

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMMY LEE HARBRON and U.S. POSTAL SERVICE,
POST OFFICE, Prophetstown, IL

*Docket No. 02-1897; Submitted on the Record
Issued December 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issue is whether appellant established that her back condition was causally related to work factors.

Appellant, then a 36-year-old carrier, filed an occupational disease claim on April 8, 1999 alleging that carrying the mail and “pounding the pavement” caused stress and pain to her back and aggravated her heel spurs.¹ Appellant noted February 27, 1999 as the onset of her conditions and began working limited duty in April 1999. The Office of Workers' Compensation Programs asked appellant to submit factual and medical evidence in support of her claim.

Appellant submitted medical form reports from Dr. Kenneth Lamchick, a chiropractor, and returned to limited duty. On July 19, 1999 the Office informed appellant that she needed to submit a rationalized medical opinion and additional factual information.

On September 23, 1999 the Office accepted appellant's claim for calcaneal (heel spurs) and explained the conditions under which chiropractors are considered physicians. Appellant submitted more form reports and treatment notes from Dr. Lamchick. On October 23, 2000 the Office again explained to appellant that the reports from Dr. Lamchick were not acceptable because her accepted condition, heel spurs, was not an injury to her spine.

Appellant accepted the employing establishment's limited-duty job offer on September 26, 2000. On December 13, 2000 the Office referred appellant to Dr. Robert J. Prentice, a Board-certified orthopedic surgeon, for a second opinion. Dr. Prentice examined appellant on January 15, 2001 after she underwent a laminectomy for a herniated disc at L5-S1. He stated that he could not be certain when the disc herniated—appellant had an “apparently

¹ A November 9, 1993 report from Dr. Gregory S. Duncan, a podiatrist, discussed appellant's ongoing heel spur problem and plantar fasciitis condition.

spontaneous” onset of severe back discomfort in the fall of 1999 when she was taking a shower. Dr. Prentice added that there was no specific relationship between a February 1999 fall at work and appellant’s current back condition.

In an April 6, 2001 memorandum, the Office medical adviser concluded that appellant’s lumbar disc herniation had “nothing to do with” the accepted back condition of February 27, 1999 or any earlier back injuries from the 1990s. On April 9, 2001 the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that she sustained a work-related back condition.

Appellant requested reconsideration and submitted a letter from her attorney. By decision dated April 16, 2002, the Office denied modification of its prior denial.

The Board finds that appellant has failed to meet her burden of proof in establishing that her back condition was causally related to work factors.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his or her claim,³ including the fact that the individual is an “employee of the United States” within the meaning of the Act,⁴ that the claim was timely filed within the applicable limitation period of the Act,⁵ that an injury was sustained in the performance of duty as alleged and that any disability or condition for which compensation is claimed is causally related to the employment injury.⁶ These elements must be established regardless of whether the claim is for a traumatic injury or an occupational disease.⁷

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 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 condition or disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.⁸

² 5 U.S.C. §§ 8101-8193.

³ *Irene St. John*, 50 ECAB 521, 522 (1999).

⁴ *Barbara L. Riggs*, 50 ECAB 133, 137 (1998).

⁵ *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993).

⁶ *David M. Ibarra*, 48 ECAB 218 (1996); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Ruth Seuell*, 48 ECAB 188, 192 (1996).

⁸ *Arturo Adame*, 49 ECAB 421-24 (1998); 20 C.F.R. § 10.5(q) (defining an occupational disease or illness as “a condition produced by the work environment over a period longer than a single workday or shift.”)

Causal relationship is a medical issue⁹ and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹⁰ 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.¹¹ The mere fact that a condition manifests itself during a period of employment does not raise an inference that the condition is causally related to work factors.¹²

In this case, the record contains multiple treatment notes and medical forms from Dr. Lamchick, who diagnosed segmental dysfunction of the lumbar vertebra, aggravated by walking 11 miles a day. The Office advised appellant that these documents, dated from February 1999 through October 2000, did not constitute competent medical evidence because Dr. Lamchick was a chiropractor and chiropractors are considered physicians under the Act only for manual manipulation if a subluxation, as shown by x-ray, is shown to exist.¹³ On November 29, 1999 Dr. Lamchick diagnosed a lumbar subluxation, but submitted no x-rays to demonstrate its existence. Therefore, his medical reports and notes have no probative value in establishing appellant's claim.¹⁴

In an October 31, 2000 report, Dr. Vardges Vandian, an osteopathic practitioner, stated that appellant's electromyography (EMG) studies showed S-1 radiculopathy and an October 27, 2000 magnetic resonance imaging (MRI) scan of the lumbar spine showed normal vertebral alignment, early degenerative changes and a large herniated disc at L5-S1. Dr. Vandian noted appellant's statement that she began having back problems eight years ago, but did not comment on the cause of appellant's current back condition.

The record also contains a September 8, 1992 report from Dr. George L. York, a general practitioner, who noted that appellant had recovered from a fall on the ice in late November 1991, while delivering the mail. Dr. York stated that if appellant followed a good back care program, she should have no significant problems in the future. Dr. York's report does not address the cause of appellant's current back condition and, therefore, has no evidentiary value

⁹ *Elizabeth Stanislav*, 49 ECAB 540-41 (1998).

¹⁰ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹¹ *Gary L. Fowler*, 45 ECAB 365, (1994).

¹² *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹³ *See Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000) (the Act includes chiropractors under section 8101(2) "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 and subject to regulation by the Secretary)."

¹⁴ *See Linda Thompson*, 51 ECAB 694, 696 (2000) (finding that form reports submitted by a chiropractor had no probative value in establishing appellant's entitlement to disability compensation).

in establishing her claim. Similarly, deficient are form reports that deal with the 1992 back strain.

The second opinion physician, Dr. Prentice, discussed appellant's past back injuries but stated that the fall in February 1999 could not be linked to appellant's herniated disc shown by the MRI and EMG studies in 2000. He found no specific relationship between the fall at work and appellant's present back condition.

On reconsideration appellant's attorney submitted copies of documents already in the record and argued that her back condition was caused by several work-related falls prior to February 27, 1999 and was aggravated by that fall, gradually leading to a herniated disc. Causal relationship is a medical issue and cannot be established by legal argument.¹⁵ Therefore, the letter from appellant's attorney is insufficient to show the requisite causal relationship.

Appellant submitted insufficient medical evidence to establish that her back condition was aggravated by the 1999 fall, leading to a disc herniation in 2000. Despite the Office's advice to obtain a rationalized medical opinion in support of her claim, appellant has failed to submit the necessary medical evidence. Therefore, the Board finds that appellant has failed to meet her burden of proof to establish that her back condition was causally related to work factors.¹⁶

The April 16, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

¹⁵ *James H. Botts*, 50 ECAB 265, 271 (1999).

¹⁶ *See Michael E. Smith*, 50 ECAB 313, 316 (1999) (finding that appellant failed to submit a rationalized medical opinion on causal relationship and, therefore, did not meet her burden of proof).