

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KENNETH L. PRICE and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 02-1205; Submitted on the Record;  
Issued January 2, 2003*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof to establish that his back condition is causally related to factors of employment.

This case has been before the Board previously. By decision dated January 6, 1997, the Board found that appellant had no disability after September 13, 1994 causally related to the June 11, 1994 employment injury.<sup>1</sup> The law and the facts as set forth in the previous Board's decision and order are incorporated herein by reference.

Subsequent to the Board's January 6, 1997 decision, on January 30, 1998 appellant filed an occupational disease claim, alleging that handling bulk mail caused low back pain. By letter dated February 19, 1998, the Office of Workers' Compensation Programs informed appellant of the type of evidence needed to support this claim. Hearing nothing further from appellant, in a decision dated April 21, 1998, the Office denied the claim.

On July 27, 1999 he submitted a second occupational disease claim, alleging that factors of employment caused facet arthrosis and spondylolisthesis at L5-S1. He had stopped work on April 17, 1999. In support of his claim, he submitted a personal statement and medical evidence. By letter dated August 31, 1999, the Office informed appellant that the medical evidence submitted was insufficient to establish entitlement. He was requested to describe in detail the employment-related activities he believed contributed to his condition and provide a comprehensive medical report explaining how employment factors contributed to his condition. The Office also requested information from the employing establishment. In response, appellant submitted an October 4, 1999 report from his treating general practitioner, Dr. Joyce Yano.

On October 29, 1999 the Office referred appellant to Dr. John Lavorgna for a second-opinion evaluation. In a decision dated December 3, 1999, the Office found that employment

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<sup>1</sup> Docket No. 95-1127.

factors did not aggravate appellant's back condition. On December 14, 1999 appellant requested a hearing and submitted a January 2, 2000 medical report from Dr. Jonathan Francis, who practices occupational medicine. By decision dated March 6, 2000, an Office hearing representative remanded the case to the Office, finding that a conflict existed between the medical opinions of Drs. Lavorgna and Francis.

Following remand, by letter dated May 8, 2000, the Office referred appellant to Dr. Clarence A. Boyd, a Board-certified orthopedic surgeon, for an independent medical evaluation.<sup>2</sup> By decision dated June 22, 2000, the Office credited the opinion of Dr. Boyd and denied appellant's occupational disease claim. On July 18, 2000 appellant, through counsel, requested a hearing and submitted a July 24, 2000 report in which Dr. Francis countered Dr. Boyd's findings. Appellant had previously requested that a number of coworkers be subpoenaed to testify at the hearing. In a decision dated December 21, 2000, an Office hearing representative denied appellant's requests for subpoenas to compel attendance and testimony by coworkers, stating that the issue in this case was medical in nature and there was no indication that the testimony of the coworkers would establish a medical basis for entitlement.

At the hearing, held on January 9, 2001, appellant testified regarding his condition and the medical evidence that he felt supported entitlement. In a decision dated March 26, 2001, an Office hearing representative noted that the June 22, 2000 decision was fine when rendered, but that Dr. Francis was correct in stating that Dr. Boyd did not review an October 1999 electromyography (EMG) report. The hearing representative observed that the EMG was not in the record and remanded the case to the Office to obtain a copy of the EMG and submit it to Dr. Boyd for review.

Following remand, the Office obtained a copy of the EMG and, by letter dated August 23, 2001, requested that Dr. Boyd review the attached EMG report. In a report dated October 12, 2001, Dr. Boyd reiterated his conclusion that appellant had no employment-related disability.

By decision dated December 3, 2001, the Office, again crediting Dr. Boyd, denied appellant's claim on the grounds that he failed to establish causal relationship. The instant appeal follows.

The Board finds that appellant did not meet his burden of proof to establish that his back condition is causally related to employment factors.

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<sup>4</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>5</sup> that the claim

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<sup>2</sup> Both Dr. Lavorgna and Dr. Boyd were furnished with the medical record, a statement of accepted facts and a set of questions.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

<sup>5</sup> See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

was timely filed within the applicable time limitation period of the Act,<sup>6</sup> 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>7</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>8</sup>

Causal relationship is a medical issue,<sup>9</sup> and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup> Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>12</sup>

In the instant case, finding that a conflict of medical opinion existed, the Office referred appellant to Dr. Boyd, a Board-certified orthopedic surgeon, to provide an impartial evaluation. In a comprehensive report dated June 9, 2000, Dr. Boyd noted his review of the medical record, the history of injury, appellant's complaints, and his findings on physical examination. He advised that there were no abnormal neurologic findings on examination which was consistent with magnetic resonance imaging findings. He opined that appellant's degenerative disc disease was not employment related and was secondary to natural progression. Dr. Boyd concluded that appellant had no employment-related disability from a subjective or objective standpoint. In an attached work capacity evaluation, the doctor advised that appellant had no abnormal findings on

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<sup>6</sup> 5 U.S.C. § 8122.

<sup>7</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>8</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 8.

<sup>11</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

<sup>12</sup> See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

examination and could work eight hours per day. Following an Office request that he review an October 8, 1999 EMG, in a supplementary report dated October 12, 2001, Dr. Boyd advised that the October 1999 EMG results were not conclusive, stating:

“Specifically, the doctor thought that there might be a possible polyneuropathy of the legs. Again, no such finding was noted on physical examination. Though the doctor thought there was a left L5-S1 radiculopathy, that was not substantiated by the results of the MRI [magnetic resonance imaging] scan or by the normal neurologic examination at this office.”

He concluded that his original assessment reported on June 9, 2000 remained unchanged.

Appellant submitted additional reports from Dr. Francis, who merely reiterated his opinion that appellant’s back condition was causally related to employment. As Dr. Francis had been on one side of the conflict in the medical opinion that Dr. Boyd, the impartial medical examiner, resolved, Dr. Francis’ report is insufficient to overcome the special weight accorded Dr. Boyd.<sup>13</sup> The Board, therefore, finds that appellant failed to establish that his back condition is causally related to employment.

The decision of the Office of Workers’ Compensation Programs dated December 3, 2001 is hereby affirmed.

Dated, Washington, DC  
January 2, 2003

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>13</sup> See *Harrison Combs, Jr.*, 45 ECAB 716 (1994).