

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSE M. O'DONOHUE and U.S. POSTAL SERVICE,  
MID HUDSON PROCESSING & DISTRIBUTION CENTER, Newburgh, NY

*Docket No. 00-2473; Submitted on the Record;  
Issued July 12, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a back condition causally related to factors of her federal employment.

On September 22, 1999 appellant, then a 43-year-old mailhandler, filed an occupational disease claim alleging that she developed back pain as a result of her employment duties. Appellant stated that between October 11, 1997 and June 5, 1999 she operated a sorting machine 8 hours a day, 5 days a week, a position which required standing on a hard floor and repeatedly bending and lifting tubs of mail weighing up to 40 pounds. Appellant related that she first experienced back pain and spasms three or four months after starting work with the employing establishment, but that these symptoms would usually subside. On September 1, 1999, however, she experienced an intense pain in her lower back, which did not subside, prompting her to seek medical attention.

In a decision dated December 28, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence did not establish that her claimed condition was causally related to factors of her federal employment.<sup>1</sup>

The Board has duly reviewed the case on appeal and finds that appellant has not met her burden of proof to establish that she developed a back condition due to factors of her federal employment.

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<sup>1</sup> By letter dated February 15, 2000, appellant, through counsel, requested reconsideration and submitted additional medical evidence in support of her claim. However, as at the time of her appeal to the Board, the Office had not yet issued a decision on appellant's request, the Board cannot consider this evidence; *see* 20 C.F.R. § 501.2(c)(1).

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 filed within the applicable time limitation 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 is causally related to the employment injury."<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered, in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

In this case, the evidence supports the fact that between March 15, 1997 and September 7, 1999 appellant performed the duties she described, including bending and lifting boxes and sacks of mail, weighing an average of 30 pounds, but sometimes as much as 70 pounds. The Office denied appellant's claim for compensation, however, on the grounds that the medical evidence of record did not establish that her claimed medical condition resulted from the accepted employment duties.

To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment incident or activities, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup> 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>7</sup> *James Mack*, 43 ECAB 321 (1991).

In support of her claim for an employment-related back condition, appellant submitted medical reports and treatment notes from her treating and consulting physicians. In a treatment note dated September 10, 1999, Dr. Dhirajlal M. Shah, a treating internist, documented appellant's complaints of low back pain, increasing in severity, and noted that x-rays of the lumbar spine revealed a narrowing of the L5-S1 disc space, with a posterior Schmorl's node seen at L3-4 with narrowing of that disc space and additional Schmorl's nodes at L1-2 and L2-3. He diagnosed acute lower back pain with radiculopathy of the right lumbar area and indicated that appellant required magnetic resonance imaging (MRI) scan and physical therapy and was being referred to a neurosurgeon. Dr. Shah released appellant to light duty on September 20, 1999 and stated that appellant's diagnosed acute lower back pain with radiculopathy resulted from a work injury on June 5, 1999. His report does not mention any specific work activities that may have contributed to appellant's condition.

By letters dated November 3, 1999, the Office wrote to appellant and to Dr. Shah directly, requesting a comprehensive medical report including, among other things, an explanation of how appellant's work duties caused or aggravated her diagnosed condition. No further reports were received from Dr. Shah.

In a report dated November 10, 1999, Dr. David H. Segal, a treating neurologist, noted appellant's history of lifting heavy items at work and her complaints of back pain and radiculopathy into her right thigh, as well as associated right leg weakness and numbness. Dr. Segal noted his findings on physical examination. A September 15, 1999 MRI scan revealed degenerative discs at L3-4 and L5-S1, with a disc bulge and protrusion at L3-4 and with a fragment pressing on the right L3 nerve root, with greater degeneration at L5-S1. Dr. Segal concluded that appellant "does appear to have a lumbar radicular syndrome and possibly also an associated mechanical low back pain syndrome." The physician stated that appellant's radicular symptoms might be due to pressure on the right nerve root, recommended an additional MRI scan with special views and discussed appellant's treatment options.

By letter dated November 19, 1999, the Office again wrote to Dr. Shah, with a copy to appellant, explaining that the medical evidence of record was still insufficient to establish a causal relationship between appellant's diagnosed conditions and her employment activities. The Office noted that the record contained some evidence that appellant had been diagnosed with Meniere's disease and had been in a motor vehicle accident on October 19, 1998 and asked the physician to discuss what effect, if any, these additional factors had on appellant's condition.

In response to the Office's request, appellant submitted a letter stating that she had not been diagnosed with Meniere's disease and was not involved in a motor vehicle accident on October 19, 1998.<sup>8</sup> In addition, appellant submitted duplicates of medical reports already in the file, as well as physical therapy treatment notes.

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<sup>8</sup> The record contains the police report generated in conjunction with the October 19, 1998 motor vehicle accident. The report indicates that Debbie A. O'Donohue was the driver of a vehicle involved in an accident that day, but does not indicate whether appellant was present or otherwise involved in the accident.

The record contains no rationalized medical opinion on the causal relationship, if any, between the employment incident and the diagnosed condition. Therefore, the medical evidence of record is insufficient to meet appellant's burden of proof to establish causal relationship.<sup>9</sup> While the medical reports document the diagnosis and treatment of appellant's back condition, they do not provide an opinion on the causal relationship, if any, between her diagnosed conditions and her employment duties. Because appellant has not submitted sufficient medical evidence to meet her burden of proof, the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated December 28, 1999 is hereby affirmed.<sup>10</sup>

Dated, Washington, DC  
July 12, 2001

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>9</sup> *Lucrecia M. Nielsen*, 41 ECAB 583, 594 (1991).

<sup>10</sup> On her application for review form submitted with her appeal to the Board, appellant indicated that she was appealing the decision of the Office dated May 18, 2000. In its May 18, 2000 decision, however, the Office granted appellant's counsel's request for attorney's fees. Appellant had previously reviewed and approved, in writing, the amount of attorney's fees requested and the brief submitted on appeal addresses only the Office's December 28, 1999 decision on the merits. Therefore, the Board assumes that appellant did not wish to appeal the May 18, 2000 decision, but rather, wished to appeal the Office's December 28, 1999 decision denying benefits.