

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK S. REKTOR and U.S. POSTAL SERVICE,
POST OFFICE, Jefferson, OH

*Docket No. 03-1409; Submitted on the Record;
Issued August 21, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury on August 10, 2001 in the performance of duty causally related to factors of his employment.

This case was previously before the Board.¹ By decision dated January 6, 2003, the Board affirmed the Office of Workers' Compensation Programs decisions dated June 27, 2002 and October 23, 2001 denying appellant's claim for a traumatic injury on August 10, 2001. The Board's January 6, 2003 decision is incorporated herein by reference.²

By letter dated February 1, 2003, appellant requested reconsideration and submitted additional evidence.

By decision dated April 9, 2003, the Office denied modification of its June 27, 2002 decision on the grounds that the evidence failed to warrant modification.

The Board finds that appellant failed to establish that he sustained an injury on August 10, 2001 in the performance of duty causally related to factors of his employment.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the

¹ Docket No. 02-1963 (issued January 6, 2003).

² On September 4, 2001 appellant filed a traumatic injury claim alleging that on August 10, 2001 he injured his back while moving a tray of mail from the rear of his vehicle.

employee must submit sufficient evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.³

The Board previously considered the medical evidence of record in this case, in its January 6, 2003 decision. Therefore, in this appeal, the Board will review the evidence submitted following the Office's June 27, 2002 decision.

Appellant submitted medical records for various dates in 1999 for treatment regarding a sinus condition and asthma, depression and anxiety, gastro-esophageal reflux disease and low back pain. In a report dated May 10, 1999, Dr. Amir Jaffer, an internist, noted that a recent MRI (magnetic resonance imaging) scan revealed a small disc herniation at L4-5 and a larger disc herniation at L5-S1.

In a report dated January 16, 2003, sent to appellant's representative, Dr. Alan E. Kravitz, an internist specializing in cardiovascular disease, stated that he had reviewed records at the request of appellant's representative.⁴ He stated that the records indicated that appellant injured his back on August 10, 2001, while moving a tray of mail from his postal vehicle. He indicated that Dr. Amir had reported a small disc herniation at L4-5 on an unspecified date after Dr. Amir's August 30, 2001 examination of appellant. Dr. Kravitz stated:

"I believe that there is *sufficient* medical evidence to indicate that lifting the tray of mail on August 10, 2001 caused or contributed to the injury [appellant] currently suffers, by review of the medical records.... [I]t is my opinion to a reasonable degree of medical certainty that [his] back pain with radiation as more fully described in the complete medical record was in fact related directly by cause to his August 10, 2001 injury and that it first manifested itself on August 2001 [sic] or August 21, 2001 with right leg sciatica." (Emphasis in the original.)

The Board finds this report is of diminished probative value. Dr. Kravitz did not conduct a physical examination of appellant. It appears that he reviewed several medical records but it is not clear exactly what he reviewed. Dr. Kravitz did not provide a rationalized opinion explaining how the incident on August 10, 2001, when appellant moved a tray of mail, caused or aggravated a back condition, nor did he provide a specific diagnosis. In addition, he indicated that appellant's herniated disc at L4-5 was first revealed on an MRI in 2001, but the record shows that in 1999, Dr. Amir first noted that an MRI revealed a herniated disc at L4-5, prior to the alleged traumatic injury on August 10, 2001. Due to these deficiencies, the January 16, 2003 report of Dr. Kravitz is insufficient to establish that appellant sustained an injury on August 10, 2001 in the performance of duty, causally related to factors of his employment.

³ *Louise F. Garnett*, 47 ECAB 639 (1996); *John J. Carlone*, 41 ECAB 354 (1989).

⁴ The medical records Dr. Kravitz reviewed are not specifically identified with the exception of an August 30, 2001 report and progress notes of Dr. Jaffer.

The April 9, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
August 21, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member