

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSE LOPEZ and U.S. POSTAL SERVICE,  
POST OFFICE, New Orleans, LA

*Docket No. 02-1985; Submitted on the Record;  
Issued April 11, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that his back condition and other conditions were caused or aggravated by his federal employment.

On September 21, 2001 appellant, then a 44-year-old distribution clerk, filed a notice of occupational disease alleging that he had a broken neck, a deformed left femur, spondylolisthesis of the lumbar spine, esophagitis, carpal tunnel syndrome in the left hand and cervical spine fusion, all due to factors of his federal employment. He stated that his position as a clerk involved pushing and pulling heavy equipment, standing on a concrete floor for eight hours per day, lifting trays of mail, with constant bending, twisting and turning. Appellant submitted numerous radiographic studies diagnosing degenerative disc disease of the lumbar and cervical spine with spondylolisthesis and spondylosis. The record indicates that in March 1988 appellant fell out of a truck when he was in the military and broke his neck. He underwent several surgeries and afterwards started to develop pain in his left hip, which radiated down his left lower extremity to the ankle, along with numbness in his left foot.

Appellant also submitted diagnostic studies indicating possible degenerative changes in the left hip, degenerative disc disease in the neck, reflux esophagitis and esophageal ulcer, and left hand carpal tunnel syndrome.

Appellant submitted a personal statement dated January 14, 2002, in which he acknowledged that his problems began in March 1988 when he broke his neck, but that he started having extreme pains in 1999. He also indicated on his notice of occupational disease that he realized on June 15, 1999 that his condition became aggravated by his federal employment. Appellant submitted a January 3, 2002 medical report from Dr. Henry L. Eiserloch III, who stated:

“I am the current treating physician for [appellant]. This patient has a complex spinal diagnosis that includes lumbar spondylolisthesis and spinal stenosis. The patient more than likely has had these symptoms for several years. The

underlying anatomic abnormality has been present for quite some time as well. This patient reports that he did not have any of these symptoms prior to employment with the U.S. Postal Service.

“The patient also reports that he did not begin having any back or leg pain until June 1999.

“The patient continues to work as a mail processor. This patient’s current treatment regimen reveals that he is getting worse with regard to his underlying problem. He more than likely will require surgical intervention for his back in the future.”

By decision dated March 27, 2002, the Office of Workers’ Compensation Programs denied appellant’s claim finding that the medical evidence was insufficient to establish that his conditions were caused by employment factors. The Office discussed the medical evidence regarding appellant’s back condition and noted that the medical documents regarding other conditions were diagnostic tests that did not address the issue of causal relation.

By letter dated July 11, 2002, appellant requested reconsideration. In support of his request appellant submitted a June 27, 2002 report from Dr. Windsor S. Dennis, who stated: “On [April 8, 2002 appellant] gave me the history that he has low back pain (LBP) and degenerative arthritis. He said on [June 15, 1999], he hurt his lower back while pulling some equipment at work at the main U.S. Post Office in New Orleans.”

Dr. Dennis described appellant’s work duties at the post office from August 1991 to August 2000 and he stated:

“Patient said during the earlier years he felt minor low back, but over the duration of time pain had been getting progressively worse from the constant turning, strain and stress on his back, until the episode in June of 1999, caused such great LBP that he had to leave work and go home. He said at the time of the injury he made the report to his supervisor at work, Gerald Reed, before leaving the job because of the disabling pain in his lower back, however, the patient says the supervisor says he cannot find the report.”

He noted:

“March of 1987 fall out of a truck while in the U.S. Army in sustaining fractures of C2 and C3, for which he had a posterior cervical fusion. The report indicates that he had residual weakness in his left arm and leg since that time.”

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“Based upon the history that I have received related to [appellant] and which I believe to be accurate and complete, in spite of his having had the March 1987 injury and his receiving 30 [percent] disability to his cervical spine and awarded 20 [percent] disability to his lumbar spine due to spondylolisthesis, these conditions did not incapacitate [appellant] from doing significantly heavy

physical work in the U.S. Post Office for nine years. Though the report from Dr. Eiserloch and a statement from the patient indicated that he was being treated for lumbar spondylolisthesis and stenosis, such treatment took place after the patient's June 1999 injury and was related to the back pain resulting therefrom. Since prior studies did not show the stenosis, this anatomical abnormality apparently developed as a result of the trauma to his lower back from the 1999 injury in that sufficient time lapse had occurred to permit this development.

