

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

IRENE C. ROBERTS, Appellant

and

**U.S. POSTAL SERVICE, DERRY POST
OFFICE, Derry, NH, Employer**

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**Docket No. 04-1708
Issued: December 21, 2004**

Appearances:

Bradley M. Lown, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 28, 2004 appellant timely filed an appeal from a June 10, 2004 merit decision by the Office of Workers' Compensation Programs which denied her request for modification of its prior decision. On March 1, 2004 the Office modified its prior decision to find that appellant had submitted sufficient evidence to support an incident but not an injury on March 10, 2001. In a September 25, 2003 decision, an Office hearing representative affirmed the denial of the claim. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant's back condition is causally related to a June 21, 1989 injury or a March 10, 2001 employment incident.

FACTUAL HISTORY

On June 21, 1989 appellant, then a 37-year-old rural letter carrier, filed a claim for a traumatic injury that occurred earlier that day. Appellant stated that she was hit in the back of

the legs by a parcel thrown by a coworker which hit the edge of a hamper and struck her. Approximately 45 minutes later, she twisted while moving mail and developed severe low back pain. The Office subsequently accepted appellant's claim for a low back strain.

On September 30, 2002 appellant filed a claim for recurrence of disability beginning March 18, 2001. She stated that on March 10, 2001 while delivering mail following two snowstorms, she had to reach further than normal to reach the mailboxes. She felt a sharp pain in her lower back at the same spot of her June 21, 1989 employment injury and with the same affect. In a December 14, 2002 letter, the Office informed appellant that the March 10, 2001 incident constituted a new injury and instructed her to complete a traumatic injury claim. On January 3, 2003 appellant filed a traumatic injury claim for the March 10, 2001 incident.

Appellant submitted a series of treatment reports dating from August 30, 1999 to July 17, 2001 from Dr. William J. Kimes, an osteopath, who diagnosed lumbar, sacral, and thoracic somatic dysfunction, lumbosacral strain, cervicodorsal strain and myofascitis of the low back with muscle spasm. In a March 20, 2001 report, Dr. Kimes indicated that appellant had severe low back pain with some referral down to the calf muscles and accompanying muscle spasms. He related that an incident had occurred 10 days previously when appellant was repetitively reaching and delivering mail while battling the snow. In an April 26, 2001 report, Dr. Kimes noted that appellant had fallen the previous Saturday, landing on both arms and both legs. He related that appellant complained of neck pain, radiating down the right arm.

In a September 24, 2002 report, Dr. Kimes noted that appellant wanted his opinion regarding the causal relationship between her current condition and her 1989 injury. He gave a history of appellant's original injury and noted that appellant was treated for many years by another osteopath. Dr. Kimes related that appellant entered a rehabilitation and strengthening program for her lumbar musculature which had become deconditioned. He noted that appellant gained strength but did not significantly alter her symptoms. Appellant had a recent magnetic resonance imaging (MRI) scan and positioning x-rays which showed degenerative disc disease at one level. Dr. Kimes informed appellant on April 24, 2001 that she was unable to return to her position as a rural letter carrier.

In an October 8, 2002 report, Dr. Frank Graf, an orthopedic surgeon, gave a history of appellant's June 21, 1989 employment injury. He indicated that on March 20, 2001 appellant had a recurrence of her injury after delivering mail. Dr. Graf commented that two snow storms had built up snow banks such that she had to stretch to reach mailboxes. He noted that appellant resigned approximately a week later, due to extreme back pain after March 20, 2001. As of August 20, 2002, appellant experienced low back pain radiating into the right buttock and hip. Dr. Graf stated that physical examination showed limitation in the thoracolumbar ranges of motion. He indicated that appellant had the greatest pain when she returned to an erect position after bending forward. She had positive straight leg raising tests in both legs. Dr. Graf reported that an August 2, 2002 MRI scan showed marked disc space narrowing and a central and left herniation at L5-S1, with hypertrophic changes at L4-5 and L5-S1. Dr. Graf diagnosed a central and left-lateralizing disc herniation at L5-S1 and recess stenosis at L4-5 and L5-S1. He noted that the diagnosed conditions were a residual and complication of the June 21, 1989 employment injury, with a recurrence on March 20, 2001.

In a March 19, 2003 report, Dr. Graf noted that appellant had experienced two work-related injuries which were the proximate causes of the disc herniation at L5-S1 and recess stenosis at L4-5 and L5-S1. He commented that the tensile loading of the collagen and elastin structures of the intervertebral discs injured in the employment injuries caused failure of the tissue and intervertebral disc herniation.

In a March 26, 2003 decision, the Office found that the medical evidence did not establish that appellant's medical conditions were related to the March 10, 2001 incident.

In a March 31, 2003 letter, appellant requested a hearing before an Office hearing representative. She subsequently requested a review of the written record. In a September 25, 2003 decision, the Office hearing representative found that appellant did not establish that she sustained an injury in the performance of duty on March 10, 2001, as alleged.

