

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH R. EVANS and U.S. POSTAL SERVICE,
POST OFFICE, Orlando, FL

*Docket No. 02-1888; Submitted on the Record;
Issued December 18, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that her claimed condition is causally related to her employment.

On November 9, 2000 appellant, a 47-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that her employment aggravated her back condition. She described the nature of her condition as “vertabrar (sic) out of alignment causeing (sic) constant back pain.” In explaining the relationship between her condition and her employment, appellant stated that “lifting, bending, standing too long or sitting too long” aggravated her spondylolisthesis. She identified April 30, 2000, as the date she first became aware of her illness. Appellant further indicated that August 30, 2001 was when she first realized her illness was caused or aggravated by her employment. She ceased working August 30, 2000.

In support of her claim, appellant submitted an October 26, 2000 report from her chiropractor, Dr. Harrison R. Prater, who diagnosed retrospondylolisthesis.¹ Additionally, she submitted a November 7, 2000 magnetic resonance imaging (MRI) scan of the lumbar spine, which revealed degenerative spondylolisthesis at L4-5. The MRI scan also revealed a severe loss of disc height and disc dehydration with some minimal disc bulging at L1-2.

By decision dated January 17, 2001, the Office of Workers' Compensation Programs denied appellant's claim based upon her failure to establish that she sustained an injury as alleged.

On January 2, 2002 appellant requested reconsideration and she submitted additional medical evidence.

In a decision dated April 12, 2002, the Office modified the January 17, 2001 decision to reflect that appellant established fact of injury. The Office, however, denied the claim based on

¹ Dr. Prater also provided a September 18, 2000 disability release form outlining appellant's work restrictions.

appellant's failure to establish a causal relationship between her claimed condition and her employment.

The Board finds that appellant failed to establish that her claimed condition is causally related to her employment.

A claimant seeking compensation under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which she claims compensation is causally related to the employment injury.³ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴

Dr. A. Denise Carter, a Board-certified family practitioner specializing in sports medicine, and her colleague, Dr. Richard C. Smith, a Board-certified orthopedic surgeon, treated appellant during the period of May 2000 through December 2001. Both physicians provided their respective treatment records and medical opinions, and as previously noted, the record also includes a report from appellant's chiropractor.

In treatment notes dated May 3, 2000, Dr. Carter stated that appellant had recurrent low back pain that "seems to have been aggravated by the new seat in her mail truck." She diagnosed osteopenia and chronic low back pain, recurrent. Dr. Carter's September 11, 2000 treatment records indicated that appellant had persistent back pain since her last visit in May and that she had been seeing a chiropractor. Appellant reportedly complained of pain from her neck down to her low back. Dr. Carter further noted that appellant was able to work, but her pain increased over the course of her day and after about two and one-half days it was difficult to continue working. She stated that appellant had worked only seven weeks out of the last four months. Dr. Carter diagnosed mid and low back pain and recommended physical therapy. She also limited appellant's lifting to five pounds and advised against repetitive bending and prolonged sitting or standing.

On appellant's October 9, 2000 visit, Dr. Carter reviewed x-rays obtained from appellant's chiropractor, which revealed degenerative spondylolisthesis at L4-5. She reported that appellant was having daily pain and was unable to do her work or any activities around the house. Dr. Carter diagnosed degenerative spondylolisthesis at L4-5 and chronic mid and lower back pain. Additionally, she referred appellant for further evaluation by Dr. Smith.

In an October 26, 2000 report, Dr. Prater, appellant's chiropractor, explained that her retro-spondylolisthesis was aggravated by forward flexion, lifting weight in front of her combined

² 5 U.S.C. §§ 8101-8193.

³ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

with flexion and forward flexion with rotation. He advised that to prevent further deterioration these activities should be avoided. Dr. Prater, however, did not address what, if any, role appellant's employment played in the development of her diagnosed condition. Moreover, as a chiropractor, Dr. Prater is not considered a "physician" under the Act and, therefore, his opinion lacks probative value.⁵

Dr. Smith, a colleague of Dr. Carter's at the Florida Center for Orthopedics, initially examined appellant on November 2, 2000 and later performed surgery on June 4, 2001. In his treatment records dated November 2, 2000, Dr. Smith noted a history of lower back pain with radiation down appellant's legs for "some time." Appellant reportedly stated that her pain was "partially due to the seat in the mail truck that she [was] required to work in." Dr. Smith also noted that conservative treatment appellant received while under Dr. Carter's care resulted in little or no improvement. He performed a physical examination and reviewed prior x-rays of appellant's lumbar spine. Dr. Smith diagnosed lumbago, spondylolisthesis, lumbosacral degenerative disc and sprain/strain of the thoracic spine. He recommended continued conservative treatment and an MRI scan of the spine.

