

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT G. WILLIS and U.S. POSTAL SERVICE,  
POST OFFICE, Newark, NJ

*Docket No. 01-1716; Submitted on the Record;  
Issued March 11, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty as alleged.

The case is on appeal to the Board for the second time.<sup>1</sup> In the first appeal, the Board found that appellant did not establish that he sustained an injury in the performance of duty as alleged and, therefore, affirmed the Office's April 27 and July 7, 1998 decisions. The Board, found, however, that the Office of Workers' Compensation Programs erred in failing to consider the medical report of appellant's treating physician, Dr. Morton Farber, a Board-certified orthopedic surgeon, dated September 16, 1998 in its February 2, 1999 decision denying appellant's request for reconsideration. The Board, therefore, set aside the Office's February 2, 1999 decision and remanded the Office to make appropriate findings on Dr. Farber's report.

In his September 16, 1998 report, Dr. Farber stated that he first saw appellant on April 8, 1997. Dr. Farber stated that appellant began to have pains on and off in 1993 and considered the nature of appellant's work, *i.e.*, that he drove a truck and had to pull big mail carts, which could weigh up to 600 pounds. He stated that when he saw appellant on October 30, 1997 he had a positive straight leg raising test and Dr. Farber recommended a magnetic resonance imaging scan. He stated that on January 5, 1998 he noted spondylolisthesis at L4-5, which was degenerative and was "probably" worse since the Department of Veterans Affairs reports. Dr. Farber stated that on July 28, 1998 appellant had spondylolisthesis at L4-5 with a slip and "probably pseudo-spondylolisthesis secondary to changes induced by hard work." He stated that appellant's condition was permanent with resultant functional limitation and disability. Dr. Farber concluded that appellant had spondylolisthesis and degenerative disc disease, which was work related "due to several incidents at work."

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<sup>1</sup> Docket No. 99-1320 (issued September 25, 2000). The facts and history surrounding the prior appeal are set forth in the initial decision and are hereby incorporated by reference.

By decision dated November 17, 2000, the Office denied appellant's claim, stating that the medical evidence did not establish that he sustained an injury in the performance of duty as alleged.

By letter dated November 27, 2000, the Office requested reconsideration of the Office's decision and submitted additional evidence consisting of the Department of Veterans Affairs medical records dated from September 5 through November 2, 1996, Dr. Farber's September 16, 1998 report and appellant's statement dated December 27, 1996, explaining the nature of his work, how his back pain began, the nature of the pain, the negative effect of his medication on his work performance and other injuries he sustained. Appellant's attorney stated that the date of appellant's accident should be changed from November 20, 1993 to October 1996 and the Office should review Dr. Farber's September 16, 1998 report in light of the corrected date of the accident.

By decision dated January 30, 2001, the Office denied appellant's request for reconsideration.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty as alleged.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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, generally, is 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 appellant'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 appellant.<sup>2</sup>

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.<sup>3</sup>

In this case, the Department of Veterans Affairs medical reports dated from September 5 through November 2, 1996 and appellant's December 27, 1996 statement were contained in the

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<sup>2</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>3</sup> *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

record and previously considered by the Board and the Office. Although appellant requested that the date of the accident which he listed in his claim as December 30, 1994, be changed to October 1996, he did not provide any valid reason for the change other than that he was performing heavy work at his job in that month. Further, an alternate accident date would not change the probative value of Dr. Farber's opinion. Dr. Farber's September 16, 1998 report, in which he stated that appellant's spondylolisthesis and degenerative disc disease were due to "several incidents at work" is vague and general as it does not describe specific incidents which caused appellant's condition and does not provide a rationalized medical explanation explaining how the incidents caused appellant's condition. The Board has held that a medical opinion which fails to state the specific employment factors which caused appellant's condition is of limited probative value.<sup>4</sup> Similarly, Dr. Farber's opinion that appellant "probably had pseudo-spondylolisthesis secondary to changes induced by hard work" is speculative and also does not address specific factors of appellant's employment.<sup>5</sup> Dr. Farber's September 16, 1998 report, therefore, does not establish that appellant's back condition arose from his employment. The other evidence appellant submitted consisting of his December 27, 1996 statement and the Department of Veterans Affairs medical documents also do not establish causation. Appellant has failed to establish his claim.

The January 30, 2001 and November 17, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
March 11, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>4</sup> See *Judith A. Peot*, 46 ECAB 1036, 1042-43 (1995).

<sup>5</sup> See *Wendell D. Harrell*, 49 ECAB 289-91 (1998).