

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GINO MARTINEZ and U.S. POSTAL SERVICE,
POST OFFICE, Metairie, LA

*Docket No. 01-1954; Submitted on the Record;
Issued May 6, 2002*

DECISION and ORDER

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

The issue is whether appellant has established that his back condition is causally related to factors of his employment.

On March 1, 1999 appellant, then a 36-year-old letter carrier, stated that an automobile accident in September 1983 resulted in a fracture of his left tibia and fibula. He noted that the healing of the fracture resulting in a shortening of his leg, which he did not realize. Appellant indicated that he began working for the employing establishment in February 1988. After six to seven years, he developed lower back pain when delivering mail. Appellant reported that he had degenerative disc disease of the lumbar spine and early degenerative joint disease of the left ankle.

In a July 26, 1999 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he had not established his condition was caused by factors of his employment. Appellant requested a hearing before an Office hearing representative, which was conducted on January 26, 2000. In an April 6, 2000 decision, the Office hearing representative stated that the medical evidence of record did not contain a report from a physician who demonstrated knowledge of appellant's accepted employment factors, provided a definitive diagnosis of appellant's condition and gave a unequivocal opinion, supported by medical rationale, on the causal relationship between appellant's injury and the factors of his employment. In a May 18, 2000 letter, appellant submitted additional medical evidence and requested reconsideration. In an October 20, 2000 merit decision, the Office denied appellant's request for modification of the prior decision. Appellant again requested reconsideration. In a January 24, 2001 merit decision, the Office again denied appellant's request for reconsideration. Appellant submitted additional medical evidence and another request for reconsideration. In a May 15, 2001 merit decision, the Office denied appellant's request for modification of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that his back condition was causally related to factors of his employment.

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;¹ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;² 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.³ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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,⁴ must be one of reasonable medical certainty⁵ 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.⁶

In a January 20, 1999 report, Dr. Roy Marrero, an orthopedic surgeon, noted that appellant developed low back pain four to five years after he was hit by a car in 1983. He diagnosed degenerative disc disease of the lumbar spine, early degenerative joint disease of the left ankle due to the fractures of the tibia and fibula and shortening of the left leg due to the fractures of the left leg. Dr. Marrero noted that appellant was working as a mailman and seemed to be doing well. In a June 7, 1999 report, he commented that wage-earning capacity was working as a postman but did not deliver mail. Dr. Marrero indicated that delivering mail seemed to generate the back pain. This statement was equivocal and, therefore, had limited probative value.

In a May 3, 1999 report, Dr. Douglas Swift, Board-certified in preventive medicine, stated that appellant was not capable of performing the duties of a letter carrier due to his ability to only walk occasionally. He noted that the restriction was permanent.

In a March 4, 1999 note, Dr. Nancy Neely, a Board-certified internist, stated that appellant had lumbar strain secondary to leg shortening. In a June 15, 1999 report, Dr. Neely stated that appellant's low back pain was likely exacerbated by the shortening of his left leg in 1982. She commented that lifting heavy loads could contribute to his symptoms. In a February 17, 2000 report, Dr. Neely indicated that appellant's left leg was ½ inch shorter than his right leg due to the fractures of the tibia and fibula. She reported that appellant had a diagnosis

¹ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

³ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

of lumbar strain at several examinations she conducted in the prior three years, most likely caused by the limb length discrepancy. Dr. Neely stated that walking 3½ hours daily with 35-pound loads could exacerbate the lumbar strain. Her reports, particularly the February 17, 2000 reports, are speculative on whether appellant's work as a letter carrier contributed to back condition. The reports, therefore, have little probative value and are insufficient to establish that appellant's condition was causally related to his employment.

In an April 28, 2000 report, Dr. Daniel J. Gallagher, an orthopedic surgeon, noted that appellant was a letter carrier and commented that carrying the mail aggravated his back pain. He stated that a magnetic resonance imaging (MRI) scan showed significant degenerative disc disease at L3-4 with no nerve impingement. Dr. Gallagher indicated that appellant had chronic low back pain due to degenerative disc disease. He noted that the leg length discrepancy contributed to the chronic back pain and progression of the degenerative disc disease. Dr. Gallagher recommended that appellant be placed on permanent light duty. In a March 30, 2001 report, he stated that carrying heavy satchels and walking approximately three hours a day with unequal leg lengths had aggravated and exacerbated appellant's degenerative disc disease. Dr. Gallagher indicated that the aggravation had caused appellant to be unable to continue his work as a letter carrier. He stated that appellant would be unable to carry heavy satchels of postal bags due to the increased low back pain that the carrying caused. Dr. Gallagher did relate appellant's back condition to his employment. However, he gave no rationale explaining how appellant's persistent back pain and lumbar symptoms could have been caused by the heavy lifting and walking associated with his duties as a letter carrier two years after he had stopped the walking route. Dr. Gallagher's March 30, 2001 report, therefore, has limited probative value and is insufficient to satisfy appellant's burden of proof.

The decisions of the Office of Workers' Compensation Programs, dated May 15, January 24, 2001 and October 20, 2000, are hereby affirmed.

Dated, Washington, DC
May 6, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member