

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MATTHEW W. HOUSH and U.S. POSTAL SERVICE,
BLUEGRASS STATION, Lexington, KY

*Docket No. 02-697; Oral Argument Held September 4, 2003;
Issued October 7, 2003*

Appearances: *Matthew W. Housh, pro se; Miriam D. Ozur, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's claimed back condition and disability after June 26, 2000 were caused by the June 22, 2000 work injury.

On June 22, 2000 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim alleging that on that day he twisted his ankle while stepping out of an employing establishment vehicle onto an uneven walkway. He stopped work on June 26, 2000 and on August 22, 2000 accepted a limited-duty job, based on the restrictions provided by his treating physician.¹ By letter dated August 10, 2000, the Office of Workers' Compensation Programs accepted that appellant sustained employment-related strains to his right hip and ankle and advised him that the evidence submitted did not establish that any condition or disability after June 26, 2000 was causally related to the June 22, 2000 employment injury. Appellant thereafter submitted additional medical evidence.

In a decision dated November 3, 2000, the Office found that appellant's back condition after June 26, 2000, was not caused by the June 22, 2000 employment injury. On November 13, 2000 appellant requested a hearing and submitted additional medical evidence. The employing establishment submitted coworker statements and reports regarding an investigation of appellant.

At the hearing held on April 24, 2001, appellant testified that he fell out of his postal vehicle while delivering a package, falling on his right hip and shoulder and twisting his ankle. He also testified regarding a nonemployment-related motor vehicle accident that had occurred in 1995 and previous back problems that he had in 1998. He stated that his back pain had increased

¹ Appellant had previously accepted a limited-duty job on July 6, 2000 that was superceded by the August 22, 2000 offer. The Office found the August 22, 2000 offer suitable.

following the June 22, 2000 employment injury and that he was forced to work outside his physical restrictions. Appellant described his symptoms and treatment and advised that he had applied for disability retirement. He further expressed his disagreement with the investigatory reports. By decision dated August 16, 2001, an Office hearing representative affirmed the November 3, 2000 decision. The instant appeal follows.²

The Board finds that appellant failed to meet his burden of proof to establish that his back condition and claimed disability after June 26, 2000, were caused by the June 22, 2000 employment injury.

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.³ 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.⁴ 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.⁵ Furthermore, under the Federal Employees' Compensation Act, the term disability means incapacity because of an employment injury to earn the wages the employee was receiving at the time of injury; that is, a physical impairment resulting in a loss of wage-earning capacity.⁶ Every injury does not necessarily cause disability for employment. Whether a particular injury causes disability for employment is a medical issue, which must be resolved by competent medical evidence.⁷

The relevant medical evidence in the instant case includes a treatment note dated June 22, 2000, in which Dr. Dennis King, a Board-certified family practitioner, noted a history that appellant twisted his right hip and ankle. Dr. King diagnosed strain of the right hip and ankle

² The Board notes that on December 21, 2001, appellant requested reconsideration with the Office and submitted additional medical evidence. On January 2, 2002 he mailed his appeal to the Board. In a decision dated February 19, 2002, the Office denied modification of the prior decision. It is well established that the Board and the Office may not exercise concurrent jurisdiction over the same issue in the same case. *Cathy B. Millin*, 51 ECAB 331 (2000); *Douglas E. Billings*, 41 ECAB 880 (1990). As the February 19, 2002 decision was issued after the Board had assumed jurisdiction, the February 19, 2002 decision of the Office is null and void. Furthermore, the Board may not consider the evidence submitted with appellant's December 21, 2001 request for reconsideration as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision, dated August 16, 2001. 20 C.F.R. § 501.2(c).

³ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁶ *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

⁷ *Patrick H. Hall*, 48 ECAB 514 (1997).

and further noted x-rays were negative. In reports dated June 28, 2000, Dr. Gregory T. Snider, a Board-certified family practitioner, noted appellant's complaints of low back pain and right sciatica. Dr. Snider provided restrictions to appellant's physical activity and advised that he could work limited duty but could not return to his regular job. An x-ray of the lumbar spine on June 28, 2000 was unremarkable.

Dr. Snider continued to submit reports, in which he diagnosed low back pain with right sciatica and continued to provide restrictions to appellant's physical activities. By report dated July 20, 2000, he advised that appellant could deliver express mail and on August 14, 2000 diagnosed sacroiliac joint sprain. By report dated August 22, 2000, Dr. Snider noted appellant's continued complaints of pain and findings on examination of right low back tenderness in the region of the sacroiliac joint and gluteus muscle. He diagnosed low back pain and again provided restrictions to appellant's physical activity.

