

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY R. McGRAW and U.S. POSTAL SERVICE,
POST OFFICE, Greenville, SC

*Docket No. 00-2380; Submitted on the Record;
Issued July 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that his degenerative lumbar spinal condition was caused or aggravated by factors of his federal employment.

This is the second appeal before the Board in this case. By decision issued August 25, 1998, the Board set aside a September 28, 1995 decision, of the Office of Workers' Compensation Programs finding that appellant's degenerative spinal condition was not related to work factors. The Board found that the June 1, 1994 report of Dr. Robert A. Blake, a Board-certified orthopedic surgeon and impartial medical examiner, was insufficient to resolve an outstanding conflict of medical opinion evidence between Drs. Thomas W. Westmoreland, appellant's attending Board-certified family practitioner and John P. Evans, a Board-certified orthopedic surgeon and second opinion examiner, for the government. The Board remanded the case for further development to resolve the conflict, including a revision of the statement of accepted facts to include additional detail regarding appellant's work duties. The law and facts of the case as set forth in the prior decision and order are incorporated by reference.¹

Following remand of the case the Office requested, in a September 28, 1998 letter, that Dr. Blake provide detailed medical rationale supporting his previous opinions that appellant's degenerative spinal disease was unrelated to his duties as a letter carrier.

In an October 12, 1998 report, Dr. Blake provided a detailed review of the medical record, noting that there was radiographic evidence of degenerative arthritis of the cervical spine as early as May 16, 1983. He opined that appellant's "degenerative disc disease at multiple

¹ In the August 25, 1998 decision the Board noted that the Office had accepted some period of aggravation of appellant's degenerative disc disease, as there was a notation to that effect on the nonfatal case summary sheet. However, it is unclear from the record for what period, if any, the Office accepted such aggravation. The Board notes that there is no correspondence or decision of record accepting any period of aggravation of appellant's degenerative spinal condition.

levels” was “not necessarily related to a job or an event,” but that Dr. Westmoreland attributed the condition in part to appellant lifting a heavy tray of Sears catalogs and to casing mail. Dr. Blake noted that appellant “was given hour limitations, special counseling in regards to body mechanics and weight restrictions for lifting. It must be presumed that he was operating within these parameters.” He concluded that there was nothing “unique” about appellant’s “duties as a postal employee letter carrier that had any *significant* contributing factor to the progression of the process.... I cannot with any medical certainty state that” the catalog lifting or mail casing incidents “affected the specific outcome of his disc deterioration and arthritis.”

In a November 2, 1998 letter, the Office again requested that Dr. Blake explain any causal relationship between appellant’s work factors and his spinal condition. The Office provided Dr. Blake with a revised statement of accepted facts, which described appellant’s duties as a letter carrier as follows: “handling mail flats and heavy sacks of mail weighing up to 70 pounds ... continuous standing, walking, sorting and distribution of mail, with repeated overhead reaching and repeated bending. [Appellant] sorted mail for approximately three hours a day. Two-thirds of his day was spent driving and one third carrying his pouch and lifting trays out of his jeep.”

In a November 5, 1998 report, Dr. Blake reviewed the statement of accepted facts, noting that while there was no mention therein of appellant’s work restrictions, the medical record was replete with physician instructions regarding appellant’s limitations. He stated that it was, therefore, “reasonable to assume that [appellant] took these recommendations to heart and worked within the parameters that were given by his physicians.” Regarding his October 12, 1998 comment that appellant’s job duties did not contribute significantly to his degenerative spinal condition, Dr. Blake explained that he was “unaware of any studies in the literature that show letter postal carriers have any greater risk of back problems than ... other people employed in similar occupations.” Dr. Blake, therefore, concluded that appellant’s duties as a letter carrier were not a “contributing factor to [appellant’s] degenerative disc disease.”

By decision issued on November 17, 1998 and reissued on April 19 and June 9, 1999,² the Office denied appellant’s claim on the grounds that causal relationship was not established between his degenerative spinal condition and factors of his federal employment. The Office found that Dr. Blake’s opinion was sufficiently rationalized to represent the weight of the medical evidence.

Appellant disagreed with this decision and in a June 14, 1999 letter, requested an oral hearing before a representative of the Office’s Branch of Hearings and Review, held January 21, 2000. At the hearing, appellant asserted that the statement of accepted facts did not accurately describe his work duties and that he was made to work outside his medical restrictions. Appellant submitted June 8, September 22 and October 16, 1989 chart notes from Dr. Glenn L. Scott, an attending Board-certified orthopedic surgeon, recommending that appellant limit lifting to 20 pounds and avoid repetitive bending due to “degenerative disc disease at L4-5 and L5-S1 with no distinct herniation.”

