

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JIMMIE L. NUGENT and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 02-2154; Submitted on the Record;
Issued March 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that his current back condition is causally related to his employment.

On August 21, 2001 appellant, then a 37-year-old mail processing clerk, filed an occupational disease claim assigned number 09-2012994 alleging that his employment duties aggravated his preexisting back condition, causing it to worsen in severity and become disabling. He submitted a detailed narrative statement and medical evidence in support of his claim. Appellant sustained a back injury in 1985 while in the Air Force and currently carries a 40 percent service-connected disability rating. He began work with the employing establishment in 1988, but it is unclear from the record exactly when he stopped work. Appellant stated that he stopped work in 1999 and attempted to return to work in January 2000, but was sent home after a few hours. In a September 10, 2001 letter controverting appellant's claim, the employing establishment indicated that appellant had been off work for approximately three years. Appellant stated that he officially retired from the employing establishment on April 20, 2000.

The record indicates that appellant has a prior accepted claim for aggravation of back pain and also contains a November 12, 1999 decision of the Office of Workers' Compensation Programs denying appellant's claim for wage-loss compensation for the period June 14 through November 9, 1998, assigned number 09-441806. In addition, the Office noted that it issued a formal denial for the period of compensation from July 1999 through January 2000 under another unspecified claim number handled in the Jacksonville, Florida, office. There is no copy of this decision contained in the record and it is unclear whether the record before the Board contains all of the medical and factual evidence submitted in support of appellant's prior claims.

By decision dated November 1, 2001, the Office found the evidence of record insufficient to establish that appellant's current back condition is causally related to either his employment or his prior accepted back condition. In a November 12, 2001 letter, appellant, through counsel, requested an oral hearing before an Office representative and submitted additional medical evidence in support of his claim.

In a July 16, 2002 decision, an Office hearing representative found the evidence insufficient to establish that appellant's current back condition is causally related to his employment. Accordingly, the hearing representative affirmed the Office's decision.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 timely filed within the applicable time limitations period 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In this case, appellant submitted a January 10, 2001 report from Dr. James Plunkett, a physiatrist, who examined appellant on September 20 and December 20, 2000 and reviewed the medical evidence of record, including imaging studies, as well as the job duties of a mail processor. Dr. Plunkett stated his diagnoses included: (1) remote lumbar strain in 1985 without evidence of disc degeneration, thoracic involvement or facet arthropathy; (2) progressive, recurrent thoracic and lumbar strain/sprain since 1989 "more likely than not" medically related to work activities as a mail processor clerk; (3) degenerative disc disease at L4-5 and L5-S1, with annular tears and Grade I L5-S1 retrolisthesis, "more likely as not" medically related to repetitive work activities in the absence of nonwork trauma and advanced in progression beyond age-related degeneration alone; (4) lumbar facet arthropathy, "more likely as not" related to cumulative work loading/stress at an earlier than expected age and in the absence of other specific trauma; and (5) chronic pain syndrome related to diagnoses 2 to 4 with restricted mood, affect, activities of daily living, mobility, recreation and employability. Dr. Plunkett further stated that "given the intervening, relatively asymptomatic period from active duty injury (June 1985) to onset of [appellant's] progressive complaints (June 1989), it is very unlikely that the above complaints and injuries derive causally from the initial strain injury." Dr. Plunkett concluded that appellant's conditions did not allow resumption of his mail processor duties and that the chronicity of these conditions made substantial improvement unlikely.

In response to the Office's September 14, 2001 letter requesting that he submit additional evidence supportive of his claim, appellant submitted Department of Veterans Affairs medical records dating from the 1990's, most of which pertain to appellants psychiatric treatment, as well as additional orthopedic treatment notes, many of which were previously considered in conjunction with appellant's previously denied claim. None of this information addresses the issue of whether appellant's current back condition is causally related to his employment. In

¹ 5 U.S.C. § 8101 *et seq.*

² *Charles E. Evans*, 48 ECAB 692 (1997).

³ *Id.*

addition, appellant submitted a second narrative report from Dr. Plunkett, dated October 29, 2001, in which he listed his findings on recent physical examination, compared the results of an April 1999 magnetic resonance imaging (MRI) scan with an earlier December 1997 MRI scan and diagnosed: (1) lumbar strain -- permanent aggravation of a preexisting condition; (2) thoracic sprain -- chronic, recurrent since 1989 with proximate cause of repetitive spinal motions as a mail processor; (3) lumbar facet arthropathy -- precipitated by the proximate cause of spinal loading related to duties as a mail processor since April 1999; and (4) L4-5 and L5-S1 degenerative disc disease with L5-S1 spondylolisthesis -- precipitated by the proximate cause of spinal motions as a mail processor. With respect to the cause of the diagnosed lumbar strain, Dr. Plunkett stated that it was originally incurred in June 1985 while appellant was serving as an Air Force medic and improved symptomatically to allow appellant to return to full active unrestricted duty until his honorable discharge in 1988. Dr. Plunkett noted that a computerized tomography (CT) scan of the lumbar spine at that time revealed no bone or disc abnormalities. He stated that appellant had incurred a permanent aggravation of his condition through the repetitive bending, reaching, lifting, grasping, pushing, pulling and twisting required of him through his duties as a mail processor from 1988 to 1998. Regarding the diagnosed thoracic sprain, Dr. Plunkett stated that this condition was diagnosed in 1989 and was precipitated by appellant's work duties, which were "likely as not" sufficient proximate cause of this now chronic condition. With respect to the diagnosed lumbar facet arthropathy, Dr. Plunkett noted that appellant was 37 years old when this condition was detected on an MRI scan and that as appellant has no family history of any early degenerative spinal diseases and no spinal trauma beyond the one-time lifting strain injury in 1985, it was his medical opinion that appellant's work duties were the proximate cause that produced this degree of osteoarthritic change in appellant's facet joints. Finally, regarding appellant's L4-5 and L5-S1 degenerative disc disease with annular tear and L5-S1 Grade I retrolisthesis, Dr. Plunkett noted that this disease was diagnosed in December 1997 and December 1999 by MRI scan findings correlating with clinical signs and symptoms. He stated that appellant was only 33 in 1997 and as noted above, lacked exposure to other trauma that would causally account for these degenerative findings. Therefore, Dr. Plunkett opined that these conditions were caused by appellant's work duties as a mail processor from 1988 through 1999. He concluded that the pain from appellant's diagnosed conditions had totally disabled him from employment as a mail processor since December 9, 1999.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁴ Although Dr. Plunkett's reports do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his current back condition is causally related, either directly or through aggravation, precipitation or acceleration, to either his employment or his prior accepted back condition, his report raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.⁵ Additionally, the Board notes that in this case the record contains no medical

⁴ *William J. Cantrell*, 34 ECAB 1233 (1983).

⁵ *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

opinion contrary to appellant's position. The Board will remand the case for further development of the medical evidence.

On remand the Office should double this case file assigned number 09-2012994 with any other injury claims appellant has filed for the same parts of the body, including case file assigned number 09-441806.⁶ The Office should also prepare a statement of accepted facts and refer it along with appellant and his medical records for a second opinion examination to obtain a rationalized opinion as to whether appellant's current diagnosed back conditions are causally related to factors of appellant's federal employment, either directly or through aggravation, precipitation or acceleration. Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The July 16, 2002 and November 1, 2001 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC
March 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury case is reported for an employee who has filed a previous injury claim for the same part of the body.