

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAYMOND W. THOMAS and U.S. POSTAL SERVICE,  
POST OFFICE, Roanoke, VA

*Docket No. 01-545; Oral Argument Held May 16, 2002;  
Issued June 25, 2002*

Appearances: *Raymond W. Thomas, pro se; Julia Mankata, Esq.,  
for the Director, Office of Workers' Compensation Programs.*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained a back injury in the performance of duty.

On March 17, 1997 appellant, then a 51-year-old carrier filed an occupational disease claim<sup>1</sup> alleging that he developed a back condition causally related to his federal employment. He stated that his back condition was the result of delivering mail, sitting, turning and twisting during his federal employment. Appellant stated that he first became aware of his back injury on August 23, 1994<sup>2</sup> and noted that he first realized his condition was caused or aggravated by his employment on March 5, 1997. He stopped work on March 7, 1997 and resumed on March 25, 1997.<sup>3</sup>

In support of his claim, appellant submitted an attending physician's reports dated August 23, 1994 and April 16, 1997; treatment notes from Dr. Melvin Heiman, a Board-certified orthopedic surgeon, dated March 5 to April 16, 1997; a certificate to return to work prepared by Dr. Heiman dated March 7, 1997; several duty status reports dated August 23, 1994 to June 9, 1997 and a narrative statement. Dr. Heiman's report dated August 24, 1994 noted that appellant was injured at work on August 9, 1997 when he slipped on grass. He noted that an x-ray

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<sup>1</sup> The record indicates that the employing establishment informed the Office on July 8, 1997 that appellant changed the nature of his claim from an occupational disease claim to a traumatic injury claim.

<sup>2</sup> Appellant asserted that he filed a claim for traumatic injury, which was accepted by the Office and thereafter received compensation benefits. The record for this claim is not currently before the Board.

<sup>3</sup> The record reflects that appellant stopped work on March 31, 1997 and thereafter he left the employing establishment on a disability retirement.

revealed degenerative disc disease at L5-S1, which was preexistent. Dr. Heiman diagnosed appellant with significant S1 joint strain and lumbosacral strain and noted that he was unable to work at this time. The attending physician's report dated August 23, 1994 noted that appellant injured himself on August 9, 1994 when he slipped and fell. Dr. Heiman noted with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity. His March 5, 1997 report noted appellant's complaints of low back pain which he related to his work injury on August 23, 1994. Dr. Heiman noted that x-rays of the back show disc narrowing at L5-S1 and apophyseal joint arthritis in the L4-5, L5-S1 area consistent with appellant's complaints of pain. He diagnosed appellant with degenerative disc disease and arthritis. Dr. Heiman noted that some of appellant's condition could be related to his on-the-job-injury, as prior to that time he denied having any problems. Dr. Heiman's March 7, 1997 note indicated that appellant continued to have mechanical back pain and would be off work for one month. His March 14, 1997 note indicated that appellant was feeling better and that he was returning to work on a trial basis. Dr. Heiman's April 9, 1997 note indicated that appellant returned to work and experienced severe back pain. The certificate to return to work indicated that appellant would be off work through April 4, 1997. The attending physician's report dated April 16, 1997 noted that appellant slipped on wet grass walking to his vehicle on August 23, 1994. Dr. Heiman diagnosed appellant with mechanical low back pain and indicated with a check mark "yes" that appellant's condition was caused or aggravated by his employment activity noting appellant drove 140 miles a day and was required to lift, reach, sit, twist and turn which caused the severe pain in the low back. He noted the period of total disability from March 5, 1997 to an undetermined date. The duty status reports dated August 23, 1994 to June 9, 1997 noted various work restrictions. Appellant's narrative statement dated May 23, 1997 indicated that on March 5, 1997 he noticed pain in his back and experienced no injuries other than the August 1994 slip and fall. He noted that he turned to get a piece of mail and put it in a box and felt his back go out. Appellant indicated that he returned to the employing establishment and the postmaster had to help him out of his automobile. He indicated that he informed the postmaster on March 5, 1997 of the injury. Appellant noted that he was off work from March 5 to March 26, 1997. He noted that his physician diagnosed him with a degenerative disc resulting from the 1994 injury and a pinched nerve. Appellant indicated that the March 5, 1997 injury caused his vertebrae to shift resulting in a pinched nerve. He described in detail his job duties and his subsequent disability after March 5, 1997

In a letter dated May 19, 1997, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Appellant submitted treatment notes from Dr. Heiman dated April 16 to June 2, 1997; a magnetic resonance imaging (MRI) scan dated May 28, 1997; and a narrative statement dated May 23, 1997. His treatment notes from April 16 to June 2, 1997 indicated that appellant continued to experience mechanical back pain and would be permanently disabled from his usual job. Dr. Heiman diagnosed appellant with degenerative disc disease and arthritis of the back and noted that his duties of bending, twisting, sitting and lifting increased his symptoms. The MRI of the spine revealed a left paracentral disc protrusion at L5-S1, impinging upon the central

canal, lateral recess and the left nerve root; a small annular tear in the posterior margin of the L4-5 disc; and facet arthropathy at L3-4 and L4-5 bilaterally.

