

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of G. BLAIR BALL and U.S. POSTAL SERVICE,
POST OFFICE, Sherman Oaks, CA

*Docket No. 00-1587; Submitted on the Record;
Issued October 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a herniated disc causally related to his federal 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 filed within the applicable time limitations 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.² 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.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 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 claimant.

¹ 5 U.S.C. § 8101.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence required to establish 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 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

On November 23, 1998 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging that he sustained a herniated disc and subsequently required surgery from performing his work duties, *i.e.*, heavy lifting, pushing, bending, stooping, standing, walking, driving and twisting. Appellant stated that on October 17, 1998 he picked up a tray of magazines and turned to put the tray in his jeep when he heard a pop and felt a warm feeling in his back. He also stated that he became aware and related his condition to his employment activities on October 29, 1998. The Office of Workers' Compensation Programs denied appellant's claim on January 26, 1999. Appellant requested a hearing before an Office hearing representative. By decision dated October 14, 1999, the hearing representative affirmed the Office's January 26, 1999 decision. By letter dated November 27, 1999, appellant requested reconsideration of the January 26, 1999 decision. By decision dated February 10, 2000, the Office, after a merit review, denied appellant's request finding that the evidence of record was insufficient to warrant modification of the prior decision.

The medical evidence in support of appellant's occupational disease claim consists of a November 11, 1998 report by Dr. Robert K. Moffatt, a Board-certified family practitioner; a November 11, 1998 report by Dr. James M. Herman, a Board-certified neurosurgeon; an attending physician's report by Dr. Herman; a supplemental attending physician's report by Dr. Herman; a December 15, 1998 report by Dr. Moffatt; a December 15, 1998 duty status report by Dr. Herman; a December 14, 1998 radiology report by Dr. C. Moses, a Board-certified radiologist; a December 11, 1998 report by Dr. Herman; a December 8, 1998 report by Dr. Herman indicating appellant could return to work with restrictions on December 16, 1998; a December 8, 1999 report by Dr. Herman; a November 19, 1998 report by Dr. Moses; a November 11, 1998 report by Dr. Herman; a November 3, 1998 operative report of the November 2, 1998 surgery by Dr. Herman; a radiology report by Dr. M.J. Brown, a Board-certified radiologist, of an x-ray of the lumbar spine; a surgical pathology report by Dr. Erwin B. Clahassey, a Board-certified pathologist; an October 29, 1998 report by Dr. Herman; an updated November 2, 1998 report by Dr. Herman; an October 27, 1998 report of an magnetic resonance imaging (MRI) by Dr. L. Cheung, a Board-certified radiologist; a December 10, 1998 report by Dr. Moses; a December 15, 1998 report by Dr. Moffatt; an April 27, 1999 report by Dr. Herman; and October 20, 1998 Veterans Administration Medical Center progress notes.

In the November 11, 1998 report, Dr. Moffatt related a history of injury, diagnosed a disc herniation at L4 as confirmed by MRI and stated that appellant underwent surgery on November 2, 1998. However, Dr. Moffatt failed to address any causal relationship between

⁴ *Id.*

appellant's disc herniation and resultant surgery and the factors of employment to which appellant has attributed his condition. The November 11, 1998 report is insufficient to establish appellant's claim.

A November 11, 1998 duty status report by Dr. Herman diagnosing a herniated nucleus pulposus. However, Dr. Herman failed to address a causal relationship between appellant's condition and the factors of employment identified. The duty status report is insufficient to establish appellant's claim.

On November 11, 1998 attending physician's and supplemental attending physician's reports Dr. Herman diagnosed disc herniation and gave a date of injury of October 17, 1998. He failed to address a causal relationship between appellant's disc herniation and the factors of employment identified by appellant. The reports are insufficient to establish appellant's occupational disease claim.