Appellant next saw Dr. Smith on November 28, 2000, at which time he reviewed her November 7, 2000 MRI scan and performed a physical examination.⁶ He noted that appellant's physical examination was unchanged from her prior visit. Regarding the recent MRI scan, Dr. Smith noted Grade I spondylolisthesis at L4 on L5 with facet atrophy and biforaminal stenosis. He also noted a loss of disc height at L1-2. Dr. Smith repeated his prior diagnoses of lumbago, spondylolisthesis and lumbosacral degenerative disc. He advised appellant that she could try to live with the pain, continue with conservative treatment or undergo surgery.

In a report dated January 23, 2001, Dr. Smith stated that appellant had low back and radicular pain as a result of a Grade I spondylolisthesis of L4 on L5 with biforaminal stenosis. He also noted quite significant disc degeneration at L2 as well as L4-5. Dr. Smith described appellant's back pain as constant and aggravated by coughing, sneezing and straining. He stated that reclining was appellant's only means of relieving her pain. Additionally, appellant experienced bilateral leg pain, which Dr. Smith stated was aggravated by extension. His physical examination revealed, among other things, tenderness to palpation with spasms at the paraspinal muscles at the lumbosacral junction. Dr. Smith reviewed appellant's job description as a rural carrier and stated that she was unable to perform those duties. Lastly, Dr. Smith indicated that he tentatively scheduled appellant for surgery in April 2001.

⁵ In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under the Act. Section 8101(2) of the Act provides that the term "'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist...." 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986). Therefore, a chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray evidence. *Kathryn Haggerty*, 45 ECAB 383 (1994). Dr. Prater's October 26, 2000 report does not include a diagnosis of subluxation. Accordingly, Dr. Prater's opinion is of no probative value as he is not considered a physician under the Act.

⁶ Dr. Donald L. Renfrew, a Board-certified radiologist, interpreted appellant's November 7, 2000 MRI scan as revealing degenerative spondylolisthesis at L4-5 and some minimal disc bulging at L1-2. Dr. Renfrew did not address the etiology of appellant's diagnosed conditions.

Appellant followed up with Dr. Smith on February 28 and March 16, 2001. Dr. Smith's treatment notes indicated that appellant's pain worsened and that she continued with conservative medical treatment while awaiting authorization for surgery. As noted on March 16, 2001, appellant reportedly could no longer live with her persistent back and radicular pain and she wanted to proceed with surgery.

Appellant saw Dr. Carter again on March 28, 2001 for a second opinion regarding surgical intervention. In a similarly dated report, Dr. Carter noted that Dr. Smith recommended surgery for appellant's painful spondylolisthesis and degenerative disc disease, as well as foraminal stenosis. Additionally, she noted that, while appellant did not have radicular symptoms when previously seen, appellant currently reported that she had experienced intermittent radicular symptoms in her left leg that became more persistent in October or November 2000. Dr. Carter also reported a more recent development of right leg symptoms. Appellant's level of pain was such that she could no longer walk upright and the prospect of working was described as "impossible." She diagnosed Grade I spondylolisthesis at L4-5, degenerative type with moderate foraminal stenosis. Dr. Carter also diagnosed sciatica and painful degenerative disc disease. She agreed that surgery should be considered.

Appellant returned to Dr. Smith for a preoperative evaluation on May 31, 2001 and she underwent surgery on June 4, 2001. Dr. Smith performed an anterior lumbar discectomy at L4-5, anterior lumbar interbody fusion at L4-5 and decompressive lumbar laminectomy at L4-5. Appellant saw Dr. Smith on four occasions following her surgery. Dr. Smith's most recent treatment notes dated November 9, 2001 indicated that appellant rated her current back and leg pain as one on a scale of ten. Lumbar x-rays obtained at the time showed a solid fusion with no postoperative complications. Dr. Smith diagnosed lumbago and status post arthrodesis. He advised that appellant continue to progress to a home exercise program, continue a no work status and continue to reduce her daily intake of Oxycontin.

In a report dated December 18, 2001, Dr. Smith stated that appellant's employment activities caused an aggravation and acceleration of preexisting degenerative disc disease, which caused her to become totally disabled from work and ultimately lead to surgery. He noted that appellant had a history of back pain but was capable of working until April, 2000, when she began suffering a worsening of symptoms. Dr. Smith further stated that "[a]t that time, due to a worsening of [appellant's] back pain and radicular symptoms, she was no longer able to perform her occupation." Additionally, he noted that "[a]ccording to [appellant], her pain worsened due to the activities she was required to do at work as a rural letter carrier, which included repetitive bending and stooping, long periods of standing, and heavy carrying." Dr. Smith added that "[t]he worsening of symptoms and objective findings are consistent with the history [appellant] gave me."

