

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARC S. LOVE and U.S. POSTAL SERVICE,
VEHICLE MAINTENANCE FACILITY, Detroit, MI

*Docket No. 01-1983; Submitted on the Record;
Issued December 24, 2002*

DECISION and ORDER

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

The issue is whether appellant has established that his claimed condition is causally related to factors of his employment.

On May 18, 2000 appellant, then a 40-year-old maintenance vehicle operator, filed a notice of traumatic injury (Form CA-1) alleging that he injured his right arm, right hand, left leg and lower back on that date.¹

In a May 18, 2000 report,² appellant was diagnosed with right lower arm pain, left leg pain and lower back pain, which occurred while he was unloading a truck.

In a report dated May 18, 2000, Dr. Mohamed Al-Jarrah, an attending Board-certified internist, diagnosed right forearm sprain and lumbosacral sprain. Dr. Al-Jarrah related that the injury occurred when appellant "was lifting a heavy container" and "he had to stop suddenly while he was holding this container to avoid striking another employee who was in his way." Physical examination stated:

"[N]o numbness or tingling in his lower extremities or his upper extremities. There was tenderness and swelling of his right forearm. He was able to move his wrist and hand normally, but he was not able to do supination and pronation normally of his right forearm. Also, he was not able to do full flexion of his right elbow."

Dr. Al-Jarrah also noted that normal range of motion in the right shoulder with no limitation and tenderness in his back over the L4-5 area. The physician released appellant to

¹ This was assigned claim number 09-0467850.

² The physician's signature is illegible.

work with restrictions on “no extra bending, pushing or pulling,” he was not to use his right arm and no lifting more than 15 pounds.

By letter dated July 24, 2000, the Office of Workers’ Compensation Programs informed appellant that the evidence was insufficient to support his claim that he sustained an injury on May 18, 2000 as alleged. The Office noted that the discrepancies in how the injury occurred and advised appellant regarding the type of factual and medical evidence required to support his claim.

In a memorandum of conference August 22, 2000, appellant detailed the history of his injury and noted that he initially sustained an injury to his right shoulder when Margo Sealie tripped him on March 29, 2000. Appellant related sustaining an injury on March 29, 2000 while transporting mail which required that he unload the truck and load other mail back onto the truck. During loading of the truck, appellant “was pushing a bulk mail container (BMC), which weighed approximately two thousand (2,000) pounds” and that this weight caused appellant to hyperextend his right arm backwards. Appellant noted that he had not reported this incident, but attributed his condition to his regular duties of pushing equipment which continued to aggravate his injury. He related his condition continued to worsen so that on May 18, 2000 it was so severe that he was unable to lift his right arm.

In an August 29, 2000 report, Dr. Wook Kim, a treating Board-certified physiatrist, diagnosed pain in the neck, right shoulder, right elbow and left wrist as well as low back pain radiating to appellant’s legs. Dr. Kim noted the history of the injury as starting on March 29, 2000 when appellant “was loading a 2000-pound container” and he had his knee pushed from behind, which caused him to lose his balance. He noted that appellant “was working with difficulty and pain until May 18, 2000, when he was reinjured while working.” A physical examination revealed weakness in the shoulder girdle, “severe muscle spasm, rigidity and tenderness along the lower cervical and upper thoracic areas, especially the trapezius area on the right.” The physician also related appellant’s “range of motion of the neck is quite limited especially lateral bending and some rotation to the left.” Regarding his upper extremities, the physician noted “weakness of the shoulder girdle” and “severe muscle spasm, rigidity and tenderness along the lower cervical and upper thoracic areas, especially the trapezius area on the right,” and painful external rotation of the right shoulder.

By decision dated September 27, 2000, the Office denied appellant’s claim on the basis that he failed to establish that his condition was causally related to his employment.

In a letter dated May 8, 2001, appellant requested reconsideration and submitted evidence in support of his request. Evidence submitted included reports dated January 19 and February 7, 2001 by Dr. Shlomo Mandel, an attending physician Board-certified in internal medicine and preventive medicine, a January 30, 2001 bone scan, a March 9, 2001 magnetic resonance imaging scan test, an August 29, 2000 report by Dr. Kim, a May 18, 2000 work status report, a July 14, 2000 letter from Calvin Snead, a union representative and the Office September 27, 2000 decision.

Dr. Mandel, in his January 19, 2001 report, diagnosed bilateral arm pain. He noted that appellant related March 30, 2000, as the initial injury date and that appellant “noticed numbness

in the arm on May 18, [2000].” He attributed appellant’s bilateral arm pain to his work-related injury based upon his medical history and electromyogram testing.

In his February 7, 2001 report, Dr. Mandel related that a bone scan revealed evidence of degenerative changes, along with a focal area of uptake, consistent with accessory ossification center.

On June 26, 2001 the Office denied modification of the September 27, 2000 decision.

The Board finds that this case is not in posture for a decision.

An employee seeking benefits under the Federal Employees’ Compensation Act 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 an 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.³ An employee seeking compensation has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.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. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁵

In the instant case, Dr. Al-Jarrah, in his May 18, 2000 report, attributed appellant’s right forearm sprain and lumbosacral sprain to his May 18, 2000 employment injury. Dr. Kim noted that appellant had injured himself on March 29, 2002 and was reinjured on May 18, 2000 while working. Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁶ In this case, although none of appellant’s treating physician’s reports contain rationale sufficient to discharge

³ *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002).

⁴ *Thomas M. Petroski*, 53 ECAB ____ (Docket No. 01-1667, issued April 5, 2002).

⁵ *Patricia J. Glenn*, 53 ECAB ____ (Docket No. 01-65, issued October 12, 2001).

⁶ *William J. Cantrell*, 34 ECAB 1233 (1983).

his burden of proving by the weight of reliable, substantial and probative evidence that he sustained an injury causally related to the May 18, 2000 traumatic incident, as well as the March 29, 2000 incident, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between his injuring his right arm, hand, left leg and lower back while unloading a truck and including his employment duties of pushing and pulling heavy equipment as early as March 29, 2000 and subsequent noted symptoms. The evidence is sufficient to require further development of the case record by the Office.⁷ There is no opposing medical evidence in the record.

The case will be remanded to the Office for the creation of a statement of accepted facts, questions to be resolved and the relevant case records, to be followed by a referral to an appropriate physician for a rationalized opinion on whether appellant's condition is causally related to his May 18, 2000 employment injury.

The June 26, 2001 and September 27, 2000 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
December 24, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁷ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).