

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE M. EBBESON and U.S. POSTAL SERVICE,
POST OFFICE, Phillipsbury, NJ

*Docket No. 02-1816; Submitted on the Record;
Issued May 2, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an injury in the performance of duty.

On May 15, 2000 appellant, then a 33-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained a herniated disc at L4-5 as a result of her federal employment. She further stated that her condition required surgical intervention on April 8 and August 19, 1999. Appellant attributed her condition to constant standing, lifting, bending, twisting and walking 4 to 5 miles daily with a 25- to 30-pound mailbag on uneven ground and pavement. She further stated that she began having pain in 1996 after an on-the-job back injury. In October 1998, her pain was consistent and daily with all work duties. Appellant identified September 3, 1998 as the date she first became aware of her illness. She further indicated that February 15, 2000 was when she first realized her illness was caused or aggravated by her employment. Appellant ceased working on August 17, 1999.

By letter dated July 7, 2000, the Office of Workers' Compensation Programs acknowledged receipt of appellant's May 15, 2000 Form CA-2 as well as a May 25, 2000 cover letter from Thomas R. Uliase, Esq. The Office advised appellant that the materials received were insufficient to determine her eligibility for benefits. Accordingly, the Office requested that appellant submit additional factual and medical evidence within approximately 30 days.

In a separate letter dated July 7, 2000, the Office advised Mr. Uliase that it was unable to communicate with him regarding appellant's file until it received written authorization from appellant designating him as her representative.

On August 23, 2000 the Office received an undated three-page statement from appellant in response to its July 7, 2000 request. Appellant did not directly submit any medical evidence to the Office, but instead submitted authorizations for release of medical records from her family physician and neurosurgeon.

By letter dated November 9, 2000, Mr. Uliase submitted the requested attorney authorization signed by appellant. He also requested that he be provided the case number assigned appellant's claim and a copy of the case file. The November 9, 2000 letter and enclosed attorney authorization were date-stamped as received by the Office on November 21, 2000.

In a decision dated November 22, 2000, the Office denied appellant's claim based on her failure to establish that she sustained an injury as alleged. The Office acknowledged receipt of appellant's detailed factual statement, but further noted that appellant failed to submit the necessary medical evidence as requested on July 7, 2000. The Office explained that, in the absence of the requested medical evidence, it could not establish that appellant sustained an injury. The November 22, 2000 decision was addressed and mailed to appellant and no copy was sent or provided to her designated representative, Mr. Uliase.

By letter dated March 5, 2001, Mr. Uliase again wrote to the claims examiner referencing his November 9, 2000 correspondence and reiterating his request for a copy of the case file. Additionally, he submitted an April 6, 2000 report from Dr. Michael I. Stanley, a Board-certified neurosurgeon and appellant's treating physician, and a copy of appellant's undated factual statement. Counsel questioned why the Office had not yet developed the case file and in closing, he asked the claims examiner to provide a decision approving the claim.

On March 26, 2001 the Office provided Mr. Uliase a copy of the case file. The Office further explained that it received Mr. Uliase's November 9, 2000 correspondence on November 21, 2000 and that case development occurred in July 2000 and the claim was denied November 22, 2000. The Office expressed its regrets that counsel had not received a copy of the file in a timelier manner.

In a letter dated April 27, 2001, Mr. Uliase requested that his March 5, 2001 correspondence be considered a request for reconsideration of the November 22, 2000 decision.

By decision dated August 15, 2001, the Office denied modification of the November 22, 2000 decision.

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

In order to establish that an injury was sustained in the performance of duty, 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.¹ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.²

In a report dated April 6, 2000, Dr. Stanley stated that when he began treating appellant in December 1998 she complained primarily of lower back pain with radiation into the buttocks and down the legs. He stated that appellant had mechanical exacerbation and a typical pattern of exacerbation with sitting, standing and bending. A November 1998 magnetic resonance imaging (MRI) scan revealed a small disc herniation at L4-5, eccentric into the right foramen as well as general bulging of the L4-5 disc. Dr. Stanley stated that appellant underwent a lumbar discectomy in April 1999 followed by an interbody lumbar fusion in August 1999. While appellant's lumbar pain and radicular symptoms improved following the August 1999 surgery, she continued to experience pain at the iliac crest bone graft site until as recently as March 2000. Dr. Stanley attributed appellant's disc herniation and subsequent surgeries to "repetitive injuries from the lifting, bending and carrying of mail..." He further stated that appellant remains symptomatic and she has functional limitations that currently preclude her from returning to work.

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.³ Although Dr. Stanley's report does not contain sufficient rationale to discharge appellant's burden of proving that her claimed herniated disc at L4-5 is causally related to her employment, the doctor's opinion raises an inference of causal relationship sufficient to require further development of the case record by the Office.⁴

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's lumbar condition is causally related to her employment exposure. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

² See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 1. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.

³ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁴ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The August 15, 2001 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action in accordance with this decision and order of the Board.⁵

Dated, Washington, DC
May 2, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁵ On appeal, counsel also argued that the Office denied appellant her right to effective representation by failing to provide him a copy of the November 20, 2000 decision. Pursuant to 20 C.F.R. §§ 10.127 and 10.700(c), the Office should have provided counsel a copy of the November 20, 2000 decision. However, given the Board's disposition of the case on the merits, the Office's oversight constitutes harmless error.