

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DANIEL E. STAPEL and U.S. POSTAL SERVICE,  
POST OFFICE, Irvington, NJ

*Docket No. 03-999; Submitted on the Record;  
Issued August 21, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that his deep vein thrombosis and pulmonary embolus conditions are causally related to his federal employment.

On April 16, 2001 appellant, then a 51-year-old letter carrier, filed a notice of occupational disease and claim for compensation alleging that he first became aware that his thrombosis and pulmonary embolus conditions were caused or aggravated by his employment on April 6, 2001. He stopped work on March 24, 2001 and retired effective April 15, 2001. In a statement dated June 28, 2001, appellant related that his doctor informed him that his problem has been exacerbated by prior injuries, beginning in 1994. Appellant stated that in 1994 he suffered an employment-related broken left ankle, tibia and fibula and subsequently developed a limp after he returned to delivering mail on foot in 1994. He advised that, as a result of the limping, he developed a herniated disc and had to undergo laminectomy surgery December 1996. Appellant alleged that as a result of the 1994 injuries and walking his delivery route with a limp, he developed thrombosis and pulmonary embolus.

A Form CA-20 dated April 16, 2001 along with a medical report dated April 20, 2001 was submitted from Dr. Robert J. Pampin, a Board-certified family practitioner. In his April 20, 2001 report, Dr. Pampin advised that appellant was totally disabled based on recent findings of a pulmonary embolus. He stated that appellant had suffered from a deep vein thrombosis as a result of vascular compromise and opined that this condition arose directly from the fracture of the left lower extremity and disc herniation in 1996. Dr. Pampin reported that appellant's job responsibilities included standing 2 to 3 hours a day casing mail and ambulating 5.5 to 6 hours per day while carrying 35 pounds on his back, all of which put extreme pressure on his legs and exacerbated his lower extremity symptoms. He advised that this led to the deep vein thrombosis and potentially life-threatening pulmonary embolus.

In a letter dated June 11, 2001, the Office notified both Dr. Pampin and appellant of the additional factual and medical information needed within 30 days in order to make a

determination on the claim, to include a complete medical report of the physician's findings and medical rationale as to how appellant's claimed medical conditions were caused or aggravated by his employment activities. The Office noted that on February 8, 1994 appellant sustained an employment-related left ankle fracture.<sup>1</sup>

Medical records from 1990 through 2000 were submitted, including a February 19, 1994 x-ray of the left tibia/fibula and left ankle which noted a fracture of the very proximal fibular shaft and a fracture of the posterior malleolus, both with minimal deformity, and a June 17, 1994 left knee with patellar view x-ray, which revealed no abnormality in ossification, morphology or any abnormalities in the adjacent soft tissue structures. In a March 13, 2001 medical note, Dr. Peter G. Lohwin, a Board-certified orthopedic surgeon, noted a history of appellant's 1994 injuries and diagnosed appellant with a popliteal cyst of his left knee.<sup>2</sup> In a March 30, 2001 report, Dr. Lohwin advised that the cyst was due to appellant's work. In an April 24, 2001 medical note, Dr. Lohwin advised that appellant could not deliver mail any more and that he was disabled secondary to a deep vein thrombosis.

In a report of April 6, 2001, Dr. Rakesh Gard, a pulmonarist, noted appellant's medical history of chronic pain in the left leg because of dropped foot, degenerative disc disease in lumbosacral spine, status post laminectomy in 1996. Dr. Gard noted that appellant was experiencing shortness of breath during his usual route and was experiencing increasing left leg pain. He noted that a spiral computerized tomography (CT) scan showed some degree of obstructive airway disease and the CT scan showed bilateral pulmonary embolism.

In an April 6, 2001 report, Dr. Pampin noted that appellant presented with progressive shortness of breath with exertion, left-sided leg pain, ambulatory discomfort secondary to sciatic distribution and lower back issues. He further noted that appellant has a popliteal cyst or Baker's cyst. He stated that the results of the pulmonary function tests were still pending and advised that appellant was unable to ambulate for any great distance and was unable to perform his duties as a mail carrier. A computerized axial tomography scan revealed a bilateral pulmonary embolus. Left-sided calf tenderness was noted, along with fullness in the popliteal fossa. Homen's sign was negative. It was noted that appellant had ankle weakness and lower extremity weakness in general, secondary to disc disease. In a June 20, 2001 report, Dr. Pampin advised that appellant was totally disabled. He stated that appellant had suffered extensive deep vein thrombosis leading to pulmonary embolism. Dr. Pampin advised that this had been linked etiologically to a leg fracture and lower extremity damage which occurred in the past as documented in his earlier report of April 20, 2001. He stated that appellant also has disc herniation and neuropathy symptoms which has lead to the deep vein thrombosis. Appellant's moderately diminished ambulatory powers were due to orthopedic concerns. He also had poor respiratory reserves. Dr. Pampin advised that, although appellant was considered totally disabled, he might be able to tolerate very sedentary work in the future.

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<sup>1</sup> This claim was adjudicated by the Office under file number A2-677474.