In a December 15, 1998 report, Dr. Moffatt stated that he saw appellant on October 23, 1998 and related a history of injury as given by appellant. Dr. Moffatt stated that he saw appellant again on October 26, 1998 at which time he ordered an MRI. Dr. Moffatt stated that the MRI revealed a herniated disc, so he referred appellant to Dr. Herman. On November 2, 1998 Dr. Herman performed a microdiscectomy. Dr. Moffatt's report failed to explain the causal relationship between appellant's diagnosed condition or findings on MRI to the factors of employment identified by appellant. The report is insufficient to establish appellant's occupational disease claim.

In Dr. Herman's December 15, 1998 duty status report, he diagnosed a herniated disc, but failed to provide an opinion causally relating the condition to factors of employment identified by appellant. The duty status report is insufficient to establish appellant's claim.

In November 19 and December 10, 1998 radiology reports, Dr. C. Moses interpreted the results of an MRI of the cervical spine to reveal some disc protrusion at C6-7 level and significant osteophytic at C3-4 level. The reports failed to provide a history of injury and to address a causal relationship between a diagnosed condition and the factors of employment identified by appellant. The reports are insufficient to establish appellant's claim.

In a November 29, 1998 report, Dr. Herman diagnosed a herniated disc at L3-4. He failed to provide an opinion on causal relationship. Therefore, the report is insufficient to establish appellant's claim. Also, in a December 8, 1998 report, Dr. Herman diagnosed herniated disc, but provided no opinion on causal relationship. In a November 3, 1998 operative report, Dr. Herman diagnosed herniated disc, but failed to address a causal relationship between the condition and the factors of employment to which appellant attributed his condition.

In a November 3, 1998 surgical pathology report, Dr Erwin B. Clahassey diagnosed lumbar spine intervertebral disc material. He failed to address a causal relationship between the diagnosed condition and the factor of employment identified by appellant. The report is insufficient to establish appellant's claim.

In an October 29, 1998 report and October 29, 1998 updated report, Dr. Herman diagnosed disc herniation as confirmed by the MRI. He failed to provide a history of injury or to causally relating the diagnosed condition to the factors, *i.e.*, bending and twisting and repetitive turning, identified by appellant. The report is insufficient to establish appellant's claim.

In an October 27, 1998 radiology report, Dr. L. Cheung interpreted an MRI of the lumbar spine to reveal a herniated disc at L3-4. He failed to address a causal relationship between the condition and the factors of employment identified by appellant.

In an April 27, 1999 report, Dr. Herman stated:

"I have also discussed with [appellant] the onset of this injury. In consideration of the mechanism of injury, [appellant] states that his pain began at work on a Saturday and that he was unable to clearly report this to a doctor until one or two days later. Based on his history, it would appear that this was related to his work."

Dr. Herman failed to provide a rationalized opinion on a causal relationship between appellant's condition and factors of his employment. The report is insufficient to establish appellant's claim.

October 20, 1998 Veterans Administration Medical Center notes are difficult to read, but mostly discuss a blood work-up. The notes failed to address a causal relationship between a diagnosed condition and the factors of employment to which appellant attributed his herniated disc. The notes are insufficient to establish appellant's claim.

The medical evidence fails to provide a rationalized medical opinion explaining how the identified factors of appellant's employment would cause or aggravate the herniated disc condition. None of the physicians explained the anatomical process by which appellant's work duties would cause or contribute to his herniated disc.

The Board finds that the evidence of record is insufficient to meet appellant's burden of proof in his occupational disease claim.

The Board notes that the record also contains statements from appellant alleging that he experience a specific incident on October 17, 1998 of picking up a tray of magazines and turning to put the tray in his jeep when he heard a pop and felt a warm feeling in his back. Appellant has alleged that the incident on October 17, 1998 caused his herniated disc and necessity for surgery. In the October 14, 1999 decision, the hearing representative advised appellant that he could file a Form CA-1, notice of traumatic injury. As this aspect of the claim is in an interlocutory position, it is not before the Board on this appeal.⁵

The decisions dated February 10, 2000 and October 14, 1999 of the Office of Workers' Compensation Programs are affirmed.

⁵ See 20 C.F.R. § 501.2(c).

Dated, Washington, DC
October 9, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member