

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DRAGUTIN NIKOLIC and U.S. POSTAL SERVICE,
POST OFFICE ANNEX II, Tampa, FL

*Docket No. 03-2137; Submitted on the Record;
Issued November 20, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant established that he sustained back, shoulder, chest and neck injuries causally related to factors of his federal employment.

On April 16, 2003 appellant, then a 50-year-old mail handler, filed a traumatic injury claim alleging that on January 3, 2003 he was injured when, while operating a forklift in the performance of duty, a coworker, Deborah Cavey, punched him hard between the shoulder blades, pushing him forward and causing him to strike his chest on the steering wheel. Appellant's claim form indicated that he did not stop work until April 4, 2003. He further indicated that he first sought medical attention on April 7, 2003. In support of his claim, appellant submitted a partial narrative statement, in which he asserted that, in addition to punching him on January 3, 2003, Ms. Cavey continually harassed him with snide comments, resulting in a second altercation, which occurred on March 13, 2003. Appellant submitted numerous witness statements from coworkers relating to the January 3 and March 13, 2003 altercations and to the hostility between appellant and Ms. Cavey in general. In addition, appellant submitted medical evidence from Dr. Walter Afield, his treating Board-certified psychiatrist, and Dr. Edward Feldman, his treating orthopedist.

The employing establishment controverted appellant's claim, noting that, while some sort of physical incident did occur on January 3, 2003 between appellant and coworker Ms. Cavey, appellant did not appear to have sustained any injuries as he did not ask for medical assistance and did not stop work until several months later. The employing establishment also submitted witness statements from appellant's supervisors and coworkers.

By letter dated May 5, 2003, the Office of Workers' Compensation Programs informed appellant that the evidence received was insufficient to establish his claim. The Office specifically stated that it was unclear what sort of injuries appellant was claiming. The Office noted that, while appellant's claim form referred only to a January 3, 2003 back injury, his narrative statements contained allegations of harassment consistent with an emotional condition claim. The Office asked appellant to specify exactly what he was claiming. In addition, the

Office asked appellant to explain why he delayed filing his claim for several months following the January 3, 2003 incident. Finally, the Office noted that there was no medical evidence of record, which contained either a diagnosis of any condition resulting from the January 3, 2003 incident, or a physician's opinion as to how the employment injury resulted in the condition diagnosed. The Office left the record open for 30 days for the submission of such additional factual and medical evidence. In response to the Office's request, appellant submitted several narrative statements, as well as medical reports and treatment notes from Drs. Feldman and Afield. Appellant did not specify whether he was claiming an emotional condition in addition to his back injury.

In a decision dated May 30, 2003, the Office denied appellant's claim finding that, while he established that the claimed January 3, 2003 employment incident occurred, he did not provide sufficient medical evidence to establish that he sustained an injury as a result of the January 3, 2003 incident.¹

The Board finds that appellant has not established that he sustained back, shoulder, chest and neck injuries causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act 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 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.³ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish

¹ The Office did not address whether appellant may have also sustained an emotional condition causally related to factors of his employment.

² *Kathryn A. Teul-Gillem*, 52 ECAB 451 (2001); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("occupational disease" and "traumatic injury" defined).

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *Id.*

causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ Moreover, neither the fact that a disease or condition manifests itself during a period of employment nor the belief of claimant that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶

In this case, it is undisputed that on January 3, 2003 there was some sort of physical contact between appellant and Ms. Cavey. It is unclear from the record exactly what happened. Appellant asserts that Ms. Cavey punched him hard between the shoulder blades, pushing him forward and causing him to strike his chest on the steering wheel of his forklift. Ms. Cavey asserted that she merely playfully grabbed the back of appellant's jacket. Nonetheless, the facts support that Ms. Cavey touched appellant on the date in question. She admitted touching appellant on that date and appellant's supervisor, W.S. Smith, submitted a statement dated April 17, 2003, in which he acknowledged that on January 3, 2003 appellant reported having been struck by Ms. Cavey. Therefore, the only issue is whether appellant established that he sustained injuries as a result of the employment incident. As noted above, this component generally can be established only by medical evidence.

The relevant medical evidence in the instant case consists of a partially illegible disability slip dated April 7, 2003 from Dr. Karl D. Jones, a psychiatrist, who indicated that appellant was disabled from April 5 through 15, 2003, but did not indicate the cause of his disability and several reports and treatment notes from Dr. Feldman, appellant's treating orthopedist.⁷ In his initial report dated April 17, 2003, Dr. Feldman noted that appellant had a history of being struck in the back by a coworker on January 3, 2003, after which he had an immediate onset of pain and was unable to continue working. Dr. Feldman noted that appellant was initially treated by his family physician and that he lost two weeks from work due to the injury. Dr. Feldman stated that it was because of the persistence of the pain that appellant sought his more specialized medical advice. Examination of appellant's cervical spine revealed spasm of the paracervical muscles, discomfort on flexion, extension and rotation, positive flexion and extension compression tests, tender occipital nerves, hypoesthesia to the arms and both hands and positive Tinel's and Phalen's tests. Examination of the thoracic spine revealed tenderness of the parathoracic muscles on palpation and examination of the lumbar spine revealed spasm of the paralumbar muscles, discomfort on flexion, extension, rotation and bending of the lumbar spine and positive straight leg raising at 80 degrees. Dr. Feldman diagnosed chronic cervical, thoracic and lumbosacral sprain and indicated the need to rule out the presence of herniated cervical and lumbar discs. Dr. Feldman stated the objective findings and subjective complaints were causally related to appellant's January 3, 2003 employment injury and that appellant had persisting complaints emanating from his injuries of January 3, 2003 and required additional testing, therapy and