The employing establishment submitted a report from Dr. B.H. Avashia, a Board-certified internist and fitness-for-duty doctor dated June 3, 1997; and two letters from the employing establishment dated June 10 and June 12, 1997; a June 20, 1997 letter from the postmaster; and a letter of contravention dated July 8, 1997. In a report dated June 3, 1997, he noted that he reviewed Dr. Heiman's reports and concluded that the diagnosed condition of arthritis of the spine and spinal stenosis were not conditions caused by appellant's fall. Dr. Avashia noted that spinal stenosis was a congenital condition present at birth, which becomes symptomatic at the age of 35 to 40. He indicated that the routine work of a carrier was unlikely to cause spinal stenosis and spinal arthritis. The letters from the postmaster dated June 10 and June 20, 1997 indicated that appellant was on leave on March 5, 1997, the date of the alleged injury. He noted that on March 3, 1997 that appellant informed him that he was experiencing back discomfort; however, he was not notified that appellant experienced a work-related injury until May 23, 1997. The postmaster noted that on March 6, 1997 appellant advised him that he had degenerative disc disease. He noted that appellant was off work for a 30-day period beginning March 7, 1997. The postmaster further noted that the fitness-for-duty physician released appellant to work on March 26, 1997. The June 12, 1997 letter from the employing establishment and the July 8, 1997 letter of contravention noted several discrepancies in appellant's claim, including the date of injury March 5, 1997, when appellant was actually on sick leave; and the statement of the postmaster, indicating that he was unaware of appellant's injury until May 23, 1997, which was contrary to appellant's statement indicating that he informed the postmaster on March 5, 1997. The letter of contravention indicated that appellant changed his claim from an occupational disease claim to a traumatic injury claim.

On July 17, 1997 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>4</sup> The Office found that the medical evidence was not sufficient to establish that the condition was caused by the employment factor as required by the Act.<sup>5</sup>

By letter dated August 7, 1998, appellant requested reconsideration of his claim and submitted treatment notes from Dr. Heiman dated June 9 to September 22, 1997; a narrative statement dated June 18, 1997; and three witness statements. Dr. Heiman's report dated June 9, 1997 indicated that appellant was treated for back pain, which dated back to his previous injury with no indication of a new injury. He noted that, "it may be that he reached in the back of his truck and reinjured his back ... but I would not see this as a new injury simply a flare-up of his old problem." Dr. Heiman's September 22, 1997 note indicated that appellant had significant arthritic involvement of his back, which would prohibit him from doing even sedentary work. Appellant's narrative statement dated June 18, 1997 noted that the date of injury was March 4, 1997 not March 5, 1997. He noted that the incorrect date was provided to him by the postmaster. Appellant indicated that he was under stress, anxiety and on medication and did not intend to

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Id.*

provide any misinformation. The three witness statements indicate that they remembered appellant injured his back in 1994 and March 1997.

By decision dated August 24, 1998, the Office denied appellant's request for reconsideration on the grounds that it was untimely filed and the evidence failed to present clear evidence of error on behalf of the Office.

In a letter dated November 5, 1998, appellant, through his attorney, appealed to the Board. In a decision dated July 11, 2000, the Board set aside the decision of the Office dated August 24, 1998 and remanded the case for further development.<sup>6</sup>

Thereafter appellant submitted a statement from his wife and another rural carrier. His wife noted that on March 4, 1997 appellant contacted her and indicated that he had injured his back. He described to her that upon his return to the employing establishment the postmaster assisted him in getting out of his car. The other witness statement indicated that he was aware that appellant injured his back in March 1997.

By decision dated November 24, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to establish that he sustained a traumatic injury on March 4, 1997 in the performance of duty, causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act 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 limitation 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."<sup>7</sup> 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.<sup>8</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

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<sup>6</sup> On June 15, 2000 the director of the Office filed a motion requesting that the Board set aside the August 24, 1998 decision acknowledging that the Office improperly denied appellant's request for reconsideration as the request was filed within one year of the Office's July 17, 1997 decision.

<sup>7</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>8</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.<sup>9</sup> In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>10</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>11</sup> A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>12</sup>

Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>13</sup> Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,<sup>14</sup> an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.<sup>15</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>16</sup>

In the present case, appellant initially filed an occupational disease claim, alleging that he developed a back condition as a result of his employment duties including delivering mail, sitting, turning and twisting. He noted that he first realized that the condition was caused by his employment on March 5, 1997. However, in a statement dated May 23, 1997, appellant indicated that he sustained a traumatic injury on March 5, 1997, he felt his back go out when he turned to get a piece of mail and put it in a mailbox. Thereafter appellant changed his claim to a traumatic injury and indicated that the date of injury was March 4, 1997 not March 5, 1997 noting that he was given the improper date from the postmaster. The postmaster indicated that appellant was on leave March 5, 1997 and, therefore, could not have sustained a work-related

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<sup>9</sup> *Elaine Pendleton*, *supra* note 7.

