

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA A. JOHNSTON and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, MN

*Docket No. 02-1375; Submitted on the Record;
Issued September 25, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a back condition in the performance of duty.

On October 25, 2001 appellant, then a 43-year-old flat sorting machine clerk, filed a notice of occupational disease alleging that she suffered from a bulging disc in her lower back due to the requirements of heavy lifting, bending and twisting in her job. Appellant was off work from October 19 until 24, 2001, when she returned to limited duty.

In a letter dated November 7, 2001, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish her claim.

Appellant submitted numerous treatment notes from Saunders Therapy Center dating from July 24, 2000 through November 7, 2001. The diagnosis was listed as low back and bilateral lower extremity pain. Range of motion findings were also listed. These treatment notes were signed by Jeanne Spadaccini, a physical therapist.

An initial physical therapy outpatient evaluation report dated March 20, 2001, was prepared for Dr. Gary Brunkow by Steve Newell, a physical therapist. The referring diagnosis apparently made by Dr. Brunkow was low back pain, degenerative disc disease.

X-rays of the lumbar spine dated July 24, 2000 and October 19, 2001, revealed multi-level degenerative disc disease with moderate loss of disc height and disc bulging at L1-2, L2-3 and L3-4. A magnetic resonance imaging scan is also dated October 19, 2001, confirming the x-ray findings.

The record also includes work restriction recommendation slips signed by personnel from Dr. Brunkow's office on his behalf. The work slips stated that appellant is restricted to limited duty and are dated October 24 and December 10 and 26, 2001.

In a decision dated January 15, 2002, the Office denied compensation on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's diagnosed condition and the alleged employment factors.¹

The Board finds that appellant failed to establish that she sustained a back condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² 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 filed within applicable time limitation; that an injury was sustained while 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁴

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.⁵ The burden of proof includes the necessity of submitting medical opinion evidence, based upon a proper factual and medical background, establishing such disability and its relationship to the employment.⁶

In this case, the Office properly determined that appellant failed to carry her burden of proof in establishing causal relationship because she did not provide a rationalized medical opinion addressing what factors of her employment resulted in her diagnosed condition of degenerative disc disease with bulging discs. Although appellant clearly suffers from a back condition, the only medical evidence she provided is not relevant to the issue of causal relationship because it is not from a qualified physician. The reports of appellant's physical therapist are of no probative value as a physical therapist is not a physician as defined under the Act and, therefore, is not competent to give a medical opinion.⁷ Likewise, the work restriction slips were not signed by a physician and they do not specify the nature of appellant's disabling condition or address causal relationship. In the absence of a rationalized medical opinion stating

¹ Appellant subsequently filed a claim for a recurrence of disability and was advised by the Office that the claim could not be processed as the original claim had been denied. The Office informed appellant that her request for a recurrence of disability would be considered as a reconsideration request. There is no final decision of record from the Office with respect to the request for reconsideration.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

⁵ *Sandra Davis*, 50 ECAB 450 (1999).

⁶ *See Michael E. Smith*, *supra* note 4; *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

⁷ *See* 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

that appellant's back condition is causally related to her employment, the Board finds that appellant is not entitled to compensation.⁸

The January 15, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 25, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member

⁸ The Board does not have jurisdiction to review evidence submitted by appellant subsequent to the Office's January 15, 2002 decision. The Board cannot review this evidence on appeal, as the Board's jurisdiction is limited to reviewing the evidence and arguments that were before the Office at the time of its final decision; *see Lloyd E. Griffin, Jr.*, 46 ECAB 979 (1995); *Carroll R. Davis*, 46 ECAB 361 (1994). Appellant may submit such evidence to the Office along with a request for reconsideration.