

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSE M. PADULA and U.S. POSTAL SERVICE,  
POST OFFICE, Port Richey, FL

*Docket No. 99-1710; Submitted on the Record;  
Issued March 8, 2001*

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DECISION and ORDER

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

The issue is whether appellant has established that she sustained an injury in the performance of duty on March 6, 1997 causally related to factors of her federal employment.

On March 28, 1997 appellant, then a 54-year-old letter carrier, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, alleging she sustained a lower back injury on March 6, 1997 when, as she was delivering mail on her route, she lifted a tray to reload the mail and felt pain in her lower back radiating down her left knee. She stopped work on March 17, 1997.

In a March 26, 1997 statement, appellant's supervisor advised that appellant indicated on March 17, 1997 that she was going to the doctor because she was experiencing pain in her lower back and left leg. The supervisor noted that approximately two weeks earlier he observed appellant limping and favoring her left leg and appellant indicated that she was experiencing pain down her left leg causing her to limp. The supervisor indicated that a few days later appellant's limp was getting noticeably worse and appellant stated her limp was aggravated by doing two step routes. The supervisor also noted that appellant did not indicate that she was injured on the job.

Accompanying her claim appellant submitted three authorization for absence forms dated March 17 through March 28, 1997 as well as a narrative statement. The authorization forms were prepared by Dr. Stephen B. Bittiker, a chiropractor, and indicated that appellant was being treated for lumbosacral sprain. He indicated that appellant could return to light duty, lifting no more than 10 pounds for four hours per day, with no delivery of mail. Appellant indicated in her narrative statement that on the date of the injury she told her supervisor that she was reloading mail and experienced a pain in her lower back. Appellant stated that she continued to work the rest of the week.

By letter dated May 29, 1997, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant stating that the initial information

submitted was insufficient to establish an injury on the above date. The Office particularly requested that appellant submit a detailed medical report from her physician indicating a history of the injury, clinical findings, diagnosis and the physicians rationalized medical opinion.

In response to the Office's request, appellant submitted physical therapy notes from April 3 to May 30, 1997, a Form CA-17 signed by Dr. Greg A. Vigna, a specialist in pain medicine and rehabilitation, dated June 19, 1997 and a narrative dated June 5, 1997. Dr. Vigna indicated on the CA-17 that appellant sustained spinal stenosis by "lifting." Appellant's narrative noted that she was being treated by Dr. Vigna and Dr. Ozuna, an orthopedic surgeon.

In a decision dated July 9, 1997, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on March 6, 1997 as required by the Federal Employees' Compensation Act.<sup>1</sup> The Office found that the medical evidence of file was insufficient to establish that appellant sustained an injury as alleged.

By letter postmarked August 13, 1997, appellant requested a hearing before an Office hearing representative.<sup>2</sup>

By decision dated October 1, 1997, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.<sup>3</sup>

On February 17, 1998 appellant underwent a lumbar laminectomy and discectomy which was performed by Dr. Harold J. Colbassani, a Board-certified neurologist.

By letter dated May 26, 1998, appellant, through her representative, requested reconsideration of the prior decision and submitted additional medical evidence. She also submitted a new medical report dated May 2, 1998 from Dr. Daniel H. Bender, Board-certified in physical medicine, and a report from Dr. Colbassani dated June 3, 1998. Both reports indicate that appellant's medical condition was directly related to her alleged work injury of March 6, 1997.

By decision dated October 8, 1998, the Office denied modification of its prior decision. The Office concluded that appellant did not meet her burden of proof in establishing that her injury occurred at the time, date and place as alleged.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> By letter dated August 25, 1997, the Office requested that appellant clarify her reconsideration request of August 13, 1997. The Office specifically requested that appellant indicate the appeal process she would like to pursue. In a letter dated August 29, 1997, appellant indicated that she wanted an oral hearing in this matter.

<sup>3</sup> By letter dated August 29, 1997, appellant requested a hearing before an Office hearing representative. By decision dated November 20, 1997, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved, and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

By letter dated December 17, 1998, appellant, through her representative, requested reconsideration of the prior decision and submitted additional factual and medical evidence. She submitted a narrative statement dated November 23, 1998 from Mr. Aaron Bridwell, a postal employee, also undergoing physical therapy at the same time as appellant. Mr. Bridwell indicated that appellant stated she injured her back while lifting a tray of mail at work. Appellant also submitted a medical note dated March 17, 1997 from her chiropractor, Dr. Bittiker, indicating appellant was treated on March 17, 1997 and she indicated to him that she was injured at work 10 days prior. She also submitted deposition testimony of Dr. Bender dated October 23, 1998.

