

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE C. WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

*Docket No. 03-1887; Submitted on the Record;
Issued October 8, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained a back injury in the performance of his federal duties.

On November 25, 2002 appellant, then a 36-year-old mail handler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that his federal employment caused him back and shoulder pain. Appellant alleged that while loading and unloading mail he experienced back pain. When the pain did not subside he sought medical attention on November 23, 2002. Appellant has a history of back problems dating to military service in the 1980s, including a 40 percent service-connected disability. He also filed a back-related traumatic injury claim on October 23, 2001 that was denied due to insufficient medical evidence.

In a December 19, 2002 letter, the Office of Workers' Compensation Programs requested more information. Appellant responded in a letter received by the Office on January 20, 2003 indicating that the work factors that contributed to his condition included pushing and lifting heavy mail and equipment up ramps, onto trucks and from one dock to another. He noted that the materials he moved weighed between 200 pounds and a ton and that his work area is very crowded prohibiting the use of fork lifts.

The record contains results of an October 29, 2001 magnetic resonance imaging (MRI) scan that showed no evidence of disc herniation or canal stenosis with an unremarkable foramen. The unsigned report contained a diagnosis of epidural lipomatology at L5-S1 without significant compression of the thecal sac. In a January 3, 2003 report, Dr. Billy Chiou, a Board-certified physiatrist, stated that appellant was initially seen on October 23, 2002 with no medical records and presented with long-standing back problems that began in the military and shoulder pain that appellant attributed to pushing. He indicated that appellant complained of subjective pain consistent with musculoskeletal etiology and scapular and shoulder pain consistent with benign acromioclavicular joint arthritis. Dr. Chiou noted that serial examinations showed inflexibility and deconditioning with objective functional/neurological findings lacking. He diagnosed

benign musculoskeletal pain with possible degenerative disc component and recommended conservative treatment. Dr. Chiou indicated that the cause of the pain was difficult to speculate especially with a 20-year history of back pain, adding that “neither can I guesstimate regarding exposure to work tasks although musculoskeletal pain is typical with manual work tasks.” He noted that detailed medical opinions are difficult based upon short-term treatment, medical recommendations that are not followed and the lack of available medical records.

In a January 31, 2003 decision, the Office denied appellant’s claim finding the medical evidence insufficient on the issue of causal relationship.

In a March 10, 2003 letter, appellant requested reconsideration and submitted a February 11, 2003 report from Dr. John Crompton, an orthopedist, who noted that appellant complained of chronic back pain and bilateral shoulder pain that appellant felt was aggravated by his work. On examination Dr. Crompton found a positive impingement sign on testing both shoulders with slight decrease in range of motion, especially with extremes of both external and internal rotation of his shoulder. He diagnosed chronic low back pain with radicular-type symptoms and bilateral impingement syndrome of bilateral shoulders secondary to spurring.

The record also contains an MRI scan report dated February 14, 2003 from Dr. James W. Ballard, a radiologist, who indicated that appellant presented with bilateral shoulder pain and that multiple images revealed findings consistent with bicipital tenosynovitis, evidence of tendinitis of subscapularis and supraspinatus tendon with probable incomplete tear of the supraspinatus tendon near its insertion on the greater tuberoisty and hypertrophic changes of the acromioclavicular joint without definite impingement.

In an April 9, 2003 report, Dr. Gordon Kirschberg, a neurologist, stated that he found a normal EMG giving evidence of mild to moderate carpal tunnel syndrome and probably a beginning of left carpal tunnel syndrome. Dr. Kirschberg also wrote that he could not find evidence of radiculopathy, neuropathy or other entrapment phenomenon and that appellant’s shoulders looked normal.

In an April 19, 2003 report, Dr. Dewey Jones, an orthopedist, wrote that after reviewing appellant’s EMG studies he diagnosed bilateral shoulder impingement and proximal tears. He added that the nature of appellant’s work was probably a contributing factor to the symptoms he was experiencing.

In a June 9, 2003 decision, the Office denied modification finding the medical evidence insufficient on the issue of causal relationship.

The Board finds that appellant has not met his burden of proof to establish that he sustained an occupational injury in the course of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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

¹ 5 U.S.C. §§ 8101-8193.

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.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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.⁴

In the present case, appellant has not submitted medical evidence to establish that his employment factors contributed to his conditions. Appellant claimed that his employment duties aggravated a low back condition and caused shoulder pain. In a January 3, 2003 report, Dr. Chiou indicated that the cause of appellant's back pain was difficult to speculate, especially with a 20-year history of back pain, adding that "neither can I guesstimate regarding exposure to work tasks although musculoskeletal pain is typical with manual work tasks." He noted that detailed medical opinions were difficult based upon short-term treatment, medical recommendations that are not followed and no medical records available. The Board finds that Dr. Chiou did not provide a reasoned medical opinion, based on a complete background, supporting causal relationship between a diagnosed condition and the identified employment factors.

On reconsideration, appellant submitted medical evidence pertaining to his shoulder and upper extremity conditions, rather than the lower back. In an April 19, 2003 report, Dr. Jones noted that the nature of appellant's work was probably a contributing factor to the shoulder symptoms he was experiencing. However, this opinion lacks medical certainty on causation and Dr. Jones failed to explain how appellant's work would cause or contribute to his shoulder or upper extremity symptoms. Such rationale is especially important in light of appellant's history

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

of back problems. The Board finds that the medical evidence of record is not sufficient to establish that appellant's federal employment work duties caused or contributed to his back and shoulder conditions. The evidence lacks a rationalized medical opinion based on a full and accurate history. Therefore, appellant has not met his burden of proof.

The decisions by the Office of Workers' Compensation Programs dated June 9 and January 31, 2003 are affirmed.

Dated, Washington, DC
October 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member