United States Department of Labor
Employees' Compensation Appeals Board

KENNETH E. BOWEN, Appellant	)	
and	)	**Docket No. 04-1663**
	)	**Issued: December 13, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Gainesville, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On June 21, 2004 appellant filed a timely appeal of the May 27, 2004 merit decision of the Office of Workers' Compensation Programs, which denied modification of a January 13, 2004 decision denying appellant's traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that his claimed back condition is causally related to an accepted December 24, 1999 employment incident.

FACTUAL HISTORY

On July 25, 2001 appellant, then a 56-year-old letter carrier, filed a traumatic injury claim alleging that he tripped and fell while in the performance of duty on December 24, 1999. Appellant was carrying a package when he tripped on broken cement and fell on his left side. He sustained injuries to his forehead, chin, cheek, forearm, hand and hip. Bud McInnis, an associate

supervisor, reported that appellant informed him on December 24, 1999 that he had fallen earlier that day. Mr. McInnis also stated that there was a noticeable bruise on appellant's forehead.

Appellant was diagnosed with L4-5 and L5-S1 disc protrusions and foraminal stenosis. On July 18, 2000 he underwent left L4-5 and L5-S1 hemilaminotomies with foramenotomies and discectomies. Following surgery appellant continued to experience radicular symptoms and on August 31, 2000 he underwent a second hemilaminotomy at L4-5 with microsurgical resection of excessive scar tissue. He subsequently developed epidural fibrosis.[1]

Dr. Steven A. Reid, a Board-certified neurosurgeon, who performed both surgical procedures, initially examined appellant on June 26, 2000. He reported that appellant presented with a chief complaint of low back pain with left lower extremity pain, weakness and tingling "which began approximately three years ago after recovering from a heart attack." Dr. Reid further noted that appellant's symptoms had progressively worsened and that they were made worse by standing or walking. He also reported that appellant worked as a letter carrier. Dr. Reid reviewed a May 18, 1998 computerized tomography scan of the lumbar spine, which revealed a moderate disc protrusion on the left at L4-5 and a large protrusion on the left at L5-S1. He attributed appellant's symptoms to his lumbar disc herniations and recommended obtaining a magnetic resonance imaging (MRI) scan to evaluate the current disc topology. Dr. Reid's preliminary diagnosis was confirmed by a June 29, 2000 lumbar MRI scan. After performing surgery in July and August 2000, he treated appellant with epidural injections through April 2001. Dr. Reid's treatment records revealed that appellant's low back complaints persisted and he developed epidural fibrosis and additional disc protrusions following surgery.

In a report dated July 23, 2001, Dr. Michael B. Rozboril, a Board-certified internist, advised that appellant had several chronic medical problems. Appellant had coronary artery disease with cardiac dysfunction secondary to ischemic heart disease. This condition reportedly led to congestive heart failure. Dr. Rozboril also stated that appellant had ruptured lumbar discs and had undergone spinal surgery, which did not solve his back problems. He also reported that appellant had not responded to analgesics or epidural spinal injections. Dr. Rozboril advised that appellant was unable to continue gainful employment and his condition was expected to be permanent.

In an August 8, 2001 report, Dr. Reid summarized appellant's surgical history and subsequent development of epidural fibrosis and the treatment provided. He indicated that appellant's "current symptoms originate primarily with epidural fibrosis" and that he would probably require intermittent epidural injections and physical therapy.

By decision dated September 19, 2001, the Office denied appellant's claim on the basis that he failed to establish that the December 24, 1999 employment incident caused or contributed to his claimed back condition. The Office explained that none of the medical evidence attributed appellant's back condition or surgeries to the fall at work on December 24, 1999.

Appellant requested an oral hearing, which was held on June 28, 2002. By decision dated August 26, 2002, the hearing representative affirmed the September 19, 2001 decision.

[1] Appellant also had a history of heart disease.

On October 17, 2002 appellant requested reconsideration and submitted a September 13, 2002 deposition from Dr. Reid, who indicated that appellant was currently disabled by epidural fibrosis. With respect to the etiology of appellant's back condition, Dr. Reid stated that the "December 4th (sic) fall may have aggravated his condition."

In a decision dated January 13, 2003, the Office denied modification of the hearing representative's August 26, 2002 decision.

Appellant again requested reconsideration on October 13, 2003. The request was accompanied by a July 7, 2003 report from Dr. Rozboril, who diagnosed a herniated nucleus pulposus and epidural fibrosis. He indicated that he had read appellant's statement concerning the December 24, 1999 fall and that this work-related injury caused a permanent aggravation.[2]

By decision dated January 13, 2004, the Office denied modification of the January 13, 2003 decision.

