

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD THOMAS, JR and U.S. POSTAL SERVICE,
POST OFFICE, Fairfield, AL

*Docket No. 03-53; Submitted on the Record;
Issued April 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

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

On July 17, 2002 appellant, then a 50-year-old custodian, filed a notice of occupational disease, alleging that he suffered from back pain, which he attributed to his work duties. Appellant noted that his family doctor told him that his back problems might be due to the type of work he was performing and recommended that he get a different job. He also related a history of back surgery with interbody fusion. Appellant's supervisor stated on the CA-2 claim form that appellant was expected to be off work from July 17, 2002 until sometime in November 2002 for additional back surgery.

Appellant's treating physician is Dr. Finley McRae, a Board-certified neurosurgeon. The record indicates that appellant underwent a lumbar laminectomy with micro disc excision at L5-S1 on January 25, 1994 and again on November 18, 1996 for treatment of a herniated disc at L5-S1.

In a February 3, 1997 report, Dr. McRae noted that appellant was much improved after his laminectomy. He related that appellant was up and walking two miles a day and reported only occasional leg pain with minimal backache. Dr. McRae further noted that appellant's job as a custodian required him to vacuum, mop and lift up to 50 pounds.

In a report dated October 20, 2000, Dr. McRae advised that appellant was seen complaining of back and right leg pain that began two months prior. It was noted that appellant denied injury to his back and had been receiving medication over the last few years for intermittent back pain but had not had to miss work. Physical findings were listed along with the diagnosis of lateral recess stenosis.

Dr. McRae ordered a myelogram and computerized tomography (CT) scan, which showed narrowing of the soft-tissue right L5-S1 lateral recess. A magnetic resonance imaging

(MRI) also confirmed foraminal stenosis at L5-S1 with the possibility of disc recurrence. It was recommended that appellant undergo additional surgery. He, therefore, had a lumbar interbody fusion with impacted grafts on November 2, 2000 for treatment of lumbar radiculopathy, lateral recess stenosis and unstable spine at L5-S1.

In follow-up reports dated November 2000 through January 2001, Dr. McRae indicated that appellant's back condition once again improved and he was back to walking two miles a day.

An MRI report dated February 27, 2001 showed normal alignment with the disc spaces at L5. Dr. McRae indicated on February 27, 2001 that appellant could return to light duty with no lifting over 15 pounds. He further recommended that appellant continue his course of physical therapy.

In a report dated April 2, 2001, Dr. McRae advised that appellant had been doing well until 10 days ago when he developed right hip and groin pain. A diagnosis of lumbosacral strain was provided. The physician subsequently recommended an epidural block.

On June 26, 2001 Dr. McRae noted that appellant was much improved after his third epidural block and felt he could return to full duty. He noted that appellant was exercising and walking up to three miles a day. Appellant was released to work with no limitations.

In a report dated October 22, 2001, Dr. McRae related that appellant was seen for a problem with back and right leg pain. The physician stated as follows: "[Appellant's] job at the post office requires lifting up to 45 [pounds] and [he] has to climb. The work aggravates his pain. Dr. McRae reported physical findings and diagnosed mechanical back pain with no further surgery required. He advised appellant to repeat the epidural blocks or stop working.

In a May 15, 2002 report, Dr. McRae indicated that appellant's lower back pain persisted and that he used a transcutaneous electrical nerve stimulator unit and back brace. Minimal decreased motion of the lumbar spine was noted. Dr. McRae reported that a cervical MRI scan revealed multilevel degenerative changes with bulging discs. He diagnosed cervical spondylosis and ordered additional lumbar x-rays.

Lumbar spine x-rays dated May 15, 2002, showed severe degenerative disc change at L5-S1 "with almost total loss of articular space and subsequent sclerosis and hypertrophic spurring."

Dr. McRae referred appellant to Dr. Michael Hammer, a Board-certified orthopedic specialist, for a consultation. He prepared a report dated May 30, 2002. Dr. Hammer discussed appellant's medical history and recommended that he go through a series of epidural blocks.

In a report dated June 10, 2002, Dr. George M. Hill, a Board-certified orthopedic surgeon, indicated that he was seeing appellant in consultation with Dr. Hammer. He reported decreased range of motion in the back and discussed the MRI findings. Dr. Hill opined that appellant's last surgery resulted in nonunion of the "PLIF [posterior lumbar interbody fusion] at L5-S1." He recommended that, appellant undergo a repeat posterolateral fusion with pedicle screws and plates.

In a July 31, 2002 letter, the employing establishment argued that appellant's back problems were not work related, but due to complications from his last lumbar interbody fusion performed on November 2, 2000.

In a letter dated August 20, 2002, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim.

Appellant subsequently submitted a position description for a custodian and a personal statement indicating that his back bothers him when he has to do a lot of standing, bending, sweeping, mopping, twisting and lifting in his job.

The record also contains a rating decision issued by the Department of Veterans' Affairs, indicating an increased disability rating with the agency for degenerative disc disease.

In a September 20, 2002 decision, the Office denied compensation on the grounds that the evidence was insufficient to establish that appellant established a back injury in the performance of duty as alleged.

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 the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation of the Act, that an injury 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 These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 a causal relationship the claimed condition or disease and the identified employment factors.⁴

In this case, appellant contends that his ongoing back condition is caused or aggravated by the physical requirements of his custodial position. Although he has documented his ongoing treatment for back pain related to a herniated disc at L5-S1, he did not submit a rationalized opinion from his treating physician that causally relates his diagnosed back disease or prior

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Arturo A. Adame*, 49 ECAB 421 (1998); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

herniated discs to employment factors. Dr. McRae stated in an October 22, 2001 report that appellant's work aggravates his pain but he did not specify the nature of the work duties alleged to be "aggravating," nor did he explain how those work duties resulted in appellant's need for additional back surgery.

Moreover, appellant's current claim is for disability on or after July 17, 2002. Dr. McRae has not offered an opinion that appellant's failed disc fusion is causally related to factors of his employment. The record establishes that appellant was injured while in the armed forces and that he received a disability award with the Department of Veterans' Affairs. Although he experienced back pain while working for the employing establishment, there is no medical evidence of record to link his back condition to his custodian duties. The medical evidence indicates that appellant had a failed disc fusion on November 2, 2000, which resulted in his continued back pain complaints through July 17, 2002, when he filed his occupational disease claim. At the recommendation of Dr. Hill, appellant agreed to undergo repeat fusion surgery to correct the disc problem. Because no physician has stated that appellant's recent back surgery from degenerative disc disease is causally related to his work duties, the Board concludes that he has failed to carry his burden of proof. Accordingly, the Board concludes that the medical evidence is insufficient to establish that appellant sustained a back condition in the performance of duty.⁵

The decision of the Office of Workers' Compensation Programs dated September 20, 2002 is hereby affirmed.

Dated, Washington, DC
April 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ Appellant submitted additional evidence to the Board; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.(2). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.