In a September 13, 2000 report, Dr. David L. Jackson, a Board-certified physiatrist, noted that appellant had been in a motor vehicle accident in 1995, that caused back pain but that appellant stated that the pain that occurred since the June 22, 2000 employment injury was different and worse. On examination appellant was diffusely tender in the thoracolumbar region with limited range of motion due to pain. Dr. Jackson diagnosed chronic low back pain with a history of a fall at work and history of upper back and shoulder pain secondary to a motor vehicle accident. He noted that there could be a small disc herniation at T12-L1 but that appellant's symptoms were musculoskeletal. Lastly, he noted symptom magnification.

By report dated September 19, 2000, Dr. Snider advised that there was no significant change in appellant's examination, concluding that he was uncertain of the etiology of appellant's low back pain, noting that "he has a family history of back pain and disability with the postal service."

In a report dated December 7, 2000, Dr. Josephine Lee Aguhob Glaser, a Board-certified family practitioner, advised that appellant had chronic low back pain with a history of a fall at work on June 22, 2000. Dr. Glaser continued that appellant was undergoing pain management. In reports dated January 8 and February 9, 2001, Dr. Harold H. Rutledge, who is Board-certified in family practice and anesthesiology, noted appellant's complaints of right lower back pain with radicular pain and paresthesias down the lower extremity that had occurred since he fell out a mail truck in June 2000. Dr. Rutledge diagnosed chronic pain syndrome, provided restrictions to appellant's physical activity and advised that he would begin a series of injections for pain control.

The record also contains a magnetic resonance imaging (MRI) scan report of the lumbar spine dated November 30, 1998, which demonstrated a mild noncompressive disc protrusion at L5-S1. An MRI scan of the thoracic spine dated December 11, 1998, revealed mild to moderately diffuse degenerative disc disease of the thoracic spine with a small central right protrusion at T12-L1.

The Board notes that on June 22, 2000 appellant sustained an employment injury when he stepped out of his postal vehicle. On his claim form, submitted on the date of injury, appellant specifically stated "step out of LLV to deliver package -- walkway uneven (twisted leg-

ankle).” In a medical report that day, Dr. King provided a history that appellant twisted his right hip and ankle when he stepped out of his vehicle and this was repeated in a June 28, 2000 report, submitted by Dr. Snider. While appellant contends that he fell as he exited the vehicle, the Board finds the contemporaneous descriptions to be most probative; that appellant sustained right hip and ankle strains when he stepped from his vehicle.

The Board finds that the medical evidence of record is insufficient to establish that appellant’s back condition or disability after June 26, 2000, were caused by the June 22, 2000 employment injury. The medical reports do not contain a rationalized description of how the twisting injury caused a continued condition or aggravated appellant’s underlying degenerative disc disease. The reports of Drs. Jackson and Glaser are of decreased probative value because they reported the history that appellant fell at work, which is not established. Dr. Rutledge provided a history that appellant “fell out of his mail truck” on June 22, 2000. The Board has held that a physician’s opinion in support of causal relationship is of diminished probative value where the opinion is based on a history of injury that is not supported by the contemporaneous medical history contained in the case record,⁸ as is found in the instant case.

Dr. Snider provided restrictions to appellant’s physical activity and diagnosed sacroiliac joint sprain with low back pain. He, however, did not provide any explanation regarding the cause of this condition. In fact, in a September 19, 2000 treatment note, Dr. Snider repeated the history that appellant was injured when he stepped from his postal vehicle and stated, “I am uncertain as to the etiology of [appellant’s] low back pain. He has a family history of back pain and disability with the postal service.”

The Board concludes that, as none of these reports contain a rationalized opinion that appellant’s back condition or disability after June 26, 2000 were caused by the June 22, 2000 employment injury, he failed to meet his burden of proof.⁹

⁸ *Caroline Thomas*, 51 ECAB 451 (2000).

⁹ The Board notes that at oral argument appellant contended that the employing establishment improperly contacted Dr. Snider. The Board, however, notes that Dr. Snider is a contract physician for the employing establishment. Appellant further contended at oral argument that continuous walking at the limited-duty job that he accepted in July 2000 aggravated his condition. The Board cannot address this allegation as it’s jurisdiction is limited to reviewing the evidence and arguments that were before the Office at the time of its final decision. *Carroll R. Davis*, 46 ECAB 361 (1994). As this allegation had not been addressed by the Office, it is not before the Board for its consideration in this appeal. *Royal E. Smith*, 49 ECAB 516 (1998). Appellant, however, may pursue this aspect of the claim with the Office.

The decisions of the Office of Workers' Compensation Programs dated February 19, 2002 and August 16, 2001 are hereby affirmed.

Dated, Washington, DC
October 7, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member