

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT M. LONG and U.S. POSTAL SERVICE,
POST OFFICE, Willingboro, NJ

*Docket No. 99-809; Submitted on the Record;
Issued January 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met his burden of proof in establishing that his herniated discs are causally related to his federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits on November 3, 1998.

The Board has duly reviewed the case on appeal and finds that appellant has met his burden of proof to establish that his herniated discs are causally related to his federal employment.

Appellant, a letter carrier, filed an occupational disease claim on December 13, 1996 alleging that the herniated discs in his cervical spine were causally related to factors of his federal employment. The Office denied his claim by decision dated April 11, 1997. Appellant requested an oral hearing and by decision dated February 17, 1998, the hearing representative affirmed the Office's April 11, 1997 decision. Appellant requested reconsideration and, by decision dated November 3, 1998, the Office declined to reopen appellant's claim for consideration of the merits.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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 or specific condition for which compensation is claimed are causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-1893.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

In this case, appellant attributed his herniated cervical discs to an October 1990 attack by a dog which mauled his left shoulder and arm, a work injury in January 1996 when he helped to push a customer's car which was stuck in the snow, and his employment duties of carrying heavy amounts of mail and repetitively looking down for addresses. Appellant stated that following the January 1996 incident he experienced continual numbness and pain down his left arm.

In a report dated February 28, 1997, Dr. Frank A. Mattei, a Board-certified orthopedic surgeon and employing establishment physician, examined appellant and noted the dog and car incidents. He stated that appellant had preexisting degenerative arthritic changes of the spinal column with resulting disc herniation. Dr. Mattei found marked degenerative changes of the spinal column demonstrated on magnetic resonance imaging. He stated that the degenerative changes may have been preexisting and not the result of the original 1990 injury. However, Dr. Mattei did not offer a clear opinion that appellant's herniated discs and degenerative changes preexisted the employment injury in 1996.

In support of his claim, appellant submitted a report dated January 5, 1998 from Dr. R. Blair Summersgill, a Board-certified family practitioner, who noted that appellant underwent cervical discectomy and spinal fusion at C4-5 and C5-6. He stated:

"I can say with a degree of reasonable medical certainty, that [appellant's] disability and initial injury were caused by the on-the-job injury of January 1996 when he was pushing a car stuck in the ice on a street, and also aggravated by the job requirements of carrying a mailbag on his shoulder, reaching, lifting and overhead work. Herniated cervical nucleus pulposi are caused by these straining activities and the onset of his symptoms corresponds with the stated date of injuries. Daily aggravation of the injuries is well documented, caused by his on-the-job requirements and activities subsequently. There is a reasonable medical certainty of the causality of his herniated nucleus pulposus by the injuries previously described...."

The Board finds that Dr. Summersgill's report is sufficiently well rationalized to meet appellant's burden of proof. Dr. Summersgill notes appellant's history of injury, provides an opinion that appellant's herniated cervical discs are causally related and explains how the herniated discs resulted from the employment-related activities. Therefore, the Board finds that appellant has met his burden of proof in establishing that he sustained herniated discs due to his employment. On remand the Office should determine if appellant has any period of disability from work due to these accepted injuries and authorize appropriate compensation.³

The February 17, 1998 decision of the Office of Workers' Compensation Programs is hereby reversed, and the case is remanded to the Office for processing.

Dated, Washington, DC
January 17, 2001

³ Due to the disposition of this issue, it is not necessary for the Board to consider whether the Office abused its discretion by refusing to reopen appellant's claim for consideration on the merits on November 3, 1998.

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member