

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

JAMES H. PEE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Florence, SC, Employer**

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**Docket No. 03-522
Issued: July 9, 2004**

Appearances:
James H. Pee, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 16, 2002 appellant filed a timely appeal of the December 3, 2002 merit decision of the Office of Workers' Compensation Programs, which denied appellant's claim for a low back injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on July 22, 2002.

FACTUAL HISTORY

On September 6, 2002 appellant, then a 53-year-old flat sorting machine clerk, filed a traumatic injury claim (Form CA-1) alleging that he sustained a herniated disc in his lower back while in the performance of duty on July 22, 2002. Appellant stated that he injured himself while "pushing [all purpose containers] in place to set up machine." He stopped working on July 22, 2002 and returned to work September 10, 2002. Appellant worked sporadically over the

next few weeks and he stopped work again on September 27, 2002. The employing establishment advised that appellant had not stated that he was injured, but that his legs had been bothering him all week.

Dr. David M. Culpepper, a Board-certified internist, examined appellant on July 23, 2002. He reported that appellant “had to leave work last night after a week of progressively worsening pain in his left buttock.” Appellant reported that his cheek began to hurt fairly severely when he would stand, particularly when he had to walk down his 60-machine mail sorter, which required him to sweep. Dr. Culpepper also noted that appellant denied any trauma or injury that could have produced the problem in his hip. On physical examination he noted some pain with rotation of the left hip joint. According to Dr. Culpepper, x-rays did not reveal a dislocation or fracture, but some sclerotic changes were noted in the joint. He diagnosed left hip pain of uncertain etiology.

Dr. Patrick K. Denton, a Board-certified surgeon, examined appellant at Dr. Culpepper’s request, and in an August 2, 2002 report, Dr. Denton noted a two-week history of increasing left lower posterior and radicular pain. He also noted that appellant had a long history of back problems and had received an epidural steroid injection in 1999. X-rays showed degenerative discs at L4-5 and sacralization at L5. Dr. Denton diagnosed degenerative disc disease and possible herniated disc and he recommended a magnetic resonance imaging (MRI) scan of the lumbar spine.

On August 8, 2002 Dr. Rakesh P. Chokshi, a Board-certified orthopedic surgeon, examined appellant. Appellant complained of low back pain and left buttock and leg pain. Dr. Chokshi noted that appellant had been hospitalized August 1, 2002 and was seen by an associate, Dr. Denton. Dr. Chokshi reported a history of “2 [to] 3 weeks of increasing left buttock, posterior hip and radicular pain, now in the lower extremity.” He also noted that appellant had “a long history of back troubles” and “no history of recent trauma.” X-rays showed degenerative changes at L4-5 with fasciculation at L5. A recent MRI scan of the lumbar spine revealed degenerative disc problems at L3-4, L4-5 and L5-S1, with possible stenosis at L4-5 on the left side and a paracentral herniated disc with bulging that could be causing pressure on the left nerve root. He also noted a similar problem at L3-4 and a congenital narrow canal. Dr. Chokshi diagnosed low back pain with irregular symptoms, likely due to spinal stenosis and degenerative disc problems at several levels as well as congenital narrow canal.

Dr. Willie S. Edwards Jr., a Board-certified orthopedic surgeon and an associate of Drs. Denton and Chokshi, examined appellant on August 12, 2002. He reported that appellant had been hospitalized over the weekend due to severe pain and had undergone epidural steroid injections, which helped him tremendously. Appellant was reportedly symptom free at the time of his hospital discharge.

Dr. Chokshi’s treatment notes reflect that he saw appellant again on August 29 and September 30, 2002. On August 29, 2002 Dr. Chokshi reported that a recent myelogram revealed Grade 1 spondylolisthesis at L4-5 with congenital spinal stenosis and superimposed acquired spinal stenosis at L3-4, L4-5 and L5-S1. When seen on September 30, 2002 appellant complained of increasing left leg pain and Dr. Chokshi discussed with him the prospect of surgical lumbar decompression at L2-5 and possible fusion.