<sup>10</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>12</sup> *Id.* at 255-56.

<sup>13</sup> *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

<sup>14</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>15</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>16</sup> *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

injury on that date. These inconsistencies cast serious doubt on appellant's traumatic injury claim.

The witness statements indicated that appellant was injured in March 1997 but are very general in nature. The statements do not reference a particular date in question and fail to establish that the employment-related injury occurred at the time, place and in manner alleged. Although appellant presented a duty status report from Dr. Heiman and was thereafter placed on light duty, at no time did appellant notify his supervisor that this was a work-related injury. The record indicates that on March 3, 1997 appellant informed his supervisor that he experienced back discomfort. On March 6, 1997 the supervisor was advised by appellant that he had degenerative disc disease and would be off work for 30 days. The supervisor noted that he learned that appellant was alleging a work-related injury on May 23, 1997 when appellant filed his statement. These circumstances of late notification and lack of confirmation cast serious doubt on appellant's *prima facie* claim.

The medical evidence submitted by appellant does not support that the incident of March 4, 1997 occurred as alleged. Dr. Heiman's report dated March 5, 1997 noted appellant's complaints of low back pain which appellant related to his work injury August 24, 1994. He diagnosed appellant with degenerative disc disease and arthritis. The medical records submitted most contemporaneously with the date of the alleged injury, specifically Dr. Heiman's note dated March 5, 1997, indicated that, with regard to appellant's back condition, "some of this certainly could be related to his on-the-job injury as prior to that time he denied having any problems." However, he failed to reference an injury-causing event on March 4, 1997. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.<sup>17</sup> The attending physician's report dated April 16, 1997 noted that appellant slipped on wet grass walking to his vehicle on August 23, 1994. Dr. Heiman diagnosed appellant with mechanical low back pain and indicated with a check mark "yes" that appellant's condition was caused or aggravated by his employment activity noting appellant drove 140 miles a day and his duties involved lifting, reaching, sitting, twisting and turning which caused severe pain in the low back. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>18</sup> Additionally, Dr. Heiman's reports do not support appellant's contention that he sustained a traumatic injury on March 4, 1997, rather his report dated June 9, 1997 indicated that appellant was treated for back pain which dated back to his previous injury with no indication of a new injury. Additionally, Dr. Heiman only offered speculative support for causal relationship by opining that "it may be that he reached in the back of his truck and reinjured his back ... but I

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<sup>17</sup> See *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

<sup>18</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

would not see this as a new injury, simply a flare-up of his old problem.” The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.<sup>19</sup>

The employing establishment submitted a report from Dr. Avashia, the fitness-for-duty physician dated June 3, 1997. His report noted that he reviewed Dr. Heiman’s reports and concluded that the diagnosed condition of arthritis of the spine and spinal stenosis were not conditions caused by appellant’s fall. Dr. Avashia noted that spinal stenosis was a congenital condition present at birth which becomes symptomatic at the age of 35 to 40. He indicated that the routine work of a carrier was unlikely to cause spinal stenosis and spinal arthritis, the conditions, which have caused appellant back pain.

For these reasons, the Board finds that appellant has not established that the claimed traumatic incident occurred as alleged. Consequently, he has not met his burden of proof in establishing his claim.

However, the Board notes that the medical evidence indicates that appellant may possibly have developed an occupational disease causally related to his accepted August 23, 1994 injury. The Board references the medical reports of Dr. Heiman which indicate that appellant’s employment duties caused him low back condition over a period of time and noted that appellant experienced no injuries other than the August 1994 slip and fall. However, the Board notes that the record regarding the other employment injuries is not before the Board on the present appeal.<sup>20</sup>

As the Office did not develop the occupational disease claim, the Board will remand the case to the Office for consolidation<sup>21</sup> of Office files for the previously accepted claim to be followed by a *de novo* decision on the merits of the claim.

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<sup>19</sup> Speculative and equivocal medical opinions regarding causal relationship have no probative value; *see Alberta S. Williamson*, 47 ECAB 569 (1996); *Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Paul E. Davis*, 30 ECAB 461 (1979).

<sup>20</sup> Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. *See generally* 20 C.F.R. § 10.5(ee). Occupational disease or illness is defined by 20 C.F.R. § 10.5(q) as “a condition produced by the work environment over a period longer than a single workday or shift.”

<sup>21</sup> Federal (FECA) Procedure Manual, Part 2 -- File Maintenance and Management, *Doubling Case Files*, Chapter 2.40000.8(c)(2-00) (February 2000).

The decision of the Office of Workers' Compensation Programs dated November 24, 2000 is affirmed in part and set aside and remanded in part for further proceedings consistent with this decision of the Board.

Dated, Washington, DC  
June 25, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member