

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NEIL E. SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, Indianapolis, IN

*Docket No. 02-1841; Submitted on the Record;  
Issued January 3, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden to establish that his current back condition is causally related to his accepted April 29, 1994 back injury.

On April 29, 1994 appellant, then a 38-year-old machine clerk, injured his back while lifting a tray of mail. He filed a claim for benefits on April 29, 1994, which the Office of Workers' Compensation Programs accepted for a herniated lumbar disc at L5-S1. On September 28, 1994 appellant returned to full-time work as a modified machine clerk and in a decision dated May 10, 1995, the Office found that appellant had no loss of wage-earning capacity in his modified position. On June 12, 1995 he stopped work and subsequently filed a claim for a recurrence of disability, which was approved by the Office on September 7, 1997. On November 15, 1995 appellant underwent a laminectomy, which was approved by the Office as related to his accepted condition. On April 3, 1996 he was released to his modified-duty job, without additional restrictions and returned to work on April 4, 1996.

On October 2, 1999 appellant filed a CA-1 traumatic injury claim, alleging that he developed spondylolisthesis in the area of his prior spinal surgery, which had been aggravated by his employment duties. He stated that he worked 8 to 10 hours a day, 5 to 6 hours a week, repeatedly lifting trays of mail weighing about 20 pounds and bending and twisting to place them on the proper carts. Appellant stated that for a time, he had been working standard mail, lifting trays weighing 35 to 40 pounds. He explained that on February 17, 1999 he performed lifting and twisting which aggravated his back, causing him to be unable to stand the following day.<sup>1</sup> Appellant did not stop work.

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<sup>1</sup> Appellant had previously filed a Form CA-2 claim for occupational disease on June 23, 1999, alleging that he developed spondylolisthesis in the area of his prior spinal fusion, and that on February 17, 1999 he became aware that his condition was aggravated by the repetitive lifting and twisting duties of his job. By decision dated October 6, 1999, the Office denied appellant's claim finding that he failed to submit rationalized medical evidence to support that his spondylolisthesis was employment related. During a telephone call to the Office on October 12, 1999 the Office advised appellant to file a new traumatic injury claim together with supporting evidence.

In support of his claim, appellant submitted treatment notes and form reports dated February 22, March 8, April 5 and 26, June 22 and November 16, 1999, from Dr. Philip W. Pryor, his treating Board-certified orthopedic surgeon, noting that appellant presented on February 22, 1999 complaining of increased pain and an increased workload, lifting trays up to 40 pounds, 60 hours a week, but that previously, appellant had been doing well. Dr. Pryor diagnosed spondylolisthesis and stated that appellant needed increased work restrictions and light duty.

In a decision dated December 27, 1999, the Office denied appellant's claim finding that he failed to submit rationalized medical evidence to support his claim.

By letter dated January 11, 2000, appellant requested an oral hearing before an Office representative. In support of his request, he submitted the results of a December 6, 1999 computerized tomography (CT) scan revealing significant facet degeneration and thesis offset at L4-5 and degenerative disc disease of a mild degree at L5-S1. Appellant also submitted a December 14, 1999 report from Dr. Pryor, who explained appellant's condition, stating, in pertinent part:

“His problems all began with an injury for which he had surgery in 1995. He had a laminectomy and discectomy with spiral fusion in 1995. This was related to an injury he had sustained earlier and, after this surgery, he had improvement. He did have a significant injury at that time, which set off a cascade of disc degeneration related to disc disruption by that injury. Post this surgery, he improved with only intermittent difficulties. Then in February 1999, he did have an exacerbation of this already existing condition by lifting 25 pounds trays all day at work. This has sometimes been ignored by his employer. He was working a mandatory 60 hours a week lifting up to 40 pounds and during this period of time had an exacerbation of the problem, which already existed from his previous injury.”

Dr. Pryor described appellant's treatment and progress since February 1999, noting additional exacerbations and the need for additional physical restrictions. He concluded:

“His diagnosis is lumbar degeneration with disc disruption with previous fusion at L5-S1 and ongoing permanent impairment from this injury. The work injury, as described by the patient, was indeed sufficient to have caused his difficulty. The initial injury back in 1995 caused the problem. His February 1999 incident reaggravated that previous problem. The patient will continue to need to work light duty.”

