

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ESSIE B. JOHNSON and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, MO

*Docket No. 03-801; Submitted on the Record;  
Issued October 22, 2003*

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DECISION and ORDER

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

The issue is whether appellant met her burden of proof in establishing that she sustained right hand, low back, middle back, right leg, right foot, sciatica and left shoulder conditions causally related to her employment.

Appellant, a 45-year-old mail processor/automation clerk, filed a Form CA-2 claim for benefits on March 1, 1996, alleging that she developed lumbar strain syndrome as of March 1990 which was causally related to factors of her employment. By decision dated April 25, 1996, the Office of Workers' Compensation Programs denied appellant's claim.

In a letter received by the Office on May 31, 1996, appellant requested reconsideration. On May 27, 1999 the Office accepted appellant's claim for the condition of lumbar strain syndrome. The Office paid appellant appropriate compensation benefits for intermittent periods of partial and total disability.

In order to determine appellant's current condition, the Office referred her for a second opinion examination with Dr. Robert S. Kramer, a Board-certified orthopedic surgeon. In a report dated July 4, 2000, Dr. Kramer stated findings on examination, reviewed the medical records and the statement of accepted facts and concluded that appellant was capable of performing the duties of the position she held at the date of injury. He determined that appellant had no permanent restrictions resulting from the May 1990 lumbar strain. Dr. Kramer opined that, if appellant had a lumbar strain in May 1990, this would have resolved at that time and would not be causing residual symptoms at the present time.

On December 13, 2000 the Office issued a notice of proposed termination of compensation. The Office found that the weight of the medical evidence, as represented by Dr. Kramer's opinion, established that there were no current residuals stemming from her accepted lumbar strain injury. By decision dated January 16, 2001, the Office terminated appellant's compensation.

On January 8, 2002 appellant filed a Form CA-2 claim for benefits based on an occupational condition. Appellant alleged that she developed lower back, middle back, left shoulder, right leg, right foot, right hand and sciatica conditions which were causally related to factors of her employment.<sup>1</sup>

In a report dated April 19, 2002, Dr. Zaki G. Ibrahim, an attending Board-certified orthopedic surgeon, stated:

“[Appellant] is a long-term patient of mine who has several problems secondary to degenerative symptoms in her neck and low back. As a result of this degenerative condition and [appellant’s] significant symptoms of left arm pain and right leg pain, I believe it would be beneficial to [appellant] should she be given a job which would have the following [restrictions]. Ideally, [appellant] could refrain from lifting greater than 20 pounds. She also would be able to refrain from any repetitive twisting, turning, bending or lifting activity.... I recommend that these restrictions stay in place until June 29, 2002.”

By decision dated July 17, 2002, the Office found that appellant failed to submit sufficient medical evidence establishing that her claimed conditions were causally related to factors of her employment.

In a letter received by the Office on July 19, 2002, appellant requested reconsideration. Appellant submitted a July 9, 2002 report of Dr. Faisal J. Albanna, an attending Board-certified neurosurgeon, which was received by the Office on July 19, 2002. Dr. Albanna stated findings on examination and diagnosed cervical spondylosis, herniated nucleus pulposus at L3-4 on the left and central L5-S1, with multilevel disc degeneration, foraminal stenosis, and bulging discs at L3-4, L4-5 and L5-S1. He related that appellant claimed to have injured her low back on January 8, 2002 while running a machine at the employing establishment. Dr. Albanna stated that he advised appellant that he was unable to conclude with a reasonable degree of medical certainty that her symptoms or diagnostic findings were causally related to her employment as she would have needed to sustain a considerable force to acquire herniated or bulging discs. He did state that there was “a high grade of potential” that her preexisting degenerative condition was aggravated by her employment given the fact that it involved repetitive motion and some heavy lifting.

By decision dated November 13, 2002, the Office denied modification of the July 17, 2001 Office decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained right hand, low back, middle back, right leg, right foot, sciatica and left shoulder conditions causally related to her employment.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing that the essential elements of his or her claim including the fact that the

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<sup>1</sup> The record also contains an occupational disease claim which was filed on November 4, 1999 and denied by the Office in June 26 and November 2, 2000 decisions. However, this claim is not the subject of the present appeal.

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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.

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 causal relationship is usually rationalized medical 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.

In the present case, the reports from Drs. Ibrahim, an attending Board-certified orthopedic surgeon, and Dr. Albanna, an attending Board-certified neurosurgeon, do not provide sufficient medical rationale to establish a causal relationship between appellant’s employment and her claimed right hand, low back, middle back, right leg, right foot, sciatica and left shoulder conditions. These reports did not contain a probative, rationalized medical opinion supporting that appellant’s claimed right hand, low back and left shoulder conditions were causally related to factors of her federal employment.

Dr. Albanna’s report is of diminished probative value in that he did not provide a clear opinion on causal relationship or adequate medical rationale in support of his stated conclusions.<sup>2</sup> Although Dr. Albanna opined that it was likely that appellant’s preexisting degenerative condition was aggravated by her employment, because it involved repetitive motion and some heavy lifting: this opinion is equivocal because he also stated that he was unable to conclude with a reasonable degree of medical certainty that her lumbar and cervical symptoms and diagnostic findings were causally related to her employment. Dr. Albanna’s statement that appellant’s job involved occasional heavy lifting reveals that he did not have an accurate and complete history of the employment factors which could have caused the claimed conditions. Appellant’s most recent work capacity evaluations, performed by Dr. Ibrahim on September 27, 2000 and April 19, 2002, restricted her from lifting more than 10 and 20 pounds, respectively.<sup>3</sup>

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<sup>2</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>3</sup> *See Geraldine H. Johnson*, 44 ECAB 745 (1993).

In an April 19, 2002 report, Dr. Ibrahim stated that appellant had degenerative symptoms in her neck and low back in addition to significant symptoms of left arm and right leg pain, as a result of which she should be placed in a job which restricted her from lifting greater than 20 pounds and precluded any repetitive twisting, turning, bending or lifting. His report, however, did not include an opinion as to whether there was a causal relationship between appellant's medical conditions and factors of her employment. Appellant, therefore, has failed to submit sufficient rationalized, probative medical evidence establishing that her right hand, low back and left shoulder conditions are causally related to employment factors.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. The Office advised appellant of the type of evidence required to establish her claim; however, appellant failed to submit such evidence. Accordingly, as appellant failed to meet her burden to submit probative, rationalized medical evidence establishing that her claimed right hand, low back, middle back, right leg, right foot, sciatica and left shoulder conditions were caused by factors or incidents of her employment, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated November 13 and July 17, 2002 are hereby affirmed.<sup>4</sup>

Dated, Washington, DC  
October 22, 2003

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; *see Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501(c).