

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LONNIE C. SHARP and U.S. POSTAL SERVICE,
POST OFFICE, North Little Rock, AR

*Docket No. 03-1239; Submitted on the Record;
Issued June 24, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that his degenerative disc and joint disease is causally related to factors of his federal employment.

On March 26, 2001 appellant, then a 58-year-old letter carrier, working modified duty 12 hours per week, filed an occupational disease claim alleging that factors of employment caused spine problems. Appellant submitted medical reports from Drs. Reginald J. Rutherford and Kenneth M. Rosenzweig. By letters dated July 24, 2001, the Office of Workers' Compensation Programs requested information from both appellant and the employing establishment. In response, appellant submitted a personal statement, in which he advised that he had been a letter carrier since 1966 and described the work duties of a letter carrier. He further indicated that he had an employment-related "broken back" adjudicated by the Office under file number 160290831.¹ The employing establishment submitted reports from Ray Sampson, supervisor, customer services, who described appellant's limited-duty job, advising that since an employment-related injury on December 26, 1996 appellant had performed modified duties consisting of light office work.

By decision dated October 29, 2001, the Office denied the claim, finding that the medical evidence of record did not establish that appellant's back condition was caused by employment factors. On December 27, 2001 appellant requested a hearing that was held on July 24, 2002. In a decision dated September 10, 2002, an Office hearing representative set aside the October 29, 2001 decision and remanded the case to the Office for a second opinion medical examination to determine if appellant's degenerative disc and joint disease was causally related to employment factors.

On November 7, 2002 the Office referred appellant, together with a set of questions, the medical record and a statement of accepted facts, to Dr. Thomas Rooney, a Board-certified

¹ The instant claim was adjudicated by the Office under file number 162021115. The Board further notes that appellant filed a separate appeal with the Board regarding a right knee condition. This was assigned docket number 03-762.

orthopedic surgeon, for a second opinion examination. By decision dated January 16, 2003, the Office denied appellant's claim, finding that the medical evidence failed to establish that appellant's degenerative disc and joint disease were causally related to his federal employment.

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

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.²

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.³ 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.⁴ 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.⁵

Furthermore, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.⁶ This is true even though the employee is found medically disqualified to continue in such employment because of the effect that the employment factors might have on the underlying condition. Under such circumstances, the employee's disqualification for continued employment is due to the underlying condition without any contribution by the employment.⁷

² *Solomon Polen*, 51 ECAB 341 (2000).

³ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

⁴ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁶ *John Watkins*, 47 ECAB 597 (1996).

⁷ *Marion Thornton*, 46 ECAB 597 (1995).

The relevant medical evidence includes a November 21, 2000 report, in which Dr. Rosenzweig, an attending Board-certified orthopedic surgeon, advised that magnetic resonance imaging scan of appellant's cervical spine revealed moderate to high-grade central and lateral canal encroachment with disc protrusion at C5-6 with deformity of the spinal cord and central disc protrusion at C4-5 with no cord impingement. The physician noted appellant's complaints of pain in the neck midline and of both posterior shoulder girdles with Spurling's findings on neck examination.⁸ Dr. Rosenzweig reported that a review of February 1997, x-rays demonstrated a 30 percent compression fracture without retropulsion at L1 with moderate disc changes. He diagnosed neck pain as a result of degenerative disc and degenerative joint disease with foraminal canal and lateral recess stenosis at multiple levels on both the right and left, as well as degenerative disease in both knees and lower lumbar spine. Dr. Rosenzweig advised that appellant's condition was related to "his cumulative trauma disorder as detailed by his work history." He advised that, although appellant was working light duty at the time of his examination, the accumulation of stresses from appellant's 30 plus year history as a letter carrier contributed to his neck condition, stating that further testing was needed to evaluate appellant's neck findings in conjunction with the employment-related lumbar compression fracture in order to make a disability determination. In an April 27, 2001 report, Dr. Rosenzweig advised that appellant had advanced degenerative changes in his back in addition to other areas including, but not restricted to, his shoulders, neck and knees, which were the "result of cumulative trauma and/or acute trauma with exacerbation and/or aggravation over the years." He further noted that canal stenosis and degenerative changes restricted appellant's ability to stand and walk for "any significant time and/or distance" and that he would require ambulatory aids.⁹

In a report dated December 11, 2002, Dr. Rooney, a Board-certified orthopedic surgeon, who performed a second opinion examination for the Office, reported appellant's work history of carrying mail for 30 years, the compression fracture to L1, following which appellant was placed on a 12-hour work week and appellant's complaints of pain in the interscapular area. The physician advised that appellant weighed 300 pounds, used crutches and had braces on both hands and right knee. Physical examination demonstrated decreased range of motion of the neck, hips and left shoulder with no spasm or tenderness in the cervical or lumbar spine. Straight leg raising was negative. Tinel's sign was positive in both wrists and Phalen's was slightly positive. X-rays of the cervical spine, left shoulder, pelvis and knees demonstrated, *inter alia*, degenerative changes. Dr. Rooney concluded:

"I find no rationalized medical evidence that the degenerative problems being experienced by [appellant] are causally related to his employment. Of course, the type of work he normally did would cause aggravation of his symptoms due to the underlying degenerative conditions."

When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Federal Employees'

⁸ The Spurling test is used to determine cervical nerve root disorder.

⁹ Appellant also submitted a June 13, 2001 report, in which Dr. Rutherford advised that Dr. Rosenzweig should treat appellant for his multilevel cervical disc disease, bilateral carpal tunnel syndrome and advances osteoarthritis of the right hip and right knee.

Compensation Act,¹⁰ to resolve the conflict in the medical opinion. In this case, although, Dr. Rooney, the Office referral physician, offered an opinion that appellant's degenerative condition was not employment related, Dr. Rosenzweig, appellant's physician, provided an opinion that the accumulation of stresses from appellant's employment as a letter carrier contributed to his degenerative disease. The Board finds that the reports of Drs. Rosenzweig and Rooney, who are both Board-certified orthopedic surgeons, are of approximately equal value and are in conflict on the issue of whether appellant's degenerative condition is employment related.¹¹ The case will be remanded for referral to an appropriate Board-certified impartial specialist, accompanied by an updated statement of accepted facts¹² and the complete case record, for a rationalized medical opinion addressing whether appellant's degenerative disc and joint disease is causally related to factors of employment. After such further development deemed necessary, the Office shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated January 16, 2003 is hereby vacated and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
June 24, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ 5 U.S.C. § 8123(a).

¹¹ The Board notes that in a companion case, adjudicated by the Board under Docket No. 03-762, *see supra* note 1, the Board instructed that all appellant's claims be consolidated.

¹² The Board further notes that the statement of accepted facts furnished to Dr. Rooney was incomplete in that it did not indicate that appellant had a previously accepted back injury or that he began working limited duty in 1996. Dr. Rooney, however, correctly recorded that appellant was working limited duty and that he had a previous employment-related lower back injury.