U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDRES A. RIOS and U.S. POSTAL SERVICE,
POSTAL SERVICE WAREHOUSE, Phoenix, AZ

Docket No. 01-787; Submitted on the Record;
Issued November 29, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof to establish that he developed a back condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for merit review on August 21 and October 30, 2000.

On March 10, 1999 appellant, then a 59-year-old mailhandler, filed a notice of occupational disease alleging that he developed a back condition as a result of his employment duties. He stopped work on March 1, 1999.

In support of his claim, appellant submitted medical reports dating from August 13, 1998 to February 22, 1999, from Dr. Louis H. Rappoport, an orthopedic surgeon.

By letter dated April 1, 1999, the Office requested additional medical and factual evidence from appellant, explaining that the initial information submitted was insufficient to establish that he developed a back condition causally related to his employment duties. In response to the Office's request, appellant submitted additional medical evidence from Dr. Rappoport.

In a decision dated June 1, 1999, the Office denied appellant's claim as the medical evidence was not sufficient to establish that appellant developed a back condition in the performance of duty. The Office found that there was no medical evidence submitted which discussed the causal relationship between appellant's diagnosed back conditions and his employment.

By letters dated July 16, 1999 and March 3, 2000, appellant requested reconsideration of the Office's decision, and submitted additional medical and factual evidence in support of his claim. In decisions dated November 29, 1999 and June 7, 2000, respectively, the Office found the additional evidence insufficient to warrant modification of the Office's prior decision.

By letters dated July 14 and August 29, 2000, appellant requested reconsideration of the Office's prior decision. In decisions dated August 21 and October 30, 2000, the Office denied appellant's requests on the grounds that he neither raised substantive legal questions nor included new and relevant evidence. The instant appeal follows.

The Board finds that appellant has failed to establish that he developed a back condition in the performance of duty as alleged.

An employee seeking benefits under the 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 timely filed within the applicable time limitation period of the Act, that the 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.[1] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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 or engaged in the employment activities alleged to have occurred.[3] In this case, it is undisputed that appellant's job as a mailhandler involved heavy lifting and frequent pushing, pulling, bending and stooping. The record also establishes that in August 1998, appellant was diagnosed with numerous back conditions, including Grade I spondylolisthesis at level L5-S1, degenerative disc disease at level L4-5 and L5-S1, herniated nucleus pulposus at L3-4 and L4-5 and associated mild spinal stenosis at L4-5.

The second component is whether the employment activities caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the conditions claimed, as well as any attendant disability, and the employment incident or activity, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4] 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

[1] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[3] *Elaine Pendleton*, *supra* note 2.

[4] *John M. Tornello*, 35 ECAB 234 (1983).

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.[5]

In this case, while it is not disputed that appellant's employment duties involved frequent heavy lifting, pushing, pulling, bending and stooping, and that in August 1998 he was diagnosed with back conditions, the medical evidence is insufficient to establish that appellant's employment duties caused his diagnosed conditions. The medical evidence of record consists of a series of medical reports and progress notes from Dr. Louis H. Rappoport, appellant's treating physician, as well as treatment notes from appellant's past military service. In his report dated December 23, 1999, the only report which addresses the issue of causal relationship,[6] Dr. Rappoport stated:

> "This patient likely developed a spondylolysis at the L5 level bilaterally as a teenager and then went on to develop a Grade I spondylolitic spondylolisthesis. Nevertheless, it is possible that this was asymptomatic at this time. The patient then has had numerous potential contributing factors to the development of his condition prior to surgery. These would include any potential back injury he sustained while in Viet Nam, his automobile accident as noted, and his years of work at the [employing establishment]. All of these could potentially be contributing to the patient's present condition and need for surgical intervention. There are patients who develop symptomatic degenerative conditions of the lumbar spine superimposed upon preexisting conditions such as spondylolisthesis without any specific injury or trauma, but rather as a result of normal wear and tear. It is for this reason that the etiology of degenerative disease of the lumbar spine is multifactoral in nature. In this particular case, the patient did have a definite preexisting condition, that being his spondylolisthesis. There are many people with spondylolisthesis that are asymptomatic and then through normal wear and tear or as a result of any trauma or injury to the lumbar spine, develop symptomatology. In summary, it is therefore difficult to determine a specific contributing factor which lead to this patient's worsening condition and subsequent surgical intervention. It is possible that all of the above factors could have contributed to the patient's condition. This would include his years of work for the [employing establishment]."

While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, Dr. Rappoport's opinion, that appellant's employment duties could have "potentially" or "possibly" contributed to his back condition, is too speculative to establish

[5] *James Mack*, 43 ECAB 321 (1991).

[6] In his reports dated August 13 and 31 and November 30, 1998, and January 26, February 22, March 1 and April 7, 1999, Dr. Rappoport discussed his findings on physical examination and testing, noted appellant's employment history and history of military service, and history of having been in a recent car accident, but did not address the cause of appellant's diagnosed back conditions.

the requisite causal relationship between appellant's employment and his diagnosed conditions.[7] Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[8] In addition, contrary to appellant's arguments, the fact that there is no medical evidence to show that appellant injured his back in the service or that he experienced any back problems prior to working for the employing establishment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[9] As the record contains no medical evidence which contains a rationalized, unequivocal medical opinion on the causal relationship, if any, between appellant's work duties and his diagnosed back conditions, the medical evidence of record is insufficient to establish causal relationship[10] and, therefore, insufficient to meet appellant's burden of proof.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on August 21 and October 30, 2000.

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[11] Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[12] In support of his July 14 and August 29, 2000 requests for reconsideration, appellant, through counsel, argued that the opinion of Dr. Rappoport is sufficient to establish and uncontroverted inference of causal relationship between appellant's employment and his back conditions, and as such, is sufficient to require the Office to further develop the medical evidence. This argument, however, was previously raised by appellant in his March 3, 2000 request for reconsideration and was fully considered by the Office in its merit decision dated June 6, 2000. The submission of evidence or legal argument which repeats or duplicates evidence already in the case record does not constitute a basis for

[7] *Judith J. Montage*, 48 ECAB 292 (1997).

[8] *Id*.

[9] *Charles E. Evans*, 48 ECAB 692 (1997).

[10] *Lucrecia M. Nielsen*, 41 ECAB 583, 594 (1991).

[11] 20 C.F.R. § 10.606(b).

[12] *See Daniel J. Perea*, 42 ECAB 214, 221 (1990).

reopening a case.[13] As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

The decisions of the Office of Workers' Compensation Programs dated October 30, August 21 and June 7, 2000 are hereby affirmed.

Dated, Washington, DC
November 29, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[13] *Linda I. Sprague*, 48 ECAB 386 (1997); *Bertha J. Soule (Ralph G. Soule)*, 48 ECAB 314 (1997).