

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUZ M. REYES and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, CA

*Docket No. 03-306; Submitted on the Record;
Issued April 9, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she developed a back condition in the performance of duty.

On October 12, 2000 appellant, then a 36-year-old clerk, filed a claim for compensation, alleging that she developed a back condition as a result of repeated bending and lifting required in her limited-duty position. She stated that she first became aware of her back condition on September 17, 1999.¹ At the time of this injury, appellant was working limited duty due to a prior back injury. She stopped work on September 14, 1999 and returned in March 2001.

Accompanying appellant's claim was a medical report from Dr. John G. Zovickian, a Board-certified neurologist, dated October 18, 2000. He indicated that appellant presented with low back pain which began in the previous year. Dr. Zovickian relayed the history of appellant's injury as provided by her, indicating that her pain was due to the repetitive bending movements she performed at work. He diagnosed appellant with low back syndrome reportedly work related and noted that the neurological examination was unremarkable. Dr. Zovickian indicated that the magnetic resonance imaging (MRI) scan revealed degenerative changes and a disc herniation at L4-5.

In a letter dated December 18, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

¹ The record indicates that appellant filed a claim for a back injury in claim No. A13-1091060, which was accepted for bilateral ulnar nerve irritation, cervical strain and left shoulder strain. The record indicates that the benefits in that claim were terminated on November 3, 2000. Appellant filed various other claims from 1992 to 1997.

In response to the Office's request, appellant submitted various medical records from Dr. Robert Fox, a Board-certified neurologist, dated October 12, 1999 to November 26, 2000; an MRI dated March 23, 2000; and a narrative statement. His October 12, 1999 note indicated that appellant's lower back symptoms had improved. Dr. Fox's December 10, 1999 note indicated that appellant's work injury to the neck and left upper extremity had resolved. He noted that appellant sustained a new injury in September when she was repeatedly bending and lifting mail out of a hamper. Dr. Fox indicated that it was reasonable to assume that repeated bending led to appellant's pain and her having difficulty getting out of her vehicle. His March 17, 2000 note indicated that appellant's neck, shoulder, leg and back symptoms had improved. Dr. Fox noted appellant's cervical and lumbar pain would not allow her to return to work for another 30 days. He diagnosed her with cervical strain, radiculopathy and lumbar strain. Dr. Fox set forth restrictions of no reaching into mail bins, no lifting greater than 10 pounds, no working at or above shoulder level and no sitting or standing in one position or place for longer than 30 minutes. His report of November 14, 2000 noted appellant's continued complaints of pain in the leg and sciatic distribution. Dr. Fox indicated that appellant could return to work under the previously noted restrictions. The MRI revealed degenerative changes, a disc bulge and left paracentral disc protrusion at L4-5. Appellant described her duties that she believed caused her present condition including pushing cages and lifting tubs of mail out of a hamper.

On March 8, 2001 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.² The Office found that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

In a letter dated March 16, 2001, appellant requested an oral hearing before an Office hearing representative. The hearing was held on August 1, 2001. Appellant testified that she initially injured her back in 1995 and worked intermittently until September 1999. She stated that in September she was required to reach into hampers and lift mail out of the hampers for approximately a one and a half-month period. Appellant submitted witness statements indicating that she worked in and around mail hampers.

In a decision dated November 15, 2001, the Office hearing representative affirmed the decision of the Office dated March 8, 2001.

The Board finds that appellant has not met her burden of proof in establishing that she developed a back injury in the performance of duty.

An employee seeking benefits under the Act 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 period of the Act, that the 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.³ These are the essential elements of each and every

² 5 U.S.C. §§ 8101-8193.

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

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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) factual statement identifying 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. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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, must be one of reasonable medical certainty 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.⁵

In the instant case, it appears that appellant did perform the duties of lifting and bending and retrieving mail out of hampers for at least one day. However, she has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged back injury is causally related to the employment factors or conditions. On December 18, 2000 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated her hand condition.

The only evidence submitted in support of her claim were medical reports from Dr. Zovickian dated October 18, 2000 and Dr. Fox dated October 12, 1999 to November 26, 2000. He related the history of appellant's injury as provided by her, indicating that her pain was due to the repetitive bending movements she performed at work. Dr. Zovickian diagnosed appellant with low back syndrome, "reportedly work related." However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether this or any other work injury caused disability after September 13, 1999. To the extent that Dr. Zovickian is providing his own opinion, he does not provide any reasoning for rationale explaining the causal relationship between appellant's employment duties and her back injury.

Dr. Fox's October 12 and December 10, 1999 and November 14, 2000 notes indicated that appellant's work-related injury to the neck and left upper extremity had resolved. He noted

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

that she sustained a new injury in September 1999, when she was repeatedly bending and lifting mail out of a hamper. Dr. Fox indicated that “it was reasonable to assume that repeated bending led to pain and her having difficulty getting out of her vehicle.” His March 17, 2000 note indicated that her neck, shoulder, leg and back symptoms had improved however she did develop pain in those areas. Dr. Fox addressed causal relationship in a conclusory statement; however, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.⁶ Moreover, Dr. Fox failed to address in any of these reports how appellant’s previous back injuries which occurred during the period of 1992 to 1997 might have affected her current back condition. The Board notes that a medical opinion based on an incomplete history is insufficient to establish causal relationship.⁷

An award of compensation may not be based on surmise, conjecture or speculation. 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 Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied her claim for compensation.

⁶ See *Theron J. Barham*, 34 ECAB 1070 (1983).

⁷ See *Cowan Mullins*, 8 ECAB 155, 158 (1955).

⁸ See *Victor J. Woodhams*, *supra* note 4.

The decision of the Office of Workers' Compensation Programs dated November 15, 2001 is affirmed.

Dated, Washington, DC
April 9, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member