

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANK J. MOULTRIE, III and U.S. POSTAL SERVICE,  
POST OFFICE, Laurel, MD

*Docket No. 02-901; Submitted on the Record;  
Issued November 6, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty on May 10, 1996.

This case is before the Board for the second time. In the first appeal, the Board affirmed the Office of Workers' Compensation Programs' April 30, 1997 decision denying benefits on the grounds that appellant failed to submit any medical evidence causally relating his diagnosed back conditions to his federal employment.<sup>1</sup> The findings of fact and the conclusions of law from the prior decision are hereby incorporated by reference.

Subsequent to the Board's decision, appellant requested reconsideration before the Office and submitted additional medical evidence in support of his claim. By decision dated January 17, 2002, the Office denied the employee's claim on the grounds that the medical evidence was insufficient to meet appellant's burden to establish that he sustained an employment-related back injury on or around May 10, 1996, as alleged.

The Board finds that the case is not in posture for a decision. Further development of the medical evidence is required.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 limitations period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition

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<sup>1</sup> The Board further affirmed the decision of the Office dated July 17, 1997, denying appellant's request for an oral hearing before an Office representative on the grounds that his request was untimely. Docket No. 98-610 (issued September 9, 1999).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.<sup>3</sup> 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.<sup>4</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. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> In this case, the Office accepted that the incident, the carrying of a mailbag, did occur.

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>6</sup>

As discussed in the prior appeal, the only medical evidence previously submitted by appellant consisted of a disability slip dated September 21, 1996 from Dr. Charles J. Lancelotta, Jr., a Board-certified neurological surgeon. The slip indicated that appellant came under Dr. Lancelotta's care on September 21, 1996 and that he would be totally disabled for work for four weeks. In further support of his claim, appellant submitted an October 29, 1996 duty status report from his treating physician, Dr. Lawrence Swink, a Board-certified family practitioner. In this report, he noted that appellant had a history of carrying a heavy mail satchel and diagnosed a lumbar disc herniation. Dr. Swink noted that appellant had undergone a discectomy and could return to work on November 5, 1996, but would remain partially disabled, within certain physical restrictions, until November 19, 1996. Appellant did not submit any medical evidence contemporaneous with the stated date of injury, May 10, 1996, and neither Dr. Lancelotta nor Dr. Swink, indicated the date of appellant's injury or provided any medical rationale explaining how or why appellant's diagnosed lumbar disc herniation was caused by his employment.

In support of his request for reconsideration, appellant submitted additional medical evidence from Dr. Swink. In a report dated July 5, 1997, Dr. Swink stated that appellant presented to his office in early October 1996 complaining of pain in his left leg and hip area. Dr. Swink stated that appellant reported having carried his bag on his left side for quite some time, but stated that he had never before experienced any back trouble. He was treated conservatively, but did not improve and eventually underwent magnetic resonance imaging (MRI) which showed a large left-sided herniation at the L4-5 area. Appellant subsequently underwent a lumbar discectomy, from which he completely recovered. Regarding

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<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

the relationship, if any, between appellant's diagnosed condition and his employment, Dr. Swink stated: "It was felt that his work, at least in part, had aggravated the injury prior to its onset." Dr. Swink concluded that appellant had just about completely recovered and he saw no reason why appellant could not continue doing his job in the future.

In a second report dated report dated October 11, 1999, Dr. Swink attempted to more fully explain appellant's course of injury and treatment, and the relationship between his diagnosed condition and his employment. Dr. Swink noted that appellant is a letter carrier and usually carries his mailbag over his left shoulder. He stated that as early as April 1995 appellant had complained of back pain with radiation into his left leg, and was treated conservatively until the early part of 1996. Dr. Swink added that appellant presented with exacerbation of back pain going down his left leg on March 23, 1996 and underwent another course of conservative treatment, which was unsuccessful. Appellant then had an MRI which revealed a left-sided herniated disc at L4-5. Dr. Swink noted that, following successful surgery, appellant returned to light duty on November 4, 1996, and returned to full duty two weeks later. Regarding the causal relationship between appellant's herniated lumbar disc and his employment, Dr. Swink stated: "While [appellant's] disc disease probably preexisted prior to the injury occurring in March 1996, I feel that carrying a heavy mailbag led to re-exacerbation of the problem and therefore is partially responsible for this patient requiring lost time and surgical correction of the dis[c] disease."

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While a claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>7</sup>

The Board finds that the medical reports of Dr. Swink are not sufficiently well rationalized to establish that appellant's back condition is causally related to his employment, as Dr. Swink's July 1997 report and his October 1999 report conflict somewhat as to appellant's history of back pain, and as the physician did not explain how appellant's employment duties had exacerbated his preexisting disc condition. However, the Board finds that Dr. Swink's medical reports, taken together, raise an inference of causal relationship between appellant's 1996 need for surgery and his employment and are sufficient to require further development of the case record by the Office.<sup>8</sup> Additionally, the Board notes that the record contains no medical opinion contrary to appellant's claim and that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion. While the Board acknowledges that Dr. Swink did not appear aware that appellant alleged his back injury occurred on May 10, 1996, not in March 1996, a close reading of appellant's claim reveals that he did not allege that a specific incident occurred on that date, but simply stated that on May 10, 1996 his pain started very subtle, later becoming very painful. While appellant's claim might be more properly characterized as one for occupational disease, with aggravation of a preexisting back condition occurring over a period of time, it is well established that a claim for compensation need not be filed on any particular form. A claim may be made by filing any paper containing words which reasonably may be construed

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<sup>7</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>8</sup> *See John J. Carlone*, 41 ECAB 354 (1989).

or accepted as a claim, and in this case, the medical evidence submitted with appellant's request for reconsideration constitutes a claim for aggravation or acceleration by employment factors.<sup>9</sup>

On remand, the Office should further develop the medical evidence by referring appellant and a complete statement of accepted facts to an appropriate Board-certified specialist for a rationalized medical opinion on the issue of whether appellant's diagnosed back condition is causally related, either directly or by precipitation, acceleration or aggravation, to factors of his federal employment, and, if so, for what periods was he disabled.

The decision of the Office of Workers' Compensation Programs dated January 17, 2002 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC  
November 6, 2002

Alec J. Koromilas  
Member

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> *William F. Dotson*, 47 ECAB 253 (1995); *Barbara A. Weber*, 47 ECAB 163 (1995).