

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY D. WOODSON and U.S. POSTAL SERVICE,
POST OFFICE, Sandston, VA

*Docket No. 02-931; Submitted on the Record;
Issued August 15, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
COLLEEN DUFFY KIKO

The issues are: (1) whether appellant met his burden of proof in establishing that he developed a back condition due to factors of federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On October 26, 2000 appellant, then a 36-year-old mailhandler, filed a notice of occupational disease alleging that he had pain in his lower back and tingling and pain in his left leg as a result of his federal employment. He submitted an October 30, 2000 report from Dr. Michael K. Kyles, a Board-certified orthopedic surgeon, stating that appellant's medical history "sounds and is typical of" degenerative disc processes with potential herniation status. He also submitted a November 10, 2000 report from his attending physician, Dr. Joseph Andriano, diagnosing him with lumbosacral strain. He noted that x-rays performed on October 30, 2000 showed some degenerative disc disease. In a November 27, 2000 report, Dr. Andriano diagnosed appellant with LS strain with radiculopathy. A magnetic resonance imaging (MRI) scan performed on November 29, 2000 was negative. In a follow-up report dated December 4, 2000, Dr. Andriano indicated: "left S1 joint strain with radiculopathy and LS strain, improved."

By decision dated March 14, 2001, the Office denied appellant's claim since the evidence was not sufficient to establish fact of injury.

Appellant requested a review of the written record and submitted a March 23, 2001 report from Dr. Andriano stating: "I have reviewed the claim for [appellant] and in the best of my medical knowledge believe that this was secondary to a work-related injury."

By decision dated July 5, 2001, the hearing representative affirmed the Office's March 14, 2001 decision.

By letter dated August 2, 2001, appellant requested reconsideration and submitted a July 30, 2001 report from Dr. Andriano.

In a nonmerit decision dated November 7, 2001, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to meet his burden of proof in establishing that he developed a lower back condition due to factors of his 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 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 the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In this case, appellant attributed his lower back condition to heavy lifting, pushing and pulling on a regular basis for eight hours per day. In support of his claim, he submitted medical reports from Dr. Andriano diagnosing him with lumbosacral strain. Therefore appellant has both established a medical condition and identified the employment factors to which he attributed his condition.

Appellant also submitted medical and x-ray reports from Dr. Kyles diagnosing him with mild degenerative disc disease. However, neither Dr. Andriano nor Dr. Kyles provided a rationalized medical opinion on the causal relationship between appellant's diagnosed lower back condition and his employment factors. Dr. Kyles stated that to "the best of his medical knowledge" he believed appellant's condition was secondary to a work-related injury. He did not provide medical rationale to support his statement. The Board has found that a conclusory statement without supporting rationale is of little probative value and insufficient to discharge appellant's burden of proof.² The medical evidence required is rationalized medical opinion evidence showing a causal relationship between the claimed condition and identified factors.³ As neither Dr. Andriano nor any other physician provided a rationalized medical opinion on the causal relationship between appellant's diagnosed lumbosacral strain and his employment factors, appellant has failed to submit the necessary medical evidence to meet his burden of proof. The Board also notes that the MRI performed on November 29, 2000 was normal. As appellant did not meet his burden of proof the Office properly denied his claim.

¹ *Haydee Martinez*, (Docket No. 01-833, issued October 29, 2001).

² *Marilyn D. Polk*, 44 ECAB 673 (1993).

³ *Supra* note 1.

The Board also finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review, section 10.606 provides that a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and setting forth arguments or submitting evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁴ When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.⁵

In support of his August 2, 2001 request for reconsideration, appellant submitted a July 30, 2001 report from Dr. Andriano. The Board finds that Dr. Andriano's report is almost identical to the March 23, 2001 report already contained in the record. As such it is cumulative. Appellant also did not show that the Office erroneously applied or interpreted a specific point of law or advance a new legal argument not previously considered by the Office. As appellant failed to meet at least one of the above standards required for a merit review, the Office properly denied his request.

The decisions of the Office of Workers' Compensation Programs dated November 7, July 5 and March 14, 2001 are hereby affirmed.

Dated, Washington, DC
August 15, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

⁴ 20 C.F.R. § 10.606(a). *See generally* 5 U.S.C. § 8128.

⁵ 20 C.F.R. § 10.608(a).