

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIDGETTE A. SANDOVAL and U.S. POSTAL SERVICE,
DISTRIBUTION & BULK MAIL CENTER. Denver, CO

*Docket No. 02-19; Submitted on the Record;
Issued May 8, 2002*

DECISION and ORDER

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

The issue is whether appellant sustained an injury to his back in the performance of duty.

On February 6, 2001 appellant, then a 33-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she suffered from Grade I spondylolisthesis of the L5 on S1 as a result of the duties of her federal employment. In a personal statement submitted with her claim, appellant stated that, when she returned to her position as a distribution clerk in March 2000, after one and one half years off, she began to experience pain in her lower back, which started in the middle of April 2000 and that she sporadically missed work due to back pain. She stated that her condition was aggravated by standing and lifting heavy parcels and also mentioned stress caused by her continued worries about her job at the employing establishment. Appellant noted that she was terminated in August 1998 and received her job back through arbitration and returned to work in March 2000.

By letter dated February 7, 2001, the employing establishment controverted appellant's claim. Specifically, the employing establishment noted that appellant stated that she first realized her back injury was related to her employment on April 18, 2000. However, the employing establishment noted that appellant returned to work in late March 2000 after being off approximately one and one-half years, that she did not request light duty and that her work does not require her to do heavy lifting.

A January 24, 2001 lumbar spine series by Dr. Jeffrey S. Moulton, a Board-certified radiologist, dated January 23, 2001 was interpreted as showing "Grade I spondylolisthesis of L5 on S1."

In an October 13, 2000 report, Dr. C.J. Tsamasfyros, a Board-certified family practitioner, diagnosed appellant as suffering from a lumbosacral sprain, depression from pain and inability to work and function, sacroilitis and spondylolisthesis L5-S1. On a form provided by the employing establishment dated October 13, 2000, Dr. Tsamasfyros indicated that appellant should not lift more than 15 pounds, that standing and walking should be limited to

three hours a day, that she should not operate a motor vehicle on the job, stoop, bend, twist, reach above her head, be exposed to inclement weather or work above ground level. Appellant was further limited to working six hours per day and was prohibited from pulling or pushing more than 35 pounds. In a similar form dated January 19, 2001, Dr. Mark Engelstad, a Board-certified family practitioner, placed similar restrictions on appellant. He also diagnosed appellant as suffering from lumbosacral sprain and spasm and severe iliac dysfunction. In a report dated January 25, 2001, Dr. Tsamasfyros indicated that appellant's pain was greatly aggravated by her work.

By decision dated May 15, 2001, the Office of Workers' Compensation Programs denied appellant's claim, finding that she failed to establish that her medical condition was caused by his employment.

By letter dated August 8, 2001, appellant requested reconsideration of the May 15, 2001 decision. In support thereof, she submitted responses to questions by the Office wherein she indicated that she hurt her back while lifting between 40 to 50 pounds and that she never had any back problems prior to this incident. Appellant indicated that she worked until September 20, 2000 when she could no longer work because of her severe back pain. She stated that she can "no longer perform [her] job duties without strict restrictions lifting, standing, sitting, pulling and pushing, without injuring [her] back."

Appellant also submitted medical reports by Dr. John P. Smith, an orthopedic surgeon. In a report dated April 30, 2001, he limited appellant to sedentary work for four hours per day for four weeks. In an attending physician's report dated May 9, 2001, Dr. Smith diagnosed appellant as suffering from spondylolisthesis L5-S1. In response to the question, "[d]o you believe the condition found was caused or aggravated by an employment activity? (Please explain answer)," Dr. Smith checked the box marked "yes" and stated, "[appellant] [is] unable to bend, lift, stoop or prolong standing." In a medical report dated July 23, 2001, Dr. Smith indicated that he initially saw appellant on February 14, 2001 when she complained of having pain since she returned back to work after her back injury in March 2000. He noted that appellant indicated that heavy lifting produces moderate low back pain. Dr. Smith also noted that appellant told him that her initial date of injury was April 12, 2000 when she lifted a heavy sack at work. He then opined:

"To answer [appellant's] specific questions in the report and to answer the letter of [the Office] her back problems are certainly aggravated by her work. Her initial injury history is consistent with their back findings. [Appellant] does have the preexisting problems of spondylolisthesis at L5-S1, but the torn annulus is probably secondary to an injury. Assuming that her history is as she claims, then it is occupational connected.

"In addition I am not the initial examiner and I am not in a position to say whether the initial injury is historical or not. [Appellant] tells me that she did require a certain amount of lifting and bending in her work and the US Department of Labor says it did not. I am not in a position to evaluate those two conflicting claims. I would anticipate that if [she] follows a therapy regimen and sees the pain clinic, that her chances of improving without surgery are at least 50 percent.

I think if [appellant] remains basically untreated that the chances of permanent injury are significant.”

By decision dated August 27, 2001, the Office denied reconsideration, finding that the evidence submitted in support thereof was not sufficient to warrant modification of the previous decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a back injury in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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 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.²

Appellant initially filed her claim as an occupational disease claim. In an occupational disease claim, claimant must submit: (1) medical evidence establishing the existence of the disease or condition on which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 the claimant.³

In the instant case, appellant has failed to submit a sufficient rationalized medical opinion that links her back injury to her employment. Initially, appellant filed this claim as an occupational disease claim and contended that her back pain was caused by “standing and lifting heavy parcels” and stress at her job. Appellant’s initial treating physicians, Drs. Tsamasfyros and Engelstad, indicated that appellant suffered from a lumbosacral sprain, depression and sacroilitis. However, neither physician submitted a rationalized opinion as to the cause of appellant’s condition and, therefore, these opinions failed to establish that appellant’s back condition was causally related to her employment. Furthermore, the employing establishment controverted appellant’s allegations, noting that she did very little lifting and bending. Accordingly, the Office properly denied appellant’s initial claim for failure to show that her back injury was caused by her employment.

On reconsideration appellant modified her version as to how she sustained her injury. In a statement received by the Office on May 18, 2001, appellant stated that she hurt her back when she was lifting a sack that weighed between 40 to 50 pounds. There was no mention of a specific lifting incident prior to this time.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Melinda C. Epperly*, 45 ECAB 196 (1993).

³ *Id.*

Additional medical evidence was also submitted in support of the request for reconsideration. In a medical report dated February 14, 2001, Dr. Smith noted that appellant stated that she had been having back pain since she returned to work in March 2000 and that she quit working in September 2000 because of back pain. In his July 2001 opinion, Dr. Smith opined that her back problems were “certainly aggravated by her work.” He noted that “She does have the preexisting problem of spondylolisthesis at L5-S1, but the torn annulus is probably secondary to an injury.” However, Dr. Smith’s opinion is speculative. After noting that there was some dispute as to appellant’s work requirements between appellant and the employing establishment, he stated that as he was not the initial examiner, he was not in a position to determine whether the initial injury was “historical or not.” The Board notes that Dr. Smith admits that his determination regarding whether appellant’s condition was caused by her employment is based largely on appellant’s statements to him and there are inconsistencies in appellant’s statements as to how she was injured. These inconsistencies cast serious doubt as to the validity of appellant’s claim.⁴ Accordingly, the Board finds that appellant has not submitted sufficient medical evidence establishing a causal relationship between her employment and her back injury. Therefore, she has failed to meet her burden of proof.

The decisions of the Office of Workers’ Compensation Programs dated August 27 and May 15, 2001 are hereby affirmed.

Dated, Washington, DC
May 8, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁴ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).