

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL P. BANZ and U.S. POSTAL SERVICE,
POST OFFICE, Portland, OR

*Docket No. 02-2001; Submitted on the Record;
Issued November 26, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury to his back on March 21, 2002 in the performance of duty.

On March 28, 2002 appellant, then a 39-year-old mailhandler, filed a traumatic injury claim alleging that on March 21, 2002 he injured his lower back while unloading a bed of mail sacks in the performance of duty. Appellant was placed on limited duty following the incident; however, he did not stop work.

Appellant submitted medical documentation including treatment notes from Drs. James Dunn, a Board-certified neurologist, and Thomas Ewald, attending physician, dated January 16 through April 9, 2002. The treatment notes beginning January 16, 2002 indicated that appellant was seen for right leg pain and a herniated nucleus pulposus with an extruded fragment at L4-5, on the right, diagnosed through a magnetic resonance imaging scan.

In a letter dated April 19, 2002, the Office of Workers' Compensation Programs requested additional evidence in support of the claim.

In response, appellant submitted an April 23, 2002 report from Dr. Dunn, which stated: "Since he had his recurrence, [appellant] has had some improvement. He says he has had 40 percent or so improvement. He is still having considerable pain in his back with radiation down his legs." In an attached work slip, Dr. Dunn released appellant to modified work duties with restrictions of lifting, pulling or pushing no more than 25 to 30 pounds.

By decision dated May 22, 2002, the Office denied appellant's traumatic injury on the grounds that the evidence submitted failed to establish a causal relationship between the claimed condition and factors of his federal employment.¹

The Board finds that appellant failed to establish that he sustained a back injury on March 21, 2002 in the performance of duty.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.² Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that he sustained an injury in the performance of duty and that his disability or condition was caused or aggravated by his employment.³ As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁴ The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.⁵ Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.⁶

In this case, the Office accepted that appellant was unloading a bed of mail sacks in the performance of duty as alleged and that he had a diagnosis of herniated disc at L4-5 prior to the alleged March 21, 2002 injury. However, the Office found that the evidence failed to establish that the implicated employment factor caused or affected the diagnosed condition as required by the Federal Employees' Compensation Act.

The evidence submitted in this case established that appellant was diagnosed with herniated disc at L4-5 prior to the March 21, 2002 employment event and that he continued to receive treatment for back and right leg pain through March 2002. However, the treatment notes submitted in support of the claim did not address causal relationship of appellant's condition or relate in any way the claimed low back injury of March 21, 2002 to the diagnosed condition. As appellant did not provide any medical reports with a rationalized medical opinion establishing that the implicated employment injury of March 21, 2002 caused or aggravated his diagnosed lumbar condition, he has failed to meet his burden of proof in this case.

¹ The Board notes that, following the May 22, 2002 Office decision, appellant requested "an appeal" and submitted additional medical evidence. The Office acknowledged receipt of appellant's correspondence with evidence and advised that if he wished to dispute the decision that he must follow the accompanying appeal rights. The Board cannot consider this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

² *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

³ *See Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

⁴ *See Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

⁵ *See Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

⁶ *Id.*

The May 22, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 26, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member