

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROOSEVELT D. ODOM, JR. and U.S. POSTAL SERVICE,
DOWNING ROAD ANNEX, Fayetteville, NC

*Docket No. 02-1125; Submitted on the Record;
Issued October 23, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty prior to July 27, 2000.

On December 8, 2000 appellant, then a 43-year-old flat sorting machine operator, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he suffered from "severe lower back pain radiating up to back of neck and more so down into right leg, spreading to left leg with numbness" as a result of the bending, lifting and reaching with heavy trays associated with his federal employment. The employing establishment controverted the claim.

In support of his claim, appellant submitted a report of a magnetic resonance imaging (MRI) scan dated August 3, 2000, by Dr. Bruce M. Distell a Board-certified radiologist, an electromyography nerve conduction study report by Dr. Sampath Charya, a neurologist, dated October 6, 2000 and medical reports and notes by Dr. Bruce P. Jaufmann, a Board-certified neurosurgeon. On September 13, 2000 Dr. Jaufmann listed appellant's symptoms as history of osteoarthritis, back pain, history of hearing loss and sinusitis. He indicated that review of appellant's MRI scan showed very mild canal stenosis at L4-5 and no disc herniation or nerve root impingement. Dr. Jaufmann noted that appellant primarily had back pain and intermittent right lower extremity pain and that he should continue light-duty work. In a note of the same date, Dr. Jaufmann indicated that appellant had severe lumbar radiculopathy and should limit lifting to five pounds, alternate sitting and standing and perform no repetitious bending at the waist. In a note dated October 17, 2000, Dr. Jaufmann indicated that appellant should remain off work until further notice. In a November 14, 2000 report, Dr. Jaufmann indicated that appellant's lower extremity pain was resolving, but that he continued to have axial pain. Dr. Jaufmann recommended physical therapy until maximum improvement.

By letter dated January 23, 2001, the Office of Workers' Compensation Programs requested that appellant submit further information. In response, he answered various questions

posed by the Office with regard to his employment duties. Appellant further submitted a letter from Dr. Jaufmann dated February 12, 2001, wherein he stated:

“I am writing this letter on behalf of [appellant] to try and describe how his work can contribute to his current low back problems. [Appellant] has primarily low back pain extending into the right hip and thigh. His lumbar MRI [scan] showed mild disc bulges with mild spinal canal stenosis at L4-5. There was no definite disc herniation or nerve root impingement. He continued to have intermittent right lower extremity pain and primarily low back pain. He has embarked on a program of physical therapy and has done reasonably well. However, his work is that of a flat sorting machine operator which requires handling an average of 25 trays in a 15[-]minute period by report or approximately 75 [to] 100 trays an hour. He requires bending and stooping to pick up bundles of magazines, putting them on the table, keying and sorting them out, putting them on a postal cart, pushing the cart (weighing 300 [to] 500 pounds each) approximately 10 times day. [Appellant] tells me that he takes the trays from the postal cart and loads them onto another machine 50 to 100 times in 15 minutes. This action is repeated over and over again during an 8[-]hour day. Because of [appellant’s] preexisting back problems and the very significant physical labor which is required by his job, I feel that this physical labor can exacerbate his low back condition. Although [appellant] has multiple reasons for having back problems, certainly labor of this magnitude could contribute to his symptoms.”

By decision dated April 4, 2001, the Office denied appellant’s claim. The Office found that the medical evidence was not sufficient to establish that appellant’s condition was caused by the alleged employment factor.

By letter dated August 22, 2001, appellant requested that the Office reconsider his claim and submitted a lumbosacral myelography report dated June 7, 2001, by Dr. Richard Falter, Jr., a Board-certified radiologist and a duty status report by Dr. Williams, dated February 5, 2000. Appellant also submitted an August 14, 2001 medical report from Dr. Jaufmann who noted that appellant had a myelogram, which showed some mild congenital spinal stenosis. He noted that appellant’s symptoms progressively worsened while he performed heavy lifting at work and that any lifting aggravated appellant’s low back symptoms. Dr. Jaufmann also noted that appellant had significant improvement with reduced activities as well as being out of work. He opined that appellant’s heavy work aggravated his preexisting condition.

In a decision dated December 18, 2001, the Office denied modification of its earlier decision, finding that the medical evidence in the file was insufficient to support causal relationship.

The Board finds that appellant did not meet his burden of proof to establish his claim.

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 an injury

¹ 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.²

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 the claimant.³ The medical evidence required to establish a causal relationship, generally is rationalized medical opinion evidence.⁴ 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,⁵ must be one of reasonable medical certainty,⁶ 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.⁷

In the instant case, appellant submitted several reports, by Dr. Jaufmann in support of his claim. In his reports of January 23 and August 14, 2001, Dr. Jaufmann indicated that appellant's condition was related to his employment. However, he utilized speculative language in the report of January 23, 2001, indicating that labor of the magnitude described by appellant "could" exacerbate his preexisting back condition. This opinion is too speculative to meet appellant's burden of proof. In his August 14, 2001 opinion, Dr. Jaufmann stated that he "believed" appellant's heavy work aggravated his preexisting condition. He noted that appellant's symptoms progressively worsened while he was performing his heavy lifting at work and that appellant showed significant improvement when he reduced his activities as well as being out of work. This report is also insufficient. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁸

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ 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.

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Dennis M. Mascarenas*, *supra* note 3.

The December 18 and April 4, 2001 decision of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 23, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member