

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

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| JACQUELINE GOLDEN, Appellant |) | |
| |) | |
| and |) | Docket No. 04-469 |
| |) | Issued: July 7, 2004 |
| U.S. POSTAL SERVICE, POST OFFICE, Jonesboro, AR, Employer |) | |
| |) | |

Appearances:
Larry J. Steele, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs merit decision dated May 22, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue is whether appellant has established that she sustained a back condition in the performance of duty.

¹ Following the docketing of an appeal with the Board on December 15, 2003 the Office issued a nonmerit decision dated April 7, 2004, which denied appellant's request for reconsideration. The Office and the Board, however, may not have simultaneous jurisdiction over the same issue in the same case regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed is null and void. As the April 7, 2004 decision contains the same issues as those currently before the Board, the Office's April 7, 2004 decision is null and void. See generally *Noe L. Flores*, 49 ECAB 344, 346, n.1 (1998); *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

FACTUAL HISTORY

On October 23, 2002 appellant, then a 65-year-old rural carrier, filed an occupational disease claim alleging that her employment duties were the cause of her back pain and lumbar disc disease. She first realized that her back condition was caused or aggravated by her federal employment on or about October 15, 2002. Appellant stopped work on October 19, 2002 and has not returned. In a separate statement, she asserted that the twisting, bending and lifting activities of her position caused her back condition. No evidence accompanied the claim.

In an October 30, 2002 letter, the Office advised appellant that the information submitted with her claim was not sufficient to determine whether she was eligible for benefits under the Federal Employees' Compensation Act.² The Office advised her of the additional medical and factual evidence needed to support her claim. Appellant was requested to provide a comprehensive medical report showing a diagnosis of any condition resulting from her federal work activities and a physician's opinion, with medical reasons for such opinion, as to how the work activities resulted in the diagnosed condition.

In a November 5, 2002 statement, appellant described her casing duties. She stated that she constantly lifts, bends, stoops, twists and turns while casing the mail for approximately four to four and half hours a day, lifts the mail into carts and pushes it to her vehicle where she then has to lift and load the mail. Submitted were Form CA-17, duty status reports, dated November 7 to 22, 2002, from Dr. Sanders B. McKee, a family practitioner, documenting a lumbar/sacroiliac spine sprain from ongoing twisting and turning, disability notes and an October 23, 2002 magnetic resonance imaging (MRI) of the lumbar spine, which was negative; and an October 23, 2002 MRI of the pelvis, which was normal.

By decision dated December 10, 2002, the Office denied appellant's claim, finding that she failed to establish that the condition causing disability was related to her employment.

In a letter dated December 18, 2002, appellant requested a review of the written record. In a supplemental statement dated December 18, 2002, she advised that she was initially injured on August 27 or 28, 2002 when the interior set of the double doors to the annex were locked. Appellant stated that, as she was pushing hard against her cart to pass through the exterior doors, she hit the locked interior doors and the sudden stop against the locked doors caused the bars around the cart to hit her just below the waist, such that she nearly fell to the floor. She stated that she was claiming this incident as an occupational injury which became progressively worse. Appellant was first able to see her physician on October 7, 2002 and he placed her on leave until October 17, 2002. After she returned to work and worked three days, her back pain increased and she returned to the doctor.

In Form CA-17 duty status reports and Form CA-20, attending physician reports dated December 16, 2002 through April 1, 2003, Dr. Calvin Savu, a pain management specialist, diagnosed lumbosacral spondylosis with facet disease and opined, with a check mark, that the condition was caused or aggravated by employment activity. In the first Form CA-20 dated December 16, 2002 and in his subsequent reports, Dr. Savu provided a history of back pain after

² 5 U.S.C. §§ 8101-8193.

lifting and pushing and noted findings of tenderness. He did not complete his last reports dated April 1, 2003, but noted that previous reports should be referenced.

In Form CA-17 and Form CA-20 reports dated November 22 and December 12, 2