

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALTER T. SEARCY, JR., and U.S. POSTAL SERVICE,
POST OFFICE, Atlanta, GA

*Docket No. 02-1533; Submitted on the Record;
Issued December 5, 2003*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

On January 27, 2002 appellant, then a 53-year-old letter carrier, filed an occupational disease claim (Form CA-2), alleging that he sustained degenerative disc disease of the spine, chondromalacia of the patella of both knees and crepitus from automobile accidents while performing his duties. Appellant also stated that his work activities exacerbated his conditions causing excruciating pain. The employing establishment stated that appellant first reported the conditions to his supervisor on May 1, 2001.

Accompanying the claim were a December 3, 2001 report by Dr. Abid Mohiuddin, a Board-certified internist, who specializes in cardiovascular diseases, stating that appellant was being treated for various musculoskeletal conditions aggravated by his work; an August 11, 2000 progress note by Dr. Angel Iglesias with the Veterans Administration Medical Center, who reported that appellant should have lifting and driving restrictions; an August 6, 1990 report by Dr. Joseph N. Saba, a Board-certified neurologist, stating that appellant had been to the "back school," noted that soft tissue injury to his neck and back were resolving and released him to full duty if Dr. Alan B. Lippitt, a Board-certified orthopedic surgeon, approved it; and progress notes by Dr. Lippitt, covering the period August 1986 to June 1990, wherein he noted that he saw appellant mainly for problems with his knees and later discussed neck and back pain. Additionally, October 24, 1997 radiological notes by Dr. Hugh G. Murray, Jr., interpreting x-rays revealed a change in appellant's degenerative disc disease in the cervical and lumbar spines.¹ Also submitted was appellant's statement identifying his work duties, to which he

¹ Other progress notes submitted were signed by nurse practitioners and registered nurses dated from 1986 to 2001. A nurse practitioner and a registered nurse are not considered physicians under the Federal Employees' Compensation Act. Therefore, the progress notes are not considered competent medical evidence. See 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572 (1988).

attributed his conditions, *i.e.*, bending, turning, walking, twisting, walking up and down stairs, standing and sitting.

By letter dated February 13, 2002, the Office of Workers' Compensation Programs requested detailed factual and medical information from appellant. He was requested to provide a statement describing the specific job duties he felt caused his conditions and a detailed narrative medical report from his physician, which contained a diagnosis and explanation as to how his conditions were caused by his employment activities and an explanation of how his conditions were materially worsened by his employment activities as opposed to merely causing symptoms of his underlying condition.

On March 11, 2002 the Office received appellant's response to the Office's February 13, 2002 request for additional information. Appellant stated that job activities that exacerbated his conditions were casing mail, which required continuous twisting of the neck from side to side; standing, which caused sharp pain down the legs; lifting trays of mail; bending while going up and down stairs and getting in and out of his postal vehicle, which hurt his knees; and sitting in the postal truck, which was too small which caused cramping in the back and knees.

On April 22, 2002 the Office received a March 6, 2002 report from Dr. Lippitt. He stated that he had not seen appellant since February 1991. Dr. Lippitt went on to say that when he had last seen appellant, he was doing quite well. Dr. Lippitt stated that he had reviewed extensive medical records from the Department of Veterans Affairs, which indicated that appellant had permanent disability and recommended restrictions on lifting to one bundle of mail at a time and limiting his time spent in a vehicle. Dr. Lippitt stated that since he had not seen appellant in a number of years he would not argue with the findings.

By decision dated April 24, 2002, the Office denied appellant's claim finding that the evidence of record failed to establish that he sustained an injury in the performance of duty causally related to factors of his federal employment.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Act² 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 filed within the applicable time limitations 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.³ These are the essential elements of each and every compensation

² 5 U.S.C. § 8101.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

claim regardless of whether the claim is predicated upon a traumatic injury or 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) a 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 the claimant.

The medical evidence required to establish causal relationship, 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.⁵

In the instant case, there is no dispute that appellant was exposed to the implicated factors of his employment. However, he has not submitted any evidence establishing that his back and knee problems result from those identified factors of employment. The medical evidence submitted, progress notes by Dr. Lippitt covering the period August 1986 to June 1990, noted that he saw appellant mainly for problems with his knees and later discussed neck and back pain. However, there is no rationalized medical opinion evidence to support a causal relationship between the factors of employment identified by appellant and his current conditions, *i.e.*, there is no medical opinion evidence explaining that appellant's current conditions are causally related to appellant's factors of employment by causation or aggravation. Therefore, the notes are insufficient to establish appellant's occupational disease claim. In a March 6, 2002 report, Dr. Lippitt stated that he had not seen appellant since 1991, at which time appellant's degenerative disc disease of the back and chondromalacia patella of both knees was doing quite well. Dr. Lippitt went on to say that, "It appears that Dr. Iglesias at the VA [Veterans Administration Medical Center] feels that [appellant] has permanent disability and recommends restrictions on lifting to one bundle of mail at a time and limiting his time spent in a vehicle." Dr. Lippitt stated: "Since I have not seen [appellant] in a number of years, I would not argue with the findings of the VA and recommend that the VA determine where he stands at this point in time." Dr. Lippitt's March 6, 2002 report, does not provide an independent rationalized medical opinion causally relating appellant's current knee and back conditions to the factors of employment identified by appellant. Dr. Lippitt failed to explain how appellant's factors of

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

⁵ *Id.*

employment worsened appellant's conditions. Therefore, the report is insufficient to establish appellant's occupational disease claim.

In a December 3, 2001 report, Dr. Mohiuddin, a Board-certified internist, who specializes in cardiovascular disease, stated that appellant was being treated for musculoskeletal conditions, which were aggravated by his work duties of lifting, standing and sitting. Dr. Mohiuddin failed to provide specific diagnosed conditions or to explain how the factors of employment he mentioned caused or worsened appellant's current knee and back conditions.

In an August 11, 2000 progress note Dr. Iglesias with the Veterans' Administration, stated that appellant was being treated for osteoarthritis of both knees and degenerative disc disease of the cervical and lumbar spine and that work activities aggravate his conditions. He stated that appellant's conditions are considered permanent and recommended that appellant be restricted to lifting one bundle of mail at a time and limited time in a vehicle or be transferred to a clerical position. Dr. Iglesias did not explain how over a period of time appellant's diagnosed conditions were caused or worsened by the factors of employment identified by appellant. The Board notes that the progress note was made in 2000, approximately one and a half years prior to appellant filing a claim. Therefore, there is no discussion of appellant's conditions. The August 11, 2000 progress note is insufficient to establish appellant's claim.

In an August 6, 1990 report, Dr. Saba, a Board-certified neurologist, diagnosed soft tissue injuries to appellant's neck and low back, which were resolving after attending "back school," and released him to full duty pending the approval of Dr. Lippitt. Dr. Saba's 1990 report stated that appellant's soft tissue injuries were resolving and does not address how factors of employment identified by appellant in 2002, caused or worsened any current conditions. Dr. Saba's August 6, 1990 report is insufficient to establish appellant's claim.

The Board finds that appellant has failed to meet his burden of proof.

The decision dated April 24, 2002 of the Office of Workers' Compensation Programs is hereby affirmed.⁶

Dated, Washington, DC
December 5, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ The Board notes that appellant submitted medical evidence with his appeal. As this evidence was not previously considered by the Office prior to its decision of April 24, 2002, the evidence represents new evidence, which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).