² The record indicates that appellant did not receive the November 17, 1998 decision as it was misaddressed. To preserve appellant’s appeal rights, the Office reissued the decision on April 19 and June 9, 1999.

Following the hearing, appellant's attorney representative submitted excerpts from internet sites on the interrelationship between musculoskeletal disabilities and workplace ergonomics. This literature does not specifically mention appellant.³

Appellant also submitted a February 15, 2000 letter from Dr. Blake to appellant's attorney representative. In this letter, Dr. Blake stated that "ASSUMING [appellant] WAS NOT operating within" the 20-pound lifting restriction set forth by Dr. Scott on July 20 and September 22, 1989, "and assuming he did not have any outside aggravating factors, it is my opinion based on a degree of reasonable medical certainty [appellant] would be exposed to aggravation of his preexisting lumbar spine problem."

By decision dated April 14, 2000 and finalized April 24, 2000, the Office hearing representative affirmed the Office's decision dated November 17, 1998 and reissued June 9, 1999, finding that appellant had not established that his degenerative lumbar spinal condition was caused or aggravated by work factors. The hearing representative found that Dr. Blake's October 12 and November 5, 1998 reports, were sufficiently rationalized to represent the weight of the medical evidence and resolve the conflict between Dr. Westmoreland, for appellant and Dr. Evans, for the government. The hearing representative noted that Dr. Blake's February 15, 2000 report was unduly influenced by appellant's attorney representative and was based on unproved assumptions regarding appellant's work activities.

The Board finds that appellant has not established that his degenerative lumbar spinal condition was caused or aggravated by factors of appellant's federal employment.

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 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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.⁴

In this case, the Board finds that the weight of the medical evidence in this case rests with Dr. Blake, a Board-certified orthopedic surgeon and impartial medical examiner, appointed to resolve a conflict of medical opinion between Dr. Westmoreland, appellant's attending family practitioner and Dr. Evans, a Board-certified orthopedic surgeon and second opinion physician. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist

³ Appellant also submitted copies of medical reports previously of record and a legal brief submitted on the prior appeal.

⁴ *Charles E. Burke*, 47 ECAB 185 (1995).

for the purpose of resolving the conflict, the opinion on such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁵

Dr. Blake submitted two reports addressing causal relationship, both based on a review of the complete medical record, as well as a detailed and accurate description of appellant's duties.⁶ In an October 12, 1998 report, assuming appellant was working within the 20-pound lifting restriction and related limitations on bending, he could not be determine with certainty that work factors "affected the specific outcome of his disc deterioration and arthritis." In a November 5, 1998 report, Dr. Blake again stated that it was "reasonable to assume" that appellant abided by the restrictions set by his physicians and that there were no individual or epidemiological indicators that appellant's duties contributed to his degenerative disc disease. These reports contain sufficient medical rationale explaining how and why appellant's work factors would not have contributed to his degenerative lumbar condition.

Appellant asserts that Dr. Blake supported causal relationship in his February 15, 2000 letter and that, therefore, his opinion is too uncertain to have resolved the conflict of medical opinion. Dr. Blake stated that if appellant was working outside of his restrictions and did not have any other contributing factors, then his job would have "exposed [him] to aggravation of his preexisting lumbar spine problem." However, appellant did not establish that he worked outside of the job description. He presented no evidence, other than his own statements asserting that he lifted greater than 70 pounds, that he worked outside of his restrictions. Therefore, any medical opinion based on such a scenario is of no probative value as it is not based on the facts as established in this case.⁷

In support of his claim, appellant submitted June 8, September 22 and October 16, 1989 chart notes from Dr. Scott, an attending Board-certified orthopedic surgeon, regarding appellant's restrictions. However, these notes are repetitive of evidence previously of record. Also, they do not contain medical rationale explaining how and why work factors would cause or aggravate appellant's spinal condition. Therefore, Dr. Scott's opinion is insufficient to create a conflict with Dr. Blake's well-rationalized opinion.

Appellant also submitted copies of medical literature obtained from the internet. However, this literature is of no probative value in establishing causal relationship in appellant's case as it is of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by appellant.⁸

Consequently, appellant has not established that his degenerative lumbar spine condition was caused or aggravated by factors of his federal employment as a letter carrier.

⁵ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

⁶ The Board notes that the information on work factors contained in the revised statement of accepted facts is nearly identical to the job descriptions previously of record at the time Dr. Blake wrote his June 1, 1994 report.

⁷ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *Armando Colon*, 41 ECAB 563 (1990).

⁸ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The decision dated April 14, 2000 and finalized April 24, 2000 of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 12, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member