On November 4, 2002 the Office advised appellant of the need for additional factual and medical evidence. The Office noted, among other things, that the medical evidence variously indicated that appellant's back pain was of uncertain etiology, that he had a long history of back problems, that his condition was possibly degenerative in nature and that it occurred over an extended period of time. Under these circumstances, the Office asked that appellant specifically describe the incident on July 22, 2002 that caused the problems with his back or any other work factors that caused his present condition. The Office afforded appellant 30 days within which to submit the requested factual and medical information.

In a statement dated November 7, 2002, appellant explained that around 4:20 p.m. on July 22, 2002 he was pushing an all purpose container (APC) to set up his machine for operation and all of a sudden a pain hit him in his lower left back that would not quit. Appellant stated that he started to look for the supervisor, but he could not find her so he completed a leave request form and went to the locker room to gather his belongings. He later saw his supervisor and handed her the leave request and told her he had hurt his back and was going home. Appellant explained that he was in so much pain that he did not even think about filing an accident report. Appellant further stated that he saw his doctor the following morning and was later hospitalized on two occasions in August 2002. Appellant also stated that he underwent back surgery on October 30, 2002. He also advised that he sustained a prior back injury on September 22, 1998 and he had completely recovered from this injury.

In a decision dated December 3, 2002, the Office denied appellant's claim on the basis that he failed to establish that he sustained an injury in the performance of duty. The Office explained that none of the medical evidence explained how appellant's back condition was work related.

LEGAL PRECEDENT

In order to determine whether 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.¹ The second component is whether the employment incident caused a personal injury.² Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.³

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *John J. Carlone*, 41 ECAB 354 (1989).

³ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship 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 claimant's specific employment factors. *Id.*

ANALYSIS

Appellant claimed to have injured his back on July 22, 2002 while pushing an APC. It is not disputed that appellant pushed an APC on that date. However, the employing establishment indicated that appellant had not stated that he was injured, but merely that his legs had been bothering him all week. In his November 7, 2002 statement, appellant indicated that while he did not complete an accident report on July 22, 2002 he did advise his supervisor that he hurt his back and was going home for the day. When appellant sought treatment with Dr. Culpepper on July 23, 2002 he failed to mention the alleged APC pushing incident. Dr. Culpepper reported that appellant “had to leave work last night after a week of progressively worsening pain in his left buttock.” The doctor also noted that appellant denied “any trauma or injury that could have produced the problem in [his] hip.” Dr. Culpepper diagnosed left hip pain of uncertain etiology.

The history reported by Dr. Culpepper only a day after appellant’s alleged traumatic injury undermines appellant’s claim that his injury resulted from pushing an APC on July 22, 2002. Furthermore, none of the remaining physicians reported a history of injury consistent with that noted on appellant’s Form CA-1 and in his subsequent November 7, 2002 statement. Drs. Denton, Chokshi and Edwards make no mention of a July 22, 2002 pushing incident involving an APC. Additionally, Dr. Denton’s August 2, 2002 report noted that appellant had “no history of recent trauma.”

The record does not substantiate appellant’s allegation that he injured his back while pushing an APC on July 22, 2002. Moreover, while Dr. Culpepper’s notation of a progressive worsening of pain over a week-long period suggests that appellant’s condition developed over a period of time, appellant did not identify any work factors other than the unsubstantiated APC pushing incident of July 22, 2002 as the cause of his back condition. Thus, appellant has not provided the necessary factual basis for either a traumatic injury claim or an occupational disease claim.⁴

The medical evidence in the instant case also fails to establish that appellant’s diagnosed back condition is work related. Regardless of whether the claim is properly classified as a traumatic injury or an occupational disease, none of the physicians of record have specifically attributed appellant’s back condition to his employment. Dr. Culpepper indicated that appellant’s hip pain was of uncertain etiology. Dr. Denton diagnosed degenerative disc disease and possible herniated disc. Dr. Chokshi diagnosed congenital narrow canal with superimposed degenerative disc problems at L3-4, L4-5 and L5-S1, with stenosis at all three levels. Not one of these physicians attributed appellant’s current condition to his federal employment.

⁴ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. *Victor J. Woodhams, supra* note 3.

Accordingly, both the factual and medical evidence fail to establish that appellant sustained an injury in the performance of duty.⁵

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on July 22, 2002.

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.115 (1999).