

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARNOLD M. MONETT and U.S. POSTAL SERVICE,
POST OFFICE, Norwood, MA

*Docket No. 01-1268; Submitted on the Record;
Issued June 10, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that his alleged lower back condition was sustained in the performance of duty.

On February 14, 2000 appellant, a 54-year-old distribution clerk, filed a Form CA-2 claim for benefits, alleging that he had developed an L4 disc condition causally related to factors of his employment. He stated on the form that he first became aware of this condition on March 17, 1982, the date he sustained an accepted, employment-related lumbosacral strain injury. Following this injury, appellant missed work for intermittent periods and the Office of Workers' Compensation Programs paid him appropriate compensation. He returned to limited duty as a clerk on January 11, 1983 and accepted employment as a modified distribution clerk in March 1988.¹

In support of the instant claim, appellant submitted three reports from Dr. Mark Reichard, his treating physician and a Board-certified orthopedic surgeon. In a report dated December 22, 1999, he stated that since his 1982 work injury appellant has had chronic aching in his lower back which limits him from bending, lifting and remaining in a sustained posture for any length of time. Dr. Reichard noted that appellant had returned to modified work for eight hours per day as a dispatcher on a restricted work schedule, which allowed him to work while seated in a chair with back support and to alternate sitting and standing. Appellant was not required to lift more than 10 pounds or engage in any heavy pushing or pulling in this job. Dr. Reichard stated:

“I think [appellant] clearly has ongoing chronic low back pain which in the past has been attributed to work[-]related injuries and there is no apparent reason to change that. He has limitations which are consistent with the restrictions on this work and I think they should be continued. I am filling out a work assignment

¹ By decision dated March 30, 1991, the Office found that appellant no longer had residuals from his March 17, 1982 work injury.

restrictions paper for [appellant] and I think that he should continue on this permanent partial disability under workmen's compensation, in the same job description he is currently doing at [the employing establishment].”

In a January 18, 2000 report, Dr. Reichard stated that his former associate, Dr. Phillip Bolton, a Board-certified orthopedic surgeon, who had treated appellant for his 1981 injury until his retirement in 1994, had advised that appellant was permanently disabled from his date-of-injury job as letter carrier and had outlined restrictions from which the employing establishment had located his current job, which enabled appellant to continue working. Dr. Reichard noted that he had reevaluated appellant on December 22, 1999, at which time appellant may have been suffering from chronic low back pain due to disc degeneration stemming from his 1981 injury. He reiterated that appellant was able to work at his current modified job as a dispatcher for eight hours per day.

In a February 7, 2000 report, Dr. Reichard advised that appellant's back pain began when he suffered repeated stresses to his back lifting mailboxes. He stated that appellant had some previous troubles with his back while serving in the military but none of these immediately preceded his injuries at the employing establishment. Dr. Reichard asserted that appellant suffered from chronic low back strain superimposed on some mild degenerative disc disease of the lumbar spine. He stated:

“[Appellant] has been evaluated adequately in the past with x-ray and [computerized axial tomography] CAT scan examination and I feel no other diagnostic tests are necessary at this time.

“He suffers from chronic low back strain, superimposed on some mild degenerative disc disease of the lumbar spine. His clinical course is that of being chronically disabled with no worsening or improving of his symptoms over an extended period of time.

“The current plan of treatment for [appellant] is to have him continue working on a restricted basis and simply do stretching exercises on his own.

“The basis of my opinion of this problem being connected to his employ is simply the history given that he was well in the immediate period of time prior to doing lifting activities for [the employing establishment]. While doing his lifting he had immediate onset of pain in his lower back which is persistent to the present time.

“I think this clearly delineates association between the two. On that basis I think he should continue in his current restricted work schedule....”

By letter dated March 17, 2000, the Office advised appellant that he needed to submit additional factual and medical evidence in order to establish his entitlement to benefits. The Office specifically asked appellant to submit a medical report from his treating physician describing the cause of his condition and an opinion as to whether specific employment factors at his employing establishment caused or contributed to her conditions.

