

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWSON ALVIN ROSE and U.S. POSTAL SERVICE,
CENTRAL POSTAL FACILITY, Chicago, IL

*Docket No. 00-1846; Submitted on the Record;
Issued July 9, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury to his lower back causally related to factors of his employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for further review of the merits under 5 U.S.C. § 8128(a).

On July 29, 1997 appellant, then a 46-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained an injury to his lower back due to repetitive bending and lifting duties in the course of his federal employment. He also alleged that the injury was sustained due to unfair duty assignments, inequitable treatment and harassment by the employing establishment.

In support of his claim, appellant submitted unsigned medical progress notes dated July 30, September 15 and October 27, 1997, by Dr. Michael R. Zindrick, a Board-certified orthopedic surgeon, who noted that he was treating appellant for chronic discogenic low back pain. In his initial report of July 30, 1997, he noted that appellant stated that he sustained a back injury from lifting and pulling heavy equipment as part of his employment and that he had a recurrence four to five weeks ago, brought about by heavy-duty repetitive bending, lifting and twisting at work. In the October 27, 1997 report, he noted that, while appellant's pain was somewhat aggravated by his work, he was still on light duty.

By letter dated February 2, 1999, the Office informed appellant that it needed further medical evidence.

In response, appellant submitted an unsigned medical report by Dr. Lawrence W. Frank, a Board-certified physical medicine and rehabilitation specialist, dated November 26, 1997, who indicated that appellant suffered from degenerative osteoarthritis versus discogenic low back pain.

Appellant also submitted a medical report dated March 1, 1999 by Dr. Michelle Wolcott, who indicated that appellant had a grade one spondylolisthesis L5-S1. She stated that this “may be as a result of repetitive heavy lifting, bending and twisting motions.” Dr. Wilcott noted that appellant could return to work with a weight restriction of 20 pounds, no standing over 30 minutes and no excessive bending.

By decision dated April 19, 1999, the Office denied appellant’s claim, finding that he failed to submit sufficient rationalized medical evidence to establish that his duties as a mailhandler caused or contributed to his diagnosed back condition.

By letter dated May 18, 1999, appellant requested reconsideration of the April 19, 1999 decision. He submitted a letter in which he reiterated statements he made previously about the employing establishment intentionally or negligently losing his forms and intentionally making his job as difficult as possible. Appellant also submitted copies of various requests for sick leave.

By decision dated October 27, 1999, the Office denied reconsideration, finding that the evidence submitted in support of the request for review was of irrelevant nature and not sufficient to warrant review of the prior decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury to his back due to factors of his employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Thomas L. Hogan*, 47 ECAB 323 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 1143, 1145 (1989).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

The medical evidence required to establish a causal relationship, generally, 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 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.⁵

In the present case, there is insufficient rationalized medical opinion evidence to support that appellant sustained an injury in the performance of duty. The Board notes that all of the medical reports, with the exception of Dr. Wolcott's return to work slip, are unsigned, and, therefore, cannot be considered as probative medical evidence.⁶ Moreover, none of these reports establish that appellant's back condition was caused by his federal employment. Drs. Zindrick and Frank failed to address the causation of appellant's back condition, other than to note that appellant contended that it was caused by bending, lifting and twisting at work. Neither physician provided a reasoned medical opinion addressing the issue of causal relation. Dr. Wolcott stated that appellant's injury "may be as a result of repetitive heavy lifting, bending and twisting motions." The Board notes that this opinion as to causation is speculative in nature and of diminished value. Therefore, the medical evidence of record is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors.⁷ Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.⁸ As appellant has not submitted rationalized medical opinion evidence explaining how and why the diagnosed condition was caused or aggravated by appellant's federal employment, the Office properly denied appellant's claim for compensation.

The Board further finds that the Office, in its decision dated October 27, 1999, did not abuse its discretion by refusing to reopen appellant's claim for a review of the merits.

The Office's federal regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence or argument that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not

⁵ *Id.*

⁶ *Merton J. Sills*, 39 ECAB 572, 575 (1998).

⁷ *Id.* at 218.

⁸ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁹ The regulations further provide that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.¹⁰

Appellant submitted no new relevant or pertinent evidence. The claim for benefits was originally denied because appellant failed to submit sufficient medical evidence. The requests for sick leave are not relevant to the issue in this case as they do not constitute medical opinion evidence addressing the causal relationship between appellant's back condition and his employment. Furthermore, appellant submitted no new arguments that were not previously considered by the Office, nor did he allege that the Office erroneously applied or interpreted a point of law. Accordingly, the Office properly denied appellant's request for reconsideration on the merits.¹¹

The decisions of the Office of Workers' Compensation Programs dated October 27 and April 19, 1999 are hereby affirmed.¹²

Dated, Washington, DC
July 9, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ 20 C.F.R. § 10.608(b).

¹¹ The Board notes that this case record contains evidence that was submitted subsequent to the Office's October 27, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

¹² On appeal, appellant contends that he should have been allowed an oral hearing. Appellant notes that he requested an extension of time in which to make an election of his course of action and that this request was denied. Appellant did not make an official request for a hearing before the Office and the Board has no jurisdiction to order a hearing. The Board notes that in order for appellant to be entitled to an oral hearing before a hearing representative as a matter of right, the request for oral hearing must be submitted, in writing, within 30 days of the issuance of the date of the decision, in this case, April 19, 1999. 20 C.F.R. § 10.616(a).