

**United States Department of Labor
Employees' Compensation Appeals Board**

JOHN W. BURNS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 04-1647
Issued: December 2, 2004**

Appearances:
John W. Burns, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 15, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 13, 2004 which denied modification of a March 24, 2004 Office decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a lower back injury in the performance of duty.

FACTUAL HISTORY

On December 30, 2003 appellant, then a 56-year-old letter carrier, filed a claim for a traumatic injury alleging that on December 24, 2003 he sustained a lower back injury while installing computer cables in the performance of duty. He did not stop work.

Appellant came under the treatment of Dr. David M. Reed, a Board-certified internist, who, in a report dated October 22, 2003, noted that appellant was post back surgery and still experienced persistent back, neck and right arm pain and paresthesia. He advised that appellant could return to work subject to various restrictions.

By letter dated February 19, 2004, the Office asked appellant to submit additional information, including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by him had contributed to his claimed low back injury.

In a statement dated February 24, 2004, appellant provided a detailed history of injury and indicated that he delayed seeking medical attention because he believed his symptoms would subside. He sought medical attention from Dr. Jon A. Levy, a Board-certified orthopedist, on February 4, 2004. In a report dated March 3, 2004, Dr. Levy noted that appellant experienced an escalation of symptoms, including cervical and lumbar radiculopathy and radicular pain in the right upper extremity since his original work injury. He noted positive physical findings upon examination and diagnosed progressive C8 radiculopathy. Dr. Levy advised that appellant was scheduled to undergo cervical decompression and fusion; however, surgery was deferred due to an escalation of his symptoms. Appellant was released to limited-duty work. Dr. Levy's report of March 16, 2004 noted that he underwent a lumbar discectomy at L4-5, but there was no evidence of recurrent disc herniation. He noted that appellant sustained a work-related injury on December 24, 2003 and subsequently experienced an aggravation of his preexisting problems in the right lower extremity. The physician noted appellant's current complaints of severe back pain, bilateral lower extremity pain and pain radiating into the heels and diagnosed preexistent degenerative disc disease and work-related aggravation resulting in significant back and leg pain.

In a decision dated March 24, 2004, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that his condition was caused by his federal employment.

Appellant requested reconsideration and submitted additional medical evidence. In a report dated April 16, 2004, Dr. Lloyd G. Lamperski, a Board-certified internist, noted a history of appellant's back problems commencing in 1995 and his subsequent injury of December 24, 2003. He noted that appellant's pain got worse after a December 24, 2003 work injury. Dr. Lamperski noted positive findings upon physical examination and diagnosed low back pain with bilateral lower extremity pain and discogenic syndrome. He indicated that, upon review of the magnetic resonance imaging (MRI) scan dated March 11, 2004, the findings were most likely degenerative. Appellant underwent an interlaminar lumbar epidural steroid injection and was diagnosed with lumbar spinal pain with radicular syndrome. Also submitted were duplicative medical reports from Dr. Levy dated March 3 to 17, 2004.¹

In a decision dated May 13, 2004, the Office denied modification of the prior decision.

¹ While the March 17, 2004 report was new, it appears to be essentially identical to one of the March 16, 2004 reports.

LEGAL PRECEDENT

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 filed within the applicable time limitation 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 occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background supporting such a causal relationship.⁴

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.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

ANALYSIS

Appellant alleged that he sustained a low back injury while he was installing computer cables. The Board notes that the Office found that the incident occurred on December 24, 2003, as alleged.

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a lower back injury causally related to his employment duties. He submitted treatment notes from Dr. Reed dated October 22, 2003, who noted that appellant was post back surgery and continued to experience persistent back, neck and right arm pain and paresthesias. However, this report is of no value in establishing the claimed back condition since it predates the claimed incident of December 24, 2003. Therefore, this report is insufficient to meet appellant's burden of proof.

Other reports from Dr. Levy dated March 3 to 17, 2004 noted that appellant experienced an escalation of symptoms including cervical and lumbar radiculopathy and radicular pain in the right upper extremity. His reports of March 16 and 17, 2004 noted that appellant underwent a lumbar discectomy at L4-5. The physician diagnosed preexistent degenerative disc disease and work-related aggravation resulting in significant back and leg pain. Dr. Levy opined that appellant sustained a work-related injury on December 24, 2003 and subsequently experienced an aggravation of his preexisting problems in the right lower extremity. The Board finds that, although Dr. Levy supported causal relationship, his conclusory statement on this issue does not provide adequate medical rationale to explain how the incident of December 24, 2003 caused or contributed to appellant's back condition.⁷ This is especially important in a case such as this, where appellant had a preexisting condition. Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Lamperski's report of April 16, 2004 provided a history of injury noting that appellant's pain got worse after a December 24, 2003 work injury. However, he does not provide a rationalized opinion regarding the causal relationship between appellant's back injury and the factors of employment believed to have caused or contributed to such condition.⁸ Additionally, he appears to attribute appellant's condition to degenerative changes, indicating that upon his review of the MRI scan of March 11, 2004 the "findings are most likely degenerative." Therefore, this report is insufficient to meet appellant's burden of proof.

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 his or her condition was caused, precipitated or aggravated by his or her employment is sufficient to establish causal relationship.⁹

⁷ *Id.*

⁸ *Id.*

⁹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

CONCLUSION

The Board, therefore, finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet his burden of proof.

ORDER

IT IS HEREBY ORDERED that the May 13 and March 24, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 2, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member