By decision dated March 10, 1999, the Office denied modification of its prior decision. The Office concluded that appellant did not meet her burden of proof in establishing that her injury occurred at the time, date and place as alleged.

The Board finds that appellant sustained an injury in the performance of duty on March 6, 1997 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act 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>4</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>5</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>6</sup> In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>7</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>8</sup> A consistent history of the injury as reported on medical reports, to the claimant's

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>6</sup> *Elaine Pendleton*, *supra* note 4.

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

supervisor and on the notice of injury, can also be evidence of the occurrence of the incident.<sup>9</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>10</sup> Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,<sup>11</sup> an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.<sup>12</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>13</sup>

In the present case, the Office found that the delayed notification and the allegation that appellant told varying descriptions of her work injury raised sufficient doubt to find that appellant had not established that the injury occurred in the performance of duty as alleged. While there was delayed notification of the March 6, 1997 injury, appellant explained in her narrative statements that immediately following the lifting incident she noticed that she had pain in her back and down her left leg, but thought it would resolve itself in time. When the backache did not resolve over the course of the next week, but gradually developed into severe back pain which was shooting down her leg, she sought medical attention. Appellant pointed out that while 11 days elapsed between March 6, 1997, the day of the alleged injury and March 17, 1997, the day she sought medical attention, she had treated herself with a hot compress and experienced some relief. However, on March 17, 1997, the pain had returned and she then sought medical attention. In addition, appellant's assertion that she felt a pain in her back while lifting a tray during her mail route, which gradually increased in severity over the next week until she sought medical attention on March 17, 1997, is corroborated by the histories contained in all of the medical reports of record. In the treatment notes of Dr. Bittiker, dated March 17, 1997, he noted appellant reported that she was hurt while working. He indicated a diagnosis of spinal subluxation. In Dr. Ozuna's treatment notes, dated March 26, 1997, he stated that appellant reported lifting an object on March 6, 1997 while at work and began developing left side lower extremity pain, worsening over time. Physical therapy notes dated April 3, 1997 indicate that appellant reported that a lifting and twisting activity performed at work on March 6, 1997 caused her injury. Dr. Vigna, in his report dated April 30, 1997, noted appellant's injury at work on March 6, 1997 while she was lifting heavy objects. He indicated that appellant

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<sup>9</sup> *Id.* at 255-56.

<sup>10</sup> *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

<sup>11</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>12</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>13</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

experienced low back pain since that time. In his consultation report dated May 8, 1997, Dr. R. Panjabi, to whom appellant was referred by Dr. Vigna, stated that appellant's reported history of complaints dated to March 6, 1997, when appellant was carrying heavy packages at work. He noted that appellant reported developing a pain on the left side of her body and left lower extremity which gradually got worse, prompting her to seek treatment. The Board finds that the evidence of record is sufficient to support the sequence of events on March 6, 1997 as related by appellant.

The question therefore becomes whether the duties she performed at work caused or aggravated the conditions for which she seeks compensation.

Causal relationship is a medical issue and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. 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 established incidents or factors of employment.

In a May 2, 1998 report, Dr. Bender stated that appellant sustained a disc herniation and that in his medical opinion the condition was "directly related to her work-related injury of March 6, 1997. The mechanism of injury was a lifting and twisting injury." He noted that "he believed this injury is the sole cause of [appellant's] disc herniation requiring surgery." In a report dated June 3, 1998, Dr. Colbassani indicated that appellant had been under his care since January 30, 1998 for lower back complaints arising out of an injury that she sustained at work. He performed a lumbar laminectomy and discectomy in February 1998. Dr. Colbassani indicated that "based upon [appellant's] history, I would say that the disc herniation that she underwent surgical intervention for was a result of that work-related injury."

While Drs. Bender and Colbassani provided some rationale for their opinions that appellant's back condition is causally related to the work incident of March 6, 1997, they did not provide a factual background of the injury in their respective reports from which to establish a causal relationship. They merely referred to appellant's work injury. Nonetheless, the Board finds that the medical reports submitted by appellant, taken as a whole, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>14</sup> Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. The Board will set aside the Office's March 10, 1999 and October 8, 1998 decisions and remand the case for further development of the medical evidence. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

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<sup>14</sup> *John J. Carlone, supra* note 7.

The March 10, 1999 and October 8, 1998 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC  
March 8, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member