Appellant submitted medical records documenting his history of treatment for lower back pain by Drs. Bolton and Reichard, which related back to the date of injury, March 17, 1981 and continued until December 22, 1999. In addition, appellant submitted a handwritten statement, received by the Office on April 7, 2000, in which he summarized his history of low back pain since the March 17, 1981 work injury but did not indicate how factors of his employment had resulted in an occupational condition as of February 14, 2000.

By decision dated May 25, 2000, the Office denied appellant's claim on the grounds that the claimed medical conditions were not causally related to specific factors or incidents of employment.

In an undated letter, appellant requested a review of the written record.

By decision dated October 23, 2000, an Office hearing representative affirmed the May 25, 2000 Office decision.

In a letter received by the Office on December 11, 2000, appellant requested reconsideration. He submitted a November 6, 2000 report from Dr. Reichard, who indicated that appellant was able to continue working because he was performing a job chosen based on the restrictions stemming from his original 1981 work injury. Dr. Reichard further stated that despite appellant's success in maintaining a work schedule, he still lived with pain. He added that although appellant had not developed any neurological symptoms in his lower extremities, he had limitations in flexion and extension in his lower back which permanently constrict his lifestyle.

By decision dated March 9, 2001, the Office denied reconsideration.

The Board finds that appellant did not meet his burden of proof to establish that his claimed lower back condition was sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 medical evidence required to establish causal relationship is usually rationalized medical evidence. 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. 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.⁵

In this case, the only medical evidence bearing on causal relationship consisted of Dr. Reichard's medical reports, which did not provide a rationalized probative medical opinion indicating that appellant's low back condition was causally related to employment factors. He opined in his December 22, 1999 report that appellant had sustained disability due to his accepted 1982 lower back injury and that he has since worked at a modified job as a distribution clerk for eight hours per day, within the restrictions stemming from the 1982 work injury. Dr. Reichard stated in his February 7, 2000 opinion, that appellant has had chronic low back pain, ever since his 1982 work injury, superimposed on mild degenerative disc disease of the lumbar spine and opined that appellant would continue to be chronically disabled with no worsening or improving of his symptoms over an extended period of time. He noted in all of his reports that the prognosis for appellant in the foreseeable future was for him to continue working on a restricted basis and that he was able to perform stretching exercises on his own. Dr. Reichard felt that appellant required no additional diagnostic tests, as his condition was stable and permanent. In his November 6, 2000 report, Dr. Reichard essentially reiterated his previous findings and conclusions, although he stated that despite appellant's success in maintaining a work schedule, he still lived with pain and noted that despite the fact that he had not developed any neurological symptoms in his lower extremities, he had limitations in flexion and extension in his lower back which permanently restricted his lifestyle.

Dr. Reichard's reports merely indicate that appellant has continued lower back pain resulting from his traumatic back injury in March 1982, for which the Office has already paid him compensation and that he continues to work for eight hours per day at the modified distribution clerk job, which was selected based on the restrictions stemming from the 1982 work injury. Dr. Reichard has not, however, submitted a probative, rationalized medical opinion establishing appellant sustained a low back condition causally related to factors of his employment as of February 14, 2000.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is

⁵ *Id.*

sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish his claim; however, appellant failed to submit such evidence. Dr. Reichard's opinion on causal relationship is of limited probative value in that it did not provide adequate medical rationale in support of his conclusion that appellant's low back condition was causally related to factors of his employment.⁷ He did not explain the process through which factors of appellant's employment would have caused the claimed back condition. Moreover, his opinion is of limited probative value in that it only stated summarily that appellant's condition is causally related to his employment duties and that his symptoms appeared to be employment related.

Accordingly, as the record contains no probative, rationalized medical evidence establishing a causal relationship between appellant's claimed condition and factors or incidents of employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated March 9, 2001 and October 23 and May 25, 2000 are hereby affirmed.

Dated, Washington, DC
June 10, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *See Id.*

⁷ *William C. Thomas*, 45 ECAB 591 (1994).