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Charles E. Evans*, 48 ECAB 692 (1997); *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (1982).

⁷ While appellant also submitted medical evidence from Dr. Afield, his treating Board-certified psychiatrist, this evidence is not relevant to appellant's back injury claim, but rather pertains solely to appellant's psychiatric condition and other stress-related symptoms. As noted above, the Office has not yet adjudicated a claim for an emotional condition.

treatment. In an accompanying duty-status form report, Dr. Feldman reiterated his diagnosis and indicated that appellant could perform light duty, within certain restrictions. In a subsequent duty status form report dated May 6, 2003, Dr. Feldman indicated that appellant's condition had not changed.

The Board finds that appellant has not established that he sustained an employment-related injury as a result of the January 3, 2003 incident, as the record contains no rationalized medical evidence containing a diagnosis and relating that diagnosed condition to employment factors. The only relevant medical evidence of record consists of the April 7, 2003 note from Dr. Karl Jones and the reports of Dr. Feldman dated April 17 and May 6, 2003. As noted above, while Dr. Jones indicated that appellant was excused from work between April 5 and 17, 2003, he did not indicate the cause of appellant's disability, or otherwise relate appellant's condition to his employment. The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.⁸ While Dr. Feldman opined that appellant sustained chronic cervical, thoracic and lumbosacral sprains as a result of the January 3, 2003 employment incident, his opinion is of little probative value as it is based on an inaccurate factual history and does not contain any rationalized explanation for the conclusions contained therein. Contrary to Dr. Feldman's statement that appellant felt an immediate onset of pain that caused him to go home from work and remain off work for two weeks, appellant's claim form indicates that appellant did not stop work until April 4, 2003, approximately three months after the incident. This is supported by the statement of appellant's supervisor, Lily Anne Bennett, who stated that appellant did not miss any work until after a second shouting match occurred between appellant and Ms. Cavey in March 2003 and he was threatened with disciplinary action. In addition, the record contains a statement dated April 17, 2003 from coworker Kevin P. Ellis, who stated that he had worked directly with appellant for the past several months and, while appellant had complained about his feet, his high blood pressure and his diabetes, he had not complained about his back, neck or shoulder region and his work did not appear impaired in any way. As Dr. Feldman's opinion is based in part on an inaccurate factual and medical history, it is of diminished probative value.⁹ In addition, Dr. Feldman did not provide any explanation for his conclusion that the alleged single punch between the shoulder blades, which occurred on January 3, 2003 could have caused appellant to sustain chronic cervical, thoracic and lumbosacral sprains, which were still in evidence more than three months later at the time of his initial examination. As noted above, to establish causal relationship between a condition, including any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.¹⁰ Rationalized medical evidence must explain how a work incident is related to a claimant's condition. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.¹¹ The only other report from Dr. Feldman consists of a form report dated May 6, 2003, on which the

⁸ *Judith J. Montage*, 48 ECAB 292 (1997).

⁹ *See Patricia M. Mitchell*, 48 ECAB 371 (1997); *Jean Culliton*, 47 ECAB 728 (1996).

¹⁰ *David M. Ibarra*, 48 ECAB 218 (1996).

¹¹ *John Watkins*, 47 ECAB 597 (1996).

physician reiterated his diagnoses and indicated by checkmark that these conditions were causally related to appellant's employment. However, the Board has held that where a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a claim.¹² As there is no other relevant medical evidence contained in the record, appellant did not provide the necessary medical evidence to establish that employment factors caused any injuries and failed to establish entitlement to benefits.

The decision of the Office of Workers' Compensation Programs dated May 30, 2003 is hereby affirmed.¹³

Dated, Washington, DC
November 20, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² *Beverly J. Duffey*, 48 ECAB 569 (1997).

¹³ The Board notes that subsequent to the issuance of the Office's May 30, 2003 decision, appellant submitted additional factual and medical evidence in support of his claim. The Board cannot consider this additional evidence, however, as the Board's review is limited to the evidence that was before the Office at the time it issued its final decision. *Charles P. Mulholland, Jr.*, 48 ECAB 604 (1997); *Robert D. Clark*, 48 ECAB 422 (1997).