On October 10, 2003 appellant requested reconsideration, citing to records she had submitted which indicated that she sustained an injury on March 10, 2003. Appellant submitted an April 22, 2003 report from Dr. Graf, who noted that, at appellant's first office visit on July 9, 2002, he made an initial diagnosis of probable lateral recess stenosis, residual to and a complication of the June 21, 1989 employment injury with a history of a work-related reinjury on March 10, 2001. He reported that subsequent evaluation showed appellant had L5-S1 disc herniation and lateral recess stenosis at L4-5 and L5-S1. He concluded that appellant's back condition was causally related to the employment injuries.

In a March 1, 2004 merit decision, the Office modified the Office hearing representative's September 25, 2003 decision to find that the March 10, 2001 incident occurred as alleged. However, the Office found that Dr. Graf's reports were of diminished probative value in that his October 8, 2002 report contained an inaccurate date of the incident, March 20, 2001, and failed to mention appellant's fall in April 2001. The Office found that Dr. Graf failed medical rationale on how appellant's repetitive reaching on March 10, 2001 caused or aggravated her conditions.

In a March 10, 2004 letter, appellant requested reconsideration. She submitted a March 12, 2004 report from Dr. Graf, who repeated the history of injury. He stated that the biomechanics of the March 10, 2001 injury, in which appellant reached out of a car window and across snow banks, included torsional rotation and flexion extension movement at the base of the cervical and thoracolumbar spines. These motions produced injury and inflammation at the motion segments of the base of the cervical and thoracolumbar regions of the spine, with particular reference to the facet joints, intervertebral disc, longitudinal ligament structures and interspinous ligaments. This reaction produced further disruption of muscle function in the base of the low back and cervical spine, resulting in irritation and inflammation of the spinal root fibers leading to pain in the neck, arm, low back and leg. Dr. Graf stated that the repeated exaggerated movement patterns produced mechanical changes within the collagen and elastin structures of the motion segments in the cervical and thoracolumbar regions of the spine when then caused chronic inflammation and chronic dysfunction. He indicated that appellant's pattern of low back and lower extremity symptoms following the work-related aggravation were predetermined by appellant's June 21, 1989 employment injury and the prior diagnosis of a L5-S1 intervertebral disc herniation.

In a June 10, 2004 merit decision, the Office denied modification of the March 1, 2004 decision.

LEGAL PRECEDENT

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.² A claimant seeking benefits under the Federal Employees’ Compensation Act³ has the burden of establishing by reliable, probative, and substantial evidence that any disability for work or specific condition for which compensation is claimed is causally related to the employment injury.⁴ To establish causal relationship between a condition, including 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.⁵ Neither the fact that the condition manifests itself during a period of federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.⁶

ANALYSIS

The Office accepted that the March 10, 2001 incident occurred as appellant alleged. The Office, however, found that appellant had not established that reaching across mailboxes on March 10, 2001 caused her subsequent disability. The Office concluded that Dr. Graf’s reports were insufficient to establish causal relationship.

Dr. Kimes did not give an opinion on whether there was a causal relationship between the March 10, 2001 employment incident and appellant’s subsequent disability. Only Dr. Graf addressed the issue of causal relationship. The Board finds, however, that the March 19 and April 22, 2003 reports of Dr. Graf do not adequately address the issue of causal relationship. The March 19, 2003 report stated that the stress on the collagen and elastin structures of the

¹ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

² As used in the Act, the term “disability” means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. See *Frazier V. Nichol*, 37 ECAB 528 (1986).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

⁶ 20 C.F.R. § 10.115(e).

intervertebral discs affected by appellant's employment injuries caused a failure of the tissue of these discs and intervertebral disc herniation. Dr. Graf's March 12, 2004 report gave a biomechanical explanation on how the March 10, 2001 incident resulted in chronic inflammation and dysfunction in the cervical and thoracolumbar regions of the spine. However, Dr. Graf stated that appellant's low back and leg symptoms were predetermined by a June 21, 1989 employment injury and the prior diagnosis of L5-S1 disc herniation. The statement is contrary to Dr. Graf's March 19, 2003 conclusion that the March 10, 2001 incident caused appellant's disc herniation as it suggests that the disc herniation preexisted the March 10, 2001 incident. The contradictions between these reports diminishes the probative value of the physician's opinion because it creates confusion on whether Dr. Graf found that the disc herniation preexisted the March 10, 2001 incident or the March 10, 2001 incident caused an L5-S1 disc herniation. These reports, therefore, do not provide sufficient rationale to meet appellant's burden of proof.

CONCLUSION

Appellant did not meet her burden of proof in establishing that her employment injuries of June 21, 1989 and March 10, 2001 caused her subsequent disability due to low back pain.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs, dated June 10 and March 1, 2004, are affirmed.

Issued: December 21, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member