

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY D. CARR and U.S. POSTAL SERVICE,  
POST OFFICE, San Antonio, TX

*Docket No. 03-897; Submitted on the Record;  
Issued May 14, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty causally related to factors of his federal employment.

On July 31, 2002 appellant, then a 42-year-old letter carrier, filed a claim for traumatic injury alleging that, on July 30, 2002, as he opened the rear door of a delivery truck, "mail began to fall," and, as he reacted to the falling bundles, "I banged my knee, twisted my wrist and my back."

In a report dated August 15, 2002, Dr. David M. Hirsch, appellant's treating physician Board-certified in physical medicine and rehabilitation, stated that he had examined appellant that day and reported findings. Dr. Hirsch related appellant's history of injury, noting that, on July 30, 2002, when appellant opened the back of his truck, "mail that was bundled up in rubber bands started to fall. He tried to catch them and developed the onset of diffuse wrist pain." Appellant related low back and overall body pain, left wrist pain with numbness and tingling. Upon examination, Dr. Hirsch noted full range of motion and normal stretch of bilateral upper extremities. He also noted Waddell's signs at three of five with some symptom magnification. He found positive Spurling's sign on the left cervical spine and wrist pain "noted at this time on even the slightest palpation." In a report dated August 15, 2002, Dr. Hirsch noted that appellant's injuries were work related and placed him on total disability from that date "until further notice."

By letter dated September 3, 2002, the Office of Workers' Compensation Programs advised appellant that the information he had submitted was insufficient to establish that he sustained an injury as alleged. The Office requested that appellant's treating physician submit a detailed report including a history of injury, a firm diagnosis resulting from the injury, findings, symptoms and test results which support the diagnosed condition and his opinion regarding whether the injury was caused or aggravated by the claimed injury.

In a report dated July 30, 2002 and received by the Office on September 9, 2002, Dr. Arie T. Scribbick, Board-certified in emergency medicine, advised that he had treated appellant that day and stated that he had a work-related recurrence of sharp, moderate low back pain caused by falling mail when he opened a sliding door of a delivery truck. Dr. Scribbick also noted left wrist sprain.

In a report dated August 5, 2002 and received by the Office on September 9, 2002, Dr. Robert A. Mora, Board-certified in emergency medicine, advised that he had treated appellant that day in a follow-up appointment for back pain. Dr. Mora noted that appellant walked from his bed to the restroom in a steady gait. Appellant was diagnosed with chronic low back pain and left wrist sprain.

In a report dated August 9, 2002 and received by the Office on September 9, 2002, Dr. Victor Abrego, a specialist in anatomic and clinical pathology, stated that he treated appellant that day for his work-related July 30, 2002 injury to his back and left wrist and placed him on total disability until August 15, 2002.

In a duty status report dated September 10, 2002, Dr. Hirsch stated that appellant's neck, low back and wrist conditions were causally related to his July 30, 2002 work-related injury and that he was totally disabled at that time. In a report dated September 12, 2002, Dr. Hirsch stated that appellant was released to return to light duty effective September 17, 2002.

By decision dated October 8, 2002, the Office denied appellant's claim.

By letter dated October 21, 2002, appellant requested reconsideration and submitted a report dated October 5, 2002 from Dr. Martin J. Gillespie, a Board-certified orthopedic surgeon, who stated that he examined appellant that day. He related appellant's history of injury, stating that, on July 30, 2002, packages began falling out of his truck and he "had a sudden traction episode on his hand and wrist at the top. Dr. Gillespie had numbness and tingling down into his hand." He noted positive Tinel's sign and Phalen's test on the left wrist, but noted negative Spurling's sign. X-rays revealed mild osteoarthritis throughout but no instability or evidence of fracture. Dr. Gillespie recommended a three phase bone scan to rule out reflex sympathetic dystrophy, an electromyography (EMG) test and nerve conduction tests (NCT) to rule out carpal tunnel syndrome and a magnetic resonance imaging (MRI) scan of the wrist to determine the cause of appellant's "persistent pain" for more than two months. In a report dated November 5, 2002, Dr. Hirsch stated that an EMG test performed that day revealed a chronic left L5 motor radiculopathy and that NCT tests performed that day were normal.

