

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EMILY D. WILEY and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 03-1880: Submitted on the Record;
Issued November 17, 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 March 26, 2003 appellant, then a 32-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she injured her "mid/lower back and lumbar spine as a result of a constant increase in workload from manual to automation." She identified November 14, 2002 as the date that she first became aware of her condition and February 8, 2003 as the date that she realized the disease was caused or aggravated by her employment.¹

In a letter dated April 9, 2003, the Office advised appellant of the additional factual and medical evidence needed to establish her claim. Appellant was advised to submit a rationalized statement from her physician addressing the causal relationship between her claimed injury and factors of her federal employment. She was allotted 30 days to submit the requested evidence.²

On April 12, 2003 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she had a recurrence on February 8, 2003 as a result of changing into a new unit and performing more work with less help. She indicated that there was a new machine and more mail to break down. Appellant stopped work on February 22, 2003 and returned to work on March 11, 2003. In a memorandum dated April 15, 2003, the Office noted that the recurrence form filed by appellant would be treated as a new occupational disease claim as already filed.

¹ The Office of Workers' Compensation Programs accepted that on November 14, 2002 appellant sustained an employment-related lumbosacral sprain/strain, claim No. 092029422. The claim was adjudicated by the Office under file number 09203239b. The files were doubled on May 29, 2003. The record also contains an April 14, 2003 decision in which the Office denied continuation of pay. Appellant did not file an appeal of this decision with the Board.

² Appellant submitted evidence relevant to the November 14, 2002 employment injury, and a February 22, 2003 duty status report keeping appellant off work from February 22 to March 11, 2003 due to a work-related condition.

On April 24, 2003 the Office received a Form (CA-7b), leave buyback worksheet dated April 20, 2003. The Office also received a Form CA-7, claim for compensation dated April 20, 2003.

In an April 24, 2003 report, Dr. David M. Rosenberg, Board-certified in internal medicine, indicated that appellant could return to work on April 24, 2003 with restrictions of no lifting over 20 pounds, occasional lifting of 11 to 20 pounds, and frequent lifting of 10 pounds. Dr. Rosenberg also specified occasional bending, twisting and turning, reaching below the knee, pushing and pulling. The report did not contain a diagnosis.

By decision dated May 20, 2003, the Office denied appellant's claim on the basis that the medical evidence did not provide a diagnosis of a medical condition causally related to her federal employment.

On May 27, 2003 appellant requested reconsideration and submitted additional evidence.³ In reports dated March 7 and April 24, 2003, Dr. Rosenberg advised that appellant could return to work with restrictions. In a duty status report dated April 24, 2003, Dr. Rosenberg, indicated that appellant fell at work and sustained a lower back and right leg injury, for low back pain, and diagnosed low back strain. In a May 23, 2003 report, Dr. Rosenberg stated that he originally saw appellant on March 7, 2003, in follow up to an injury that occurred on November 14, 2002 when she fell between two benches and had pain in the lumbar spine. He indicated that appellant initially sought care from her primary care physician on November 15, 2002 and then at the emergency room on November 18, 2002. Dr. Rosenberg noted findings on examination and advised that the prognosis was guarded. He advised that he had placed appellant on limited duty on April 24, 2003 which she should continue.⁴ Dr. Rosenberg advised that a magnetic resonance imaging (MRI) scan was needed for diagnostic purposes and indicated that once appellant's MRI scan was approved and he was able to review the results, he would be better able to discern the extent of her disability. In May 27, 2003 treatment notes, Dr. Rosenberg indicated that appellant could return to work with restrictions and in a duty status report also dated May 27, 2003, Dr. Rosenberg diagnosed low back strain and reiterated that appellant could return to work with restrictions on the same date.

By decision dated July 9, 2003, the Office found that appellant failed to provided evidence linking her claimed disability with the work exposure.

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 Act⁵ 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

³ Appellant submitted evidence relevant to the November 14, 2002 employment injury, and a February 22, 2003 duty status report keeping appellant off work from February 22 to March 11, 2003 due to a work-related condition.

⁴ He also referred appellant for physical therapy on March 7 and May 21, 2003.

⁵ 5 U.S.C. §§ 8101-8193.

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.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

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.⁸

In the present case, the medical evidence of record reveals that appellant has a low back condition. However, the Board finds that appellant has not established that this condition is causally related to factors of her federal employment. While, appellant provided a number of reports from Dr. Rosenberg dating from March 7 to May 27, 2003; the reports identified a traumatic incident of November 14, 2002 and did not address the occupational factors to which appellant attributed her claim of March 26, 2003. Dr. Rosenberg's treatment notes did not address her workload, contained no diagnosis and are insufficient to establish appellant's claim for occupational disease. In his May 23, 2003 report, Dr. Rosenberg addressed the November 14, 2002 injury and appellant's continued complaints of back pain. However, he did not provide any explanation regarding employment factors such as the change in her workload from manual to automation which appellant alleged caused her condition. As appellant has not submitted sufficient medical evidence in support of her claim, the Board finds that she has failed to meet her burden of proof to establish that she sustained an occupational disease in the performance of duty.

⁶ *Trina Bornejko*, 53 ECAB ____ (Docket No. 01-1118, issued February 27, 2002); *James P. Bailey*, 53 ECAB ____ (Docket No. 01-1993, issued April 11, 2002); *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Rebecca LeMaster*, 50 ECAB 254(1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Irene St. John*, 50 ECAB 521 (1999).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The July 9 and May 20, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 17, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member