“One realizes that, even if a healthy man free of degenerative changes and stenosis, engaged in similar type distribution clerk work, as described by [appellant], over a duration of nine years, he would more likely than not develop degenerative osteophytes of articular joints of the lower spine from the constant repetitive mechanical stress to the lumbar spine. Hence, it is even more understandable that [appellant], a stoic man with spondylolisthesis and who tended not to complain, would eventually experience aggravation of his ‘minor low back pain’ from the same type of mechanical stress to his lumbar area over a nine year period. On [June 15, 1999], repetitive trunk twisting, bending, lifting, reaching, stooping and throwing trays of mail continually loaded his spine with a compressive force or with rotary stress, combined with the culminating mechanism of pushing and pulling the heavy [p]ost [c]oms and the heavy A [f]rames that put distracting forces on the ligaments of the articulating joints of the spine caused the traumatic event of the acutely increased low back pain. The repetitive mechanical stress to the vulnerable and lumbar area aggravated the bilateral spondylolysis defect involving the pars interarticularis at L5. Stress on the ligaments produced by pulling such heavy loads caused the more intense back pain....

“Finally, based upon the foregoing historical information believed to be complete and accurate, the physical findings at the time of examinations, the objective findings being consistent with and giving date that supports the patient's complaints, along with a plausible mechanism of injury related to specific factors of his work over a prolonged period of time, it is my opinion that this patient's work in the [p]ost [o]ffice has affected the prior condition of his lower back and has caused further back injury associated with pain to his lower extremities such that his claim is thought to be work related.”

The Board has duly reviewed the case record and finds that this case is not in posture for decision. The Board finds that further development of the medical evidence regarding appellant's back condition is warranted; however, the medical evidence regarding appellant's other conditions does not contain a physician's opinion on causal relationship and further development of this evidence is not justified.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of proof to establish the essential elements of his claim.<sup>2</sup> When an employee claims that

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Margaret A. Donnelley*, 15 ECAB 40 (1963).

he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

In order to determine whether an employee 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. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>4</sup>

It is undisputed that appellant’s job duties involved frequent repetitive mechanical movements including lifting and pulling of mail and constant twisting and reaching with his back. The medical evidence establishes that he developed a degenerative back condition and other conditions and sought medical attention for his complaints. The question, therefore, becomes whether the duties he performed caused or aggravated his conditions for which he seeks compensation.

Causal relationship is a medical issue<sup>5</sup> and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incidents or factors of employment.<sup>8</sup>

In this case, appellant claimed that the degenerative changes in his left hip, degenerative disc disease of his neck, reflux esophagitis and esophageal ulcer, and his left hand carpal tunnel syndrome were caused by his federal employment and submitted medical reports diagnosing these conditions. The Board notes, however, that the record does not contain a definitive diagnosis regarding appellant’s hip pain, as the medical records indicate “possible” degenerative changes in the left hip and a magnetic resonance imaging report of the left hip indicates “exact etiology uncertain.” Appellant may have submitted medical evidence diagnosing the other conditions; however, he has not submitted a physician’s rationalized opinion on what caused or contributed to these conditions. It is appellant’s burden to submit rationalized medical opinion

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<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Id.*

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>8</sup> *William E. Enright*, 31 ECAB 426, 430 (1980).

evidence, based on a complete factual and medical background, explaining the nature of the relationship between his hip and neck condition, esophageal conditions, and left hand carpal tunnel syndrome and his federal employment duties.<sup>9</sup> In this case, appellant has not submitted a report containing a physician's rationalized opinion on the cause of these conditions and has, therefore, not met his burden of proof in establishing a causal connection.

Appellant also claimed that his degenerative back condition was caused by federal employment factors and submitted medical evidence in support of his claim. In his June 27, 2002 report, Dr. Dennis provided a complete medical history and opined that appellant's employment duties aggravated his previous back condition in spite of the neck injury he suffered in 1988. He stated that it was more likely than not that appellant developed a degenerative condition of the lower spine and aggravated his low back pain due to the repetitive mechanical stress to his lumbar area over a period of nine years. Dr. Dennis also specifically described appellant's employment duties and explained how they caused the injury and aggravated appellant's preexisting condition. He concluded by stating that both the physical findings at the time of his examination and the objective findings support that appellant's position at the post office aggravated his preexisting lower back condition and also caused further back injury.

The Board finds that, even though some of Dr. Dennis' statements are somewhat speculative and may not be sufficient in explaining how appellant's preexisting back condition was aggravated by his federal employment duties, the report does raise an inference of causal relationship, either direct or by aggravation, sufficient to require further development of the case record by the Office.<sup>10</sup> Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. The Board will set aside the Office's March 27, 2002 decision and remand the case for further development of the medical evidence. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

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<sup>9</sup> *William Nimitz, Jr., supra* note 6.

<sup>10</sup> *See John J. Carlone, supra* note 3 (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship). The Board also finds that even though Dr. Dennis refers to one specific incident taking place on June 15, 1999 the Board notes that the record as a whole indicates that appellant *realized* on or around June 15, 1999, that his federal employment duties were aggravating his previous condition.

The March 27, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further action consistent with this opinion of the Board.

Dated, Washington, DC  
April 11, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member