

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

GARY P. THRASH, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Banos, CA, Employer**

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**Docket No. 04-16
Issued: February 6, 2004**

Appearances:
Gary P. Thrash, 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 September 29, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated February 11, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On November 8, 2002 appellant, then a 43-year-old carrier technician, filed a claim alleging that his pain in the left buttocks, which radiated to his foot, was causally related to his work duties. He indicated that he first became aware of his condition on November 1, 2001 and realized that his condition was caused or aggravated by his employment on October 21, 2002. In a separate statement, appellant described his duties and noted that he first felt a sharp pain on the left side of his lower back on November 1, 2001 when he had bent over to retrieve a letter which

had fallen. Appellant stated that he saw his physician, a Dr. Mevi, on November 28, 2001 who performed a physical examination and took a hip x-ray, but found nothing. Appellant indicated that he was able to work even though he was in discomfort, that he spent his vacation in the summer months trying to get better, but even rest had not helped his increasing pain symptoms. He went back to Dr. Mevi on September 16, 2002 and was eventually referred to Dr. David B. Bybee, a Board-certified neurological surgeon. It was during a conversation with Dr. Bybee that he realized his condition was work related and had been aggravated for months. Appellant advised that he underwent back surgery on November 18, 2002.

Physician chart notes dated November 28, 2001 and September 16 through October 9, 2002¹ were provided, along with a November 28, 2001 left hip x-ray examination, which demonstrated an essentially negative study for appellant's age,² a September 19, 2002 lumbosacral spine x-ray examination, which indicated chronic mild degenerative disc disease with borderline to mild disc thinning or narrowing of L4-5 and L5-S1, and an October 7, 2002 magnetic resonance imaging (MRI) scan, which demonstrated a left paracentral disc protrusion, facet hypertrophy and spinal stenosis at the L5-S1 level and degenerative disc disease with disc bulging and facet hypertrophy at the L4-5 level. In an October 21, 2002 report, Dr. Bybee noted that appellant's symptoms began rather acutely with a sense of left buttock pain, for which appellant sought prompt medical attention, and eventually increased with walking to the point where appellant experienced difficulty extending his legs to walk. Dr. Bybee indicated that appellant was prescribed medication and had been taken off work since October 9, 2002 due to severe pain. He presented his examination findings and diagnosed an acute left lumbar radiculopathy unresolved by time off work and medication and rest. Various treatment options, including surgery, were discussed.

In a November 14, 2002 letter, the employing establishment controverted the claim. In a November 8, 2002 statement, Michael D. McCormick, customer service supervisor, indicated that appellant had never reported an on-the-job injury and was involved in outside activities. Mr. McCormick stated that appellant was known for his athletic endeavors off the job and had come to work many times the previous year in the fall with minor injuries from those endeavors. Mr. McCormick further indicated that in late March 2003 appellant had mentioned to him that he still played pick-up basketball.

In a letter dated November 26, 2002, the Office advised appellant that the information submitted with his claim was insufficient to determine whether he was eligible for benefits under the Federal Employees' Compensation Act.³ The Office informed appellant of the deficiencies in his claim and requested that he provide additional factual and medical information. He was asked to clarify whether he was claiming a traumatic injury based on the event of November 1, 2001 or an occupational injury due to his work duties as a carrier technician. Appellant was also asked to provide details regarding the work duties which he believed contributed to his

¹ Although there is no signature on the physician chart notes, from appellant's statement, the chart notes would appear to be from Dr. Mevi.

² A bone infarct at the base of the neck of the left femur was noted.

³ 5 U.S.C. §§ 8101-8193.

condition, as well as any outside activities and similar previous conditions. The Office indicated that it could not authorize the November 2002 lumbar discectomy surgery. Appellant was afforded 30 days to provide the requested evidence.

In statements dated November 23, 2002 to January 6, 2003, appellant indicated that he believed his back condition was due to an occupational injury and not a traumatic event. He indicated that November 1, 2001 was the first time he had experienced any pain down his left leg and in June 2001 he began to experience discomfort in his left leg while walking which progressed to the point of becoming constant and unbearable. He further stated that he had reported the November 1, 2001 incident to acting supervisor, Jesus Martinez, as soon as he returned to the employing establishment and that Mr. Martinez had full knowledge of his doctor's visits. Appellant further indicated that he had informed Supervisor McCormick when he received the results of his October 8, 2002 MRI scan.