By decision dated January 13, 2003, the Office denied modification of its October 8, 2002 decision.<sup>1</sup> The Office noted that appellant's evidence on reconsideration included an October 22, 2002 report from Dr. Hirsch.

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

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<sup>1</sup> In support of his request for reconsideration, appellant submitted an October 28, 2002 report from Dr. Nelson, a chiropractor. However, his report did not find subluxation as established by x-ray to exist and thus it is of no probative value. 5 U.S.C. § 8107(a); *see Jack B. Wood*, 40 ECAB 95, 109 (1988).

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim<sup>3</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>4</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>5</sup> 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.<sup>6</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup> However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.<sup>8</sup>

Causal relationship is a medical issue,<sup>9</sup> and the medical evidence required to establish a causal relationship 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>10</sup> Moreover, 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.<sup>11</sup>

In the instant case, the record reveals that Dr. Scribbick, appellant's attending physician, treated him on July 30, 2002, the date of the claimed injury and stated that it was a "workmens (sic) compensation injury." Dr. Abrego, in an August 9, 2002 report, stated that appellant was totally disabled until August 15, 2002, based on his work-related injury of July 30, 2002. Dr. Hirsch, in his August 15, 2002 report, noted a history of injury that was consistent with appellant's history of injury in his claim form and found left-sided cervical pain and wrist pain. In a second report that day, he opined that appellant's injuries were work related and placed him

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<sup>2</sup> 5 U.S.C. § 8101.

<sup>3</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

<sup>4</sup> See *James A. Lynch*, 32 ECAB 216 (1980).

<sup>5</sup> 5 U.S.C. § 8122.

<sup>6</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>7</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> See *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>9</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup> *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>11</sup> *Minnie L. Bryson*, 44 ECAB 713 (1993).

on total disability until further notice. Dr. Hirsch again noted in a September 10, 2002 report that appellant's injuries were work related. Dr. Gillespie's consultative report noted positive Tinel's sign and Phalen's test on the left wrist and requested additional tests to rule out carpal tunnel syndrome and reflex sympathetic dystrophy and to determine the cause of appellant's wrist pain. Dr. Hirsch's subsequent EMG test revealed a chronic left L5 motor radiculopathy.<sup>12</sup> The Board notes that the record does not include any evidence which is contrary to the opinions of Dr. Scribbick, who treated appellant on the day of the injury, and Dr. Hirsch, appellant's treating physician, who opined that appellant's injuries were work related. The Board finds that, although the medical reports of record may not be sufficiently rationalized to discharge appellant's burden of proof that he sustained a work-related injury on July 30, 2002, these reports raise an uncontroverted inference of causal relationship sufficient to require further development of the record by the Office.<sup>13</sup>

Upon remand, the office should further develop the medical evidence as necessary. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.<sup>14</sup>

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<sup>12</sup> The Board notes that the Office failed to authorize Dr. Gillespie's requested three phase bone scan and magnetic resonance imaging scan of the wrist.

<sup>13</sup> *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>14</sup> The Board is mindful that Dr. Hirsch found positive Waddell's test, 3 out of 5, on August 8, 2002, and that on September 9, 2002 while in the hospital for back pain treatment, appellant walked from his bed to the restroom in a steady gait.

The decisions of the Office of Workers' Compensation Programs dated January 7, 2003 and October 8, 2002 are hereby set aside and the case is remanded for further development in accordance with this decision.<sup>15</sup>

Dated, Washington, DC  
May 14, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>15</sup> The Board finds that the incident occurred as alleged on July 30, 2002, noting that the Office's October 8, 2002 decision was unclear regarding whether it accepted that the incident occurred.