr. Cohen which stated that he had cervical spine degeneration as verified by the CT scan, yet offered no medical opinion that appellant's condition was linked to his employment. In support of appellant's request for a review of the written record he also submitted a medical report from Dr. Schwetschenau, who opined that appellant is suffering from degenerative disc disease with osteophytic spurring and lumbar radiculopathy, yet stated that he did not get a history from appellant in his initial examination and is thus unable to relate appellant's complaints to his workplace injury. The medical evidence of record diagnoses appellant with degenerative disc disease and cervical spurring, yet offers no medical rationale explaining the relationship between the diagnosed conditions and appellant's employment.

⁸ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁹ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

The decision of the Office of Workers' Compensation Programs dated January 11, 2000 is hereby affirmed.

Dated, Washington, DC
February 27, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member