In a follow-up report dated November 15, 2000, Dr. Pryor described appellant's duties on the DCBS machine, outlined his current physical restrictions and stated, in relevant part:

“[Appellant] has a very serious disc problem. This disc problem is because of his injury related to the DCBS machine. His problem relates to his original injury and it has been aggravated by his being forced to do heavier work than would be advisable at times.... He did this for two years before he had trouble but all of

this led to more and more trouble with his back and this was responsible for his injury and his current restrictions and all this should continue to be considered by the Department of Labor as being the cause of his permanent restrictions which he should be allowed to continue.”

In a decision dated January 11, 2001, an Office hearing representative found the medical evidence insufficient to meet appellant’s burden of proof to establish that his current condition is causally related to his employment.

By letter dated January 7, 2002, appellant requested reconsideration of the Office’s January 11, 2001 decision. In further support of his claim, appellant submitted a December 19, 2001 report from Dr. Pryor, who stated:

“This letter is to clarify my recent treatment of [appellant]. The patient was previously treated in years past for his back by me, last seen in 1997. The patient was then injured on February 17, 1999 lifting trays from carts to the top of a stack and then began to have significant back pain and left buttock pain into the sciatic notch. The next day he was totally incapacitated and called for an appointment immediately after the injury on February 18, 1999. He was then seen a few days later on February 22, 1999 and it was noted at that time he had an increased load in general. Lifting more. It was, however, discussed that the patient had a specific injury on February 17, 1999. Apparently, my failure to stress this in the records has been an area of debate among the various people involved with his problem. He definitely had a specific event on February 17, 1999 which again, caused him to begin to have significant back problems.”

Dr. Pryor further described appellant’s course of treatment, noted his intermittent periods of disability between February 17, 1999 and the present, and his need for continued physical restrictions. He concluded:

“[Appellant] has a disrupted disc above his old fusion. This relates to an injury on February 17, 1999 where he did some lifting. It has been aggravated continuously over the years by his repetitive heavy work. He continues to be disabled because of his injury. I expect this will continue to be the case. He will continue to try to work. He will need to have restrictions such as no heavy lifting, bending or twisting as well as no lifting above his head as per the last incident that caused him problems.”

In a noted dated December 28, 2001, Dr. Pryor stated that appellant required lumbar surgery, which had been scheduled for February 6, 2002.

By decision dated April 2, 2002, the Office affirmed the prior denial, finding that appellant did not submit evidence sufficient to warrant modification of the January 11, 2001 decision.

The Board finds that the case is not in posture for decision.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of the burden, he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation.<sup>2</sup>

The medical evidence required to establish a causal relationship, generally, 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>3</sup>

It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. The subsequent injury "is compensable if it is the direct and natural result of a compensable injury."<sup>4</sup>

In the present case, appellant has submitted rationalized, probative, unrefuted medical evidence from Dr. Pryor, his treating Board-certified orthopedic surgeon, which indicates that appellant still suffered residuals from his April 29, 1994 employment injury and that on, or around February 17, 1999 he sustained an employment-related aggravation of his condition which necessitated additional medical treatment and intermittent periods of disability, and raised the possibility of the need for additional back surgery. Dr. Pryor explained in his reports that appellant's April 1994 injury and 1995 associated back surgery set off a cascade of disc degeneration which was further exacerbated by his employment duties on February 17, 1999, resulting in his current condition.

The Board finds that the evidence submitted by appellant, which contains a history of the development of the condition and a medical opinion that the condition found was consistent with the history of development, given the absence of any opposing medical evidence, is sufficient to require further development of the record. The medical evidence of record raises an uncontroverted inference of causal relationship between appellant's April 29, 1994 work injury and his current condition, and is sufficient to require further development of the case record by the Office.

On remand, the Office should refer appellant to a Board-certified orthopedic specialist to submit a rationalized medical opinion on whether his current condition, including any additional

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<sup>2</sup> *Judith J. Montage*, 48 ECAB 292-93 (1997).

<sup>3</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994); *Ern Reynolds*, 45 ECAB 690, 695 (1994).

<sup>4</sup> *Frank Barone*, 30 ECAB 1119 (1979).

surgery, is casually related to his accepted April 29, 1994 back condition, either directly or by precipitation, aggravation or acceleration, or otherwise related to factors of his employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The April 2, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC  
January 3, 2003

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member