Appellant requested reconsideration on February 27, 2004 and submitted another copy of Dr. Rozboril's July 7, 2003 report. He also submitted a February 11, 2004 report from Dr. Rozboril who stated that appellant's December 24, 1999 work-related injury accelerated his underlying degenerative disc disease and caused the development of symptomatic disc disease. Dr. Rozboril stated that this symptomatic disc disease resulted in appellant's absence from work and ultimately lead to his having disc surgery. According to Dr. Rozboril, the disc surgery was complicated by the development of epidural fibrosis and persistent pain syndrome. He explained that it was well known that trauma could accelerate an underlying but compensated degenerative condition such as spinal arthritis. Dr. Rozboril stated that the trauma appellant sustained on December 24, 1999 in the course of his employment led to the aggravation and eventual deterioration of his spinal condition.

On May 27, 2004 the Office denied modification of the January 13, 2004 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.[4]

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[2] Appellant also submitted an October 24, 2003 operative report for an unrelated umbilical hernia repair.

[3] 5 U.S.C. § 8101 *et seq.*

[4] 20 C.F.R. § 10.115(e) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

ANALYSIS

While it is accepted that appellant's fall at work on December 24, 1999 occurred while in the performance of duty, the medical evidence of record fails to establish that appellant's claimed back condition is causally related to this incident. Appellant's neurosurgeon, Dr. Reid, did not make mention of a December 24, 1999 employment incident until his September 13, 2002 deposition. When he first examined appellant on June 26, 2000, Dr. Reid reported that appellant's low back and left lower extremity symptoms "began approximately three years ago after recovering from a heart attack." Dr. Reid noted that appellant worked as a letter carrier, but he did not mention the December 24, 1999 fall at work or otherwise discuss a causal connection between appellant's back condition and his employment prior to his September 13, 2002 deposition. When questioned at the deposition about a possible connection to the December 24, 1999 employment incident, Dr. Reid responded that the "December 4th (sic) fall ***may*** have aggravated his condition." (Emphasis in the original.)

Dr. Reid did not specifically attribute appellant's condition to his employment, but merely surmised that the fall "may have" aggravated appellant's back condition. Medical opinions that are speculative or equivocal in character are of diminished probative value in determining causal relationship.[8] Dr. Reid did not mention the December 24, 1999 employment incident in any of his reports and treatment records covering the period of June 26, 2000 to August 8, 2001. When he first mentioned the possibility of an employment-related aggravation in his September 13, 2002 deposition, the doctor's opinion was speculative in nature. Accordingly, Dr. Reid's opinion is insufficient to establish a causal relationship between the December 24, 1999 employment incident and appellant's claimed back condition.

Dr. Rozboril's opinion is also insufficient to establish a causal relationship between the December 24, 1999 employment incident and appellant's claimed back condition. Dr. Rozboril did not treat appellant for his back condition, but instead referred appellant to Dr. Reid for treatment. In July 7, 2003 and February 11, 2004 reports, Dr. Rozboril stated that appellant's December 24, 1999 fall had permanently aggravated his preexisting lumbar degenerative disc disease. The doctor characterized the December 24, 1999 fall as involving "significant trauma"

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[8] *Frank Luis Rembisz*, 52 ECAB 147, 150 (2000).

as demonstrated by "a bump on [appellant's] head and a scrape on his chin." This characterization, however, is inconsistent with appellant's representation of the incident and Mr. McInnis' July 27, 2001 recollection of what appellant reported to him on December 24, 1999. Specifically, Mr. McInnis indicated that he noticed a bruise on appellant's forehead and when he asked if appellant needed to see a doctor, appellant reportedly declined, explaining that he sustained only a few scrapes due to the fall and did not want to seek medical attention at that time. Consequently, the record does not support Dr. Rozboril's statement that appellant suffered significant trauma as a result of the December 24, 1999 fall. Although Dr. Rozboril stated that it was well known that trauma could accelerate an underlying degenerative condition such as spinal arthritis, he failed to explain how the fall that resulted in "a bump on [appellant's] head and a scrape on his chin" aggravated preexisting lumbar degenerative disc disease. Medical reports that lack adequate rationale are entitled to diminished probative value.[9]

Neither Dr. Reid nor Dr. Rozboril provided a sufficiently rationalized medical opinion demonstrating a causal relationship between appellant's December 24, 1999 fall at work and his claimed low back condition. The Office, therefore, properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to establish that his claimed back condition is causally related to the accepted employment incident of December 24, 1999.

[9] *Jimmie H. Duckett*, 52 ECAB 332, 336 (2001).

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member