Dr. Carter did not specifically attribute appellant's back condition to her employment. In her initial treatment notes dated May 3, 2000, she reported that appellant had a history of recurrent low back pain that "seems to have been aggravated by the new seat in her mail truck." While noting the history reported by appellant, Dr. Carter did not otherwise comment on the etiology of appellant's condition. Additionally, appellant did not identify her mail truck's "new

seat” as a contributing employment factor in either her Form CA-2 or her supplemental statement received by the Office on December 11, 2000.⁷

Dr. Carter’s only other reference to appellant’s employment appeared in her September 11, 2000 treatment notes where she reported the following history: “[Appellant] is able to work but has pain that increases over the course of the day. After about two and one half days it is difficult for her to continue working.” Although noting that appellant experienced increased pain during the course of her workday, Dr. Carter did not attribute appellant’s increased pain to any specific employment factors or to appellant’s work in general. Furthermore, when Dr. Carter examined appellant on September 11, 2000, appellant had not worked for 12 days.

Dr. Carter’s treatment records are insufficient to satisfy appellant’s burden of proof as she did not specifically attribute appellant’s back condition to her employment. Moreover, her records do not reflect a thorough understanding of appellant’s employment duties. Additionally, Dr. Carter’s reference to what “seems to have been [an aggravation] by the new seat in [appellant’s] mail truck” is not consistent with the information appellant provided the Office regarding the alleged contributing employment factors.

Dr. Smith is the only physician of record who specifically attributed appellant’s condition to her employment. As previously indicated, he stated that appellant’s employment activities caused an aggravation and acceleration of preexisting degenerative disc disease, which caused her to become totally disabled from work and ultimately lead to surgery. Several factors call into question the reliability of Dr. Smith’s opinion concerning the etiology of appellant’s condition. First, Dr. Smith stated that appellant was “no longer able to perform her occupation” in April 2000 “due to a worsening of her back pain and radicular symptoms.” Contrary to Dr. Smith’s representation, appellant stated that she took a month of sick leave from May 2 to June 2, 2000 and returned to work June 5, 2000 and continued to work until August 1, 2000. Additionally, appellant stated she worked another two and one half weeks in August before finally ceasing work on August 30, 2000. Dr. Smith’s report inaccurately conveys the impression that appellant ceased work in April 2000 whereas the record clearly indicates that she continued to work intermittently for a period of four months thereafter.

Second, Dr. Smith incorrectly reported the presence of radicular symptoms in April 2000. He did not begin treating appellant until November 2, 2000. Dr. Smith’s colleague, Dr. Carter, began treating appellant on May 3, 2000 and did not report the presence of radicular symptoms at that time. Moreover, Dr. Carter stated in her March 28, 2001 report that when she last saw appellant on October 9, 2000 she did not have radicular symptoms. When appellant first saw Dr. Smith on November 2, 2000, he noted a history of lower back pain with radiation down appellant’s legs for “some time.” As evidenced by Dr. Carter’s treatment notes covering the period May 3 to October 9, 2000, the record does not support Dr. Smith’s reported history of radicular symptoms dating back to April 2000.

In his December 18, 2001 report, Dr. Smith stated that according to appellant “her pain worsened due to the activities she was required to do at work as a rural letter carrier, which included repetitive bending and stooping, long periods of standing, and heavy carrying.” He

⁷ As previously noted, appellant stated on her Form CA-2 that “lifting, bending, standing too long, or sitting too long” aggravated her spondylolisthesis.

explained that “[t]he worsening of symptoms and objective findings are consistent with the history [appellant] gave me.”

The record indicates that appellant saw Dr. Smith no less than 11 times during the period November 2, 2000 through November 9, 2001. Prior to his December 18, 2001 report, Dr. Smith made only one reference to appellant’s employment as a possible contributing factor to her condition. His November 2, 2000 treatment notes indicated that appellant stated her condition was “partially due to the seat in the mail truck that she [was] required to work in.” As previously discussed, appellant did not advise the Office that the seat in her mail truck contributed to her claimed condition.

After more than a year of treating appellant and having authored numerous prior reports, Dr. Smith for the first time on December 18, 2001 reported a work history of “repetitive bending and stooping, long periods of standing and heavy carrying.” In his opinion, these identified factors aggravated and accelerated appellant’s preexisting degenerative disc disease. Although the employment histories reported by Dr. Smith on November 2, 2000 and later on December 18, 2001 are not mutually exclusive, the absence of a consistent history of injury throughout the course of appellant’s treatment with Dr. Smith calls into question the reliability of his December 18, 2001 opinion concerning the employment-related nature of appellant’s claimed condition.

As the record does not include a rationalized medical opinion attributing appellant’s claimed condition to her employment, the Office properly denied appellant’s claim.

The April 12, 2002 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 18, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member