In a January 14, 2003 medical report, Dr. Bybee noted appellant's progress following the lumbar discectomy surgery at L5-S1 and released appellant back to full unrestricted work. Dr. Bybee noted that he first saw appellant on October 21, 2002 for symptoms which appellant had been constantly experiencing for approximately two months. He noted that appellant took time off resting, hoping the symptoms would resolve. Dr. Bybee further noted that appellant had coached a youth basketball team during the months of March and April 2002, but did not play. He stated that appellant's symptoms began June 2002 and became severe and constant shortly thereafter. Dr. Bybee opined that appellant's disc rupture was consistent with the kind of work he was doing as a mail carrier and would appear directly due to his employment.

By decision dated February 11, 2003, the Office denied appellant's claim that he sustained an injury on November 1, 2001 on the grounds that he failed to establish fact of injury. The Office found that appellant had not established the manner in which he was injured as there was conflicting information regarding how appellant was injured. It further found that appellant's physician did not provide a detailed opinion regarding the relationship between his condition and the work injury as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the 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 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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

⁴ See *Leslie C. Moore*, 52 ECAB 132 (2000); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Gabe Brooks*, 51 ECAB 184 (1999); *Victor J. Woodhams*, 41 ECAB 345 (1989).

between the condition, as well as any attendant disability claimed and employment, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

ANALYSIS

In the instant case, the Office concluded that the evidence of record was insufficient to establish that appellant sustained an injury on November 1, 2001. The Board notes that appellant has consistently maintained that he became aware of the first symptoms of his back condition on November 1, 2001 and that he was claiming that his subsequent increase in symptoms and pain in the summer of 2002, which eventually resulted in surgery, were the result of his work-related duties as a carrier technician. The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷ The circumstances of this case, as supported by the medical documentation, lend support to appellant's allegation that he first experienced some symptoms in his buttock area while in the performance of his duties in November 2001 and that such symptoms had increased in the summer to fall of 2002, prior to a lumbar discectomy. Although the November 8, 2002 statement by Supervisor McCormick indicated that appellant had mentioned to him in late March 2003 that he still played pick-up basketball, there is no probative evidence of record to affirmatively establish that appellant had actively engaged in any outside activities following the increase in back symptoms in the summer to fall of 2002. In his January 14, 2003 report, Dr. Bybee specifically noted that, while appellant had coached a youth basketball team during March and April 2002, he did not participate in playing basketball. Accordingly, from the evidence presented, the Board finds that appellant is claiming an occupational injury attributed to his employment duties as a carrier technician.

However, the Board finds that the medical evidence of record fails to demonstrate that appellant's claimed back condition and subsequent surgery is employment related. It is well established that medical conclusions unsupported by rationale are of diminished probative value,⁸ and in this case, the evidence appellant submitted lacks a rationalized medical opinion explaining causal relationship between specific factors of his employment and his diagnosed condition. In his October 21, 2002 report, Dr. Bybee diagnosed an acute left lumbar radiculopathy but failed to provide any medical rationale explaining how appellant's work duties could have caused or contributed to this lumbar condition.⁹ In his January 14, 2003 report, Dr. Bybee opined that appellant's disc rupture was causally related to his employment duties but failed to offer any medical rationale for his stated conclusion or provide a discussion about the specific factors of employment alleged.¹⁰

⁶ See 20 C.F.R. § 10.115(e); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000); *Gary Fowler*, 45 ECAB 365 (1994).

⁷ *Linda S. Christian*, 46 ECAB 598 (1995).

⁸ *Jacqueline L. Oliver*, 48 ECAB 232 (1996).

⁹ See *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *Id.*

As appellant has not provided rationalized medical evidence identifying the specific factors of employment implicated in causing his back conditions, he has not established that he sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant has not established that his back condition is causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2003 decision of the Office of Workers' Compensation Programs is affirmed, as modified to reflect that appellant had not submitted sufficient medical evidence to establish that he sustained an injury in the performance of duty.

Issued: February 6, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member