

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DARRYL L. BLOCK and U.S. POSTAL SERVICE,  
POST OFFICE, Long Beach, CA

*Docket No. 02-703; Submitted on the Record;  
Issued October 23, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a back condition in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On July 23, 2000 appellant, then a 43-year-old city mail carrier, filed an occupational disease claim alleging that he sustained problems with his left leg which he attributed to performing the duties of his federal employment. By decision dated October 31, 2000, the Office denied appellant's claim on the grounds that he did not establish fact of injury. The Office noted that the medical evidence did not provide sufficient information about preexisting conditions.

By letter dated March 28, 2001, appellant requested reconsideration of his claim, which the Office denied in a merit decision dated April 16, 2001.

On October 16, 2001 appellant, through his representative, again requested reconsideration. In a decision dated November 7, 2001, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was cumulative and thus insufficient to warrant review of the prior decision.

The Board finds that the case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his/her claim, including the fact that an injury

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>2</sup>

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; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or 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 claimant.<sup>3</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>4</sup> 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,<sup>5</sup> must be one of reasonable medical certainty,<sup>6</sup> 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.<sup>7</sup> The mere fact that a condition 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 condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.<sup>8</sup>

In this case, appellant has submitted evidence from Dr. Barry B. Ceverha, a Board-certified neurosurgeon, supporting his claim for an occupational disease. In a report dated May 19, 2000, Dr. Ceverha noted appellant's complaints of left leg pain, weakness and numbness which began during his employment. He noted that appellant had a previous employment-related problem with his neck. He diagnosed a "[l]arge dis[c] herniation at C5-6 with cervical myelopathy and cord edema" and stated, "I feel it is reasonable to conclude that this was at least aggravated by his work as it began in his occupation as a mail carrier."

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>4</sup> The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>7</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

In a report dated October 18, 2000, Dr. Ceverha noted that he had treated appellant for neck pain, arm and leg weakness, and numbness in his thigh. He stated, “[Appellant] is a mail carrier and noted this progressively during his work.” Dr. Ceverha related that appellant underwent an “anterior corpectomy with arthrodesis at C5-6” on June 26, 2000. He noted that appellant provided “a very clear history of progressive nature of his illness that occurred while working as a mail carrier.”

In a report dated January 26, 2001, Dr. Ceverha diagnosed cervical myelopathy secondary to cervical disc herniation and spinal cord injury at C5-6. He related:

“[Appellant] states very clearly in the medical records that this occurred while delivering mail. He noted the onset of pain in his neck with tingling and weakness in his arms that progressed in his occupation as a mail carrier. There was no specific incident or accident that I am aware of. His subjective findings are supported radiologically and by objective physical examination. At the present time, he remains temporarily totally disabled.”

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>9</sup> When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee’s attending physician.<sup>10</sup> In this case, while the reports of Dr. Ceverha are not sufficiently detailed or rationalized to discharge appellant’s burden of proving by the weight of the reliable, substantial and probative evidence that he sustained an occupational disease due to factors of his federal employment, the Board finds that the reports raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>11</sup>

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on the issue of whether appellant sustained a herniated disc at C5-6 causally related to employment. After such development of the case record as the Office deems necessary, it shall issue a *de novo* decision.<sup>12</sup>

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<sup>9</sup> *Dennis J. Lasanen*, 43 ECAB 549 (1992).

<sup>10</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *Id.*

<sup>12</sup> In view of the Board’s disposition of the merits, the issue of whether the Office properly denied appellant’s request for reconsideration under section 8128 is moot.

The decisions of the Office of Workers' Compensation Programs dated November 7 and April 16, 2001 are set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC  
October 23, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member