

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANICE M. EASTERWOOD-COLE and U.S. POSTAL SERVICE,
Kansas City, MO

*Docket No. 03-252; Submitted on the Record;
Issued March 21, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

On August 1, 2002 appellant, then a 52-year-old distribution clerk, filed an occupational disease claim alleging that on April 30, 2001 she sustained a herniated disc. She first became aware that her condition was caused or aggravated by her employment on June 14, 2001. The employing establishment controverted the claim.

In a letter dated August 6, 2002, the Office advised appellant of the additional factual and medical evidence needed to establish her claim. Appellant was advised to submit rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment. She was allotted 30 days to submit the requested evidence.

In a statement received by the Office on September 6, 2002, appellant indicated that for the prior nine years she was required to lift, twist, bend and stand for prolonged periods of time, and sit for prolonged periods on a stool. She stated that her position required a great deal of walking on concrete flooring, stooping, pulling and pushing equipment, kneeling and squatting on a daily basis for weeks at a time, including occasional 60-hour weeks. Appellant indicated that her outside activities were computer use one to two times weekly, for a period of two hours each time. She added that her hobbies included cooking and reading. Appellant stated that limiting her activities allowed her to tolerate the pain and that she experienced pain in her left leg and buttocks and tingling in her leg and foot.

In a magnetic resonance imaging (MRI) scan dated June 22, 2001, Dr. Martin Phillip, indicated that there was a protrusion of the L5-S1 disc with midline and paracentric protrusion on the left.

In a July 24, 2001 neurosurgery patient history report, it was noted that appellant's problem first began on April 28, 2001.

In reports dated August 22 and September 12, 2001, Dr. John Breth, a Board-certified anesthesiologist, noted appellant's history of illness and treatment, which included low back pain and left buttocks pain. He noted that she attributed an abrupt onset of pain after standing suddenly from sitting on the ground in May 2001. Dr. Breth diagnosed lumbar radiculopathy.

In reports dated February 5, March 5 and May 21, 2002, Dr. Robert M. Beatty, a Board-certified neurological surgeon, indicated that appellant had an L5-S1 disc bulge on the left and on the right, an L4-5 bulge. He did not provide any description of how the injury occurred or how it was related to her employment.

In an MRI report dated February 15, 2002, Dr. Rick S. Moritz, a Board-certified radiologist, indicated that appellant had mild broad-based posterior disc protrusion at L5-S1 with moderate associated narrowing of the medial aspect neural foramina bilaterally and a mild posterior disc bulge at L4-5.

In a March 5, 2002 report, Dr. Beatty indicated that he met with appellant to discuss the difficulties that she had with her left leg. She was able to walk and stand and do shopping. He noted that appellant had some bulging at the discs, particularly at L5-S1 and also a bit at L4-5.

In a May 21, 2002 report, Dr. Beatty, indicated that appellant was having problems for about a year related to pain in the back and left leg, with pain in her left buttock radiating down into the posterolateral calf. He opined that it was generally related to her left S1 radiculopathy, probably related to a disc protrusion and or arthritic formation.

In an MRI report dated June 3, 2002, Dr. Moritz indicated that appellant had mild degenerative change in the lumbar spine and no acute abnormality.

In a June 3, 2002 computerized tomography lumbar spine post myelogram, Dr. Moritz indicated that appellant had: moderate broad-based posterior disc protrusion at L5-S1 with poor filling of the S1 nerve root sleeves, particularly on the left; the disc protrusion in conjunction with the facet joint disease at L5-S1 was causing moderate narrowing of the inferior aspects of the neural foramina bilaterally and a moderate posterior disc bulge at L4-5.

In reports dated June 26 and July 26, 2002, Dr. Beatty indicated that appellant had degenerative bulging of the L5-S1 disc and advised that appellant should receive surgery.

In reports dated August 28, 2002, Dr. Beatty indicated that appellant had returned to work and was getting along fairly well. He indicated that she did have considerable problems with her lower back and lumbar degenerative changes. Dr. Beatty stated that appellant's condition did not warrant surgery at this time, but he did think that it would be helpful for her not to be required to lift heavy objects.

By decision dated September 24, 2002, the Office denied appellant's claim on the grounds that she failed to establish a causal relationship between her claimed back condition and her federal employment.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of 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 limitation 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 a causal relationship 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.⁴

The Board finds the evidence of record insufficient to establish that appellant sustained an occupational disease caused by her factors of her federal employment.

Appellant submitted numerous reports from her treating physicians, Drs. Phillip, Breth, Beatty and Moritz, which discussed her pain and back conditions. Dr. Breth diagnosed lumbar radiculopathy and Dr. Beatty diagnosed a bulging disc on the left and right. Dr. Moritz also

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

diagnosed broad-based posterior disc protrusion at L5-S1 with moderate associated narrowing of the medial aspect of neural foramina bilaterally and a mild posterior disc bulge at L4-5. However, none of the doctors addressed appellant's job duties or provided an explanation relating her claimed condition to employment factors. The medical evidence of record does not substantiate that appellant's federal employment duties caused or contributed to her claimed back condition. As appellant has not submitted the requisite medical evidence needed to establish her claim, she has failed to meet her burden of proof.

Appellant has not established that she sustained an injury in the performance of duty.

The September 24, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 21, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member