<sup>2</sup> In a March 16, 2001 report, Dr. Lohwin noted that appellant has a prior foot drop on the left side with leg atrophy.

By decision dated October 20, 2001, the Office denied the claim on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's current claimed conditions and factors of his federal employment.

On July 11 and September 24, 2002, appellant, through his attorney, requested reconsideration and submitted additional evidence. In a June 24, 2002 report, Dr. Arthur Tiger, a Board-certified orthopedic surgeon, advised that appellant had a significant work-related injury in 1994 where he sustained fractures of his proximal fibula and the posterior malleolus of his tibia. Dr. Tiger noted that, upon appellant's return to work, he continued to stand, walk and do his normal activities as a letter carrier and, as a result of walking abnormally, due to problems in his left ankle, he began to develop problems in and about his lower back, consisting of significant left-sided sciatica and foot drop with objective evidence of discogenic disease and stenosis at the L3-4 and L4-5 levels, for which he underwent an operative procedure in December 1996. Dr. Tiger advised that this relieved appellant's back pain, but did not relieve the foot drop and, upon his return to work, appellant continued to have problems with his left lower extremity in that he could not dorsiflex his foot and started developing knee and calf problems. Dr. Tiger noted that Dr. Peter Lohwin, who treated appellant at that time, found that appellant had evidence of a popliteal cyst behind the knee. He further noted that appellant had a preexisting condition of severe pes planus bilaterally which had been treated since childhood and for which appellant wore orthotics. Dr. Tiger advised that, in September 2001, appellant developed significant shortness of breath and was found to have developed deep venous thrombosis in his legs as well as a pulmonary embolism. He set forth his examination findings and opined that, as a result of the work injury of 1994, appellant had developed profound problems in and about his entire left lower extremity which led to an awkward gait which, in turn, led to left-sided radiculopathy, which necessitated surgery on his back, after which appellant had problems with his gait which led to the deep venous thrombosis and pulmonary embolism. Dr. Tiger also noted that appellant had been left with profound problems of muscle atrophy in the left thigh and calf, as well as traumatic arthritis in and about his left knee. He further noted that appellant had fluid accumulation in his left knee, a large popliteal cyst behind his left knee, pretibial pitting edema in the left portion of the left leg, traumatic arthritis in and about the left ankle, along with a worsening of the pes planus on the left side. There was also evidence of an L5 radiculopathy with weakness of the dorsiflexors of the left foot.

By decision dated October 11, 2002, the Office denied modification of the October 20, 2001 decision finding that Dr. Tiger did not furnish sufficient rationale in his June 24, 2002 report to establish causal relation.

On October 21, 2002 appellant, through his attorney, requested reconsideration.

In a December 24, 2001 report, Dr. Pampin stated that appellant had suffered back injuries at work on January 10 and October 20, 1976, November 8, 1977, April 15, 1979 and January 11, 1989. He stated that, although these were not thought to be serious back injuries at the time, the multiple injuries led to the necessity that appellant undergo a laminectomy, as documented in 1996. Dr. Pampin opined that these prior injuries led to the ultimate manifestation of the lumbosacral disc disease, left foot drop, left muscle atrophy and the left deep vein thrombosis. He further advised that appellant's attempts at maintaining gainful

employment throughout the years had exacerbated his lumbosacral pathology. Dr. Pampin stated that appellant had obvious neurologic deficits which caused atrophy and decreased mobility on his left side and opined that appellant's pulmonary embolus was due to a deep vein thrombosis which resulted from weakness and limited ambulatory tolerance. He further opined that appellant was totally disabled and without pulmonary reserve.

By decision dated January 14, 2003, the Office denied modification of its previous decision dated October 11, 2002, again finding the medical evidence insufficient to establish that the claimed conditions were caused by employment factors.

The Board finds that appellant failed to meet his burden of proof to establish that his deep vein thrombosis and pulmonary embolus conditions are causally related to his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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.<sup>4</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

The medical evidence required to establish causation, generally, is 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.<sup>6</sup>

In this case, the Office noted that it had previously accepted, under another claim, the condition of a left ankle fracture which had occurred on February 8, 1994.<sup>7</sup> It additionally noted, in its decision of October 20, 2001, that appellant had accepted claims for injuries on January 10, and 20, 1976, November 8, 1977, April 16, 1979 and January 11, 1989, but stated that those events were accepted with little to no lost time and did not reflect a serious back condition. The Office found that, when appellant returned to work in 1994, he delivered mail on foot for

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<sup>3</sup> 5 U.S.C. §§ 8101-8193; *see* 20 C.F.R. §§ 10.115, 10.116 (1999).

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

<sup>5</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *Supra* note 2.

approximately 5 to 6 hours per day and had carried up to 35 pounds of mail in a shoulder bag. Appellant contends that the work injury of February 8, 1994 and the residuals therefrom along with subsequent back injuries from 1976 to 1989 resulted in a deep vein thrombosis and a pulmonary embolism. However, none of the medical reports rationalized medical opinion, based on a complete factual and medical background, which relates the cause of the claimed conditions to appellant's federal employment or previous employment injuries.

