

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

RICHARD M. ZINSKY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ashtabula, OH, Employer**

)
)
)
)
)
)
)

**Docket No. 04-1807
Issued: December 7, 2004**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member

DAVID S. GERSON, Alternate Member

MICHAEL E. GROOM, Alternate Member

JURISDICTION

On July 13, 2004 appellant, through his attorney, filed an appeal of the Office of Workers' Compensation Programs' merit decision dated June 7, 2004, which affirmed the denial of his claim for an employment-related back injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant satisfied his burden of proof to establish that he sustained a back condition in the performance of duty on May 8, 2002.

FACTUAL HISTORY

On May 28, 2003 appellant, a 52-year-old city carrier, filed an occupational disease claim alleging that on September 21, 2001 he first realized that his lower back bone spurs and bulging discs were due to being attacked by a dog while on duty on a prior occasion.¹ He also noted that

¹ This was assigned claim number 09-2034438.

carrying large amounts of mail in his pouch, twisting and turning and ascending and descending stairs aggravated his condition. Appellant experienced pain in his hip area while walking, twisting and climbing stairs. He noted that pain was severe at times radiating into his left leg and foot. Appellant did not stop working.

In a letter dated June 12, 2003, the Office informed appellant that the evidence of record was insufficient to support his claim and advised him as to the medical and factual evidence required to support his claim. The Office also noted that appellant had previously filed claims for back injuries in 1996² and 2000,³ which had been denied, and that it required a description of the employment factors to which he attributed his condition.

In response appellant submitted a statement, an August 21, 2001 report by Dr. James H.T. Chillcott, a treating Board-certified family practitioner, a June 4, 2003 report by Dr. Anil G. Patel, a treating physician specializing in anatomic and clinical pathology, a May 8, 2003 computerized tomography (CT) scan by Dr. David J. Horejs and a March 23, 1992 CT scan.

Appellant attributed his condition to an incident on April 6, 2003 when he had “five extra tubs of mail to carry” which was “very stenious (sic) on my back.” Appellant asked his supervisor for some help, but did not get any and, when he got home, he experienced pain. He alleged that he reinjured his back due to being “forced to carry mail on other routes repeatedly and to work my schedule days off.”

In an August 21, 2001 report, Dr. Chillcott diagnosed chronic pain due to degenerative disc disease and right ankle osteoarthritis. He recommended that appellant not carry a mail satchel and should case mail together and in one bundle.

In a June 4, 2003 report, Dr. Patel noted that he first saw appellant on May 7, 2003 for a complaint of back pain and reported that appellant related a herniated disc history. Appellant related that after returning from being on vacation “he took all the mail out” of the mail room and that “since then his back” has been bothering him.” A physical examination revealed tenderness at the lumbosacral spine and straight leg pain on examination and a CT scan report revealed disc degeneration. Dr. Patel opined that appellant’s job may have aggravated his condition.

By decision dated July 21, 2003, the Office denied the claim on the grounds that appellant failed to establish that his back condition was caused or aggravated by his employment duties.

On July 31, 2003 appellant’s counsel requested an oral hearing before an Office hearing representative. A hearing was held on April 21, 2004 at which appellant provided testimony, noting that the day mentioned in his statement when he had extra mail to sort and lift tubs of mail was May 8, 2002.

² This was assigned claim number 09-411586.

³ This was assigned clam number 09-2002780.

By decision dated June 7, 2004, the Office hearing representative affirmed the denial of the claim, but amended the claimed date of injury to May 8, 2002. He noted that the employing establishment did not dispute appellant's assertion regarding the heavy mail volume on May 8, 2002. The hearing representative found the record devoid of medical evidence to support a causal relationship between appellant's back condition and the alleged work activities on May 8, 2002.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his 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; that an injury was sustained while 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁶

To determine whether an employee has sustained a traumatic injury in the performance of duty, "fact of injury" must first be established.⁷ The employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁸ 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.⁹ The medical evidence required to establish causal relationship is usually rationalized medical opinion evidence.¹⁰

To establish a causal relationship between appellant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes 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. 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

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 5.

⁷ *Neal C. Evins*, 48 ECAB 252 (1996).

⁸ *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

⁹ 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (2003) (defining injury).

¹⁰ *Michael E. Smith*, *supra* note 6.

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

ANALYSIS

In this case, the Office hearing representative determined that appellant's claim was for a traumatic injury rather than an occupational disease since he attributed his condition to heavy mail volume on May 8, 2002. He found the evidence sufficient to establish that the incident occurred as alleged on May 8, 2002. The Board finds that appellant has submitted insufficient medical evidence to establish a causal relationship between his diagnosed conditions and the employment incident on May 8, 2002.¹²

The question is whether appellant has established that his back condition was caused by the extra heavy mail volume on May 8, 2002. To meet his burden of proof to establish that his back condition is employment related appellant must submit a rationalized medical opinion explaining how his condition is causally related to his employment.

Appellant submitted insufficient medical evidence to establish that his back condition was aggravated or caused by employment factors. In a medical report dated August 21, 2001, Dr. Chillcott diagnosed chronic pain due to degenerative disc disease and provided work restriction recommendations. He did not address the issue of causal relationship. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹³ Dr. Chillcott's report is insufficient to support appellant's claim as he provided no opinion as to whether appellant's back condition was caused or aggravated by his employment.

In a June 4, 2003 report, Dr. Patel reported tenderness at the lumbosacral spine and disc degeneration by CT scan. With regard to the cause of appellant's back condition, he opined that appellant's employment might have aggravated his condition. Dr. Patel's June 4, 2003 report is of limited probative value because it is speculative in nature as to the causal relationship between the diagnosed condition and factors of appellant's employment.¹⁴

The Board finds that appellant has failed to meet his burden of proof to establish that his back condition was causally related to the May 8, 2002 employment incident.¹⁵

¹¹ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404 (1997).

¹² The Board notes that neither the reports of the March 23, 1992 lumbar CT scan, nor the May 8, 2003 CT scan addressed the causal relationship between the May 8, 2002 employment incident and the findings of bulging discs; therefore, these reports were insufficient to satisfy appellant's burden of proof.

¹³ *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

¹⁴ *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

¹⁵ See *Michael E. Smith*, *supra* note 6 (finding that appellant failed to submit a rationalized medical opinion on causal relationship and, therefore, did not meet his burden of proof).

CONCLUSION

The Board finds that appellant failed to satisfy his burden of proof to establish that he sustained a back condition causally related to the May 8, 2002 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 7, 2004 is affirmed.

Issued: December 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member