Appellant and his attorney claim that appellant had also sustained a fracture at the left knee (specifically, an incomplete fracture of the very proximal fibular shaft) as a result of the February 8, 1994 work injury. The February 15, 1994 left knee x-ray verifies an incomplete fracture of the very proximal fibular shaft and a fracture of the posterior malleolus; with very minimal deformity. Although the record also contains medical evidence contemporaneous to that time period to substantiate such a claim, the record, however, is devoid of any medical opinion to indicate or explain, with medical rationale, how these conditions, which were considered minor, are causally related to the accepted work injury of February 8, 1994.<sup>8</sup>

Dr. Pampin stated that appellant suffered from a deep vein thrombosis as a result of vascular compromise and opined that the conditions arose directly from the injuries appellant had sustained from his leg fracture of the left lower extremity and the summation of appellant's back injuries which necessitated the 1996 laminectomy. His opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his stated conclusions.<sup>9</sup> In his December 24, 2001 report, Dr. Pampin opined, without any medical rationale or explanation, that appellant's prior injuries had led to the ultimate manifestation of the lumbosacral disc disease, left foot drop, left muscle atrophy and now left deep vein

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<sup>8</sup> The medical reports of record do not definitely establish that the 1996 disc herniation or appellant's other claimed back conditions were related to employment activities. In a February 23, 1990 report, Dr. Eric S. Englestein, a Board-certified neurologist, noted that appellant had cryptococcal meningitis in 1973 which necessitated the placement of a ventriculoperitoneal shunt. He found that appellant had an extremely wobbly gait and opined that, although a functional disorder could not be dismissed, other possible causes of his wobbly gait would include a labyrinthitis, medication side effect, orthostatic hypotension or shunt failure. In a December 9, 1996 report, Dr. Marc A. Cohen, a Board-certified orthopedic surgeon, noted that, while appellant was at physical therapy in September 1996, a manipulation was performed and he subsequently developed a new complaint with respect to the back and leg pain and weakness. He stated that appellant had a herniated disc at L3-4 with a free fragment which appeared to be causing the left foot drop and neurological deficit. In a February 23, 1990 report, Dr. Robert Weinschenk, a Board-certified orthopedic surgeon, noted that a number of years previously, while working as a mailman, appellant was attacked by a guard dog and pushed to the ground, which initiated the onset of his lower back symptomatology. He further noted that three years previously, appellant had sustained another fall which resulted in exacerbation of back pain and hospitalization. Objective testing revealed a herniated disc at the L5-S1 level. Prior to the current hospitalization, Dr. Weinschenk advised that appellant had increased his time at work, increased his driving time in the car, and had multiple situations which increased stress and strain across the lower lumbar region. Dr. Weinschenk diagnosed a reexacerbation of degenerative and/or herniated disc disease of the lumbar spine at L5-S1 with associated radiculopathy, but offered no opinion as to causation. A partial report dated April 6, 2001 from Dr. Raskesh Gard (credentials are not known) advised that appellant had chronic pain in the left leg because of dropped foot, degenerative disc disease in lumbosacral spine, status post laminectomy 1996. Although he noted that appellant was a letter carrier and that he complained of shortness of breath, the record is incomplete to decipher whether an opinion was rendered with regard to whether appellant had a work-related condition.

<sup>9</sup> *William C. Thomas*, 45 ECAB 591 (1994).

thrombosis. He did not explain the process by which the 1994 work injuries caused or aggravated appellant's conditions to result in the diagnosed deep vein thrombosis or pulmonary embolus several years later. His opinion is of limited probative value for the further reason that the opinion is equivocal. Dr. Pampin stated summarily that appellant's conditions were the result of his work-related incidents, although the medical evidence of record notes other nonwork-related events -- such as the possibility of a shunt failure; an inference from Dr. Cohen with regard to a blotched physical therapy;<sup>10</sup> and a documented history of a free fragment along with the herniated disc, which appeared to be causing complications or could have also contributed to appellant's current condition. Moreover, the full history of appellant's medical condition was not addressed.

In his June 24, 2002 report, Dr. Tiger opined that appellant's current conditions is causally related to his employment due to appellant's awkward gait. He explained that appellant suffered a fracture of his proximal fibula as well as a fracture of the posterior malleolus of his tibia and summarized how this condition affected appellant's other problems which eventually led to the deep vein thrombosis and pulmonary embolus. However, his opinion is of limited probative value as he related the fracture of the proximal fibula and the posterior malleolus of the tibia to appellant's employment, which the Office did not accept as an accepted condition, and opined that appellant's conditions were the result of his work-related incidents, without any discussion or reference to the other nonwork-related events contained in appellant's medical record which might have contributed to appellant's condition. Additionally, the full history of appellant's medical condition was not addressed.

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.<sup>11</sup> Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish his claim; however, he failed to submit such evidence establishing that his federal employment or previous employment injuries caused or aggravated his current conditions.

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<sup>10</sup> It is unknown whether physical therapy was the result of an employment injury.

<sup>11</sup> *Victor J. Woodhams, supra* note 3.

The January 14, 2003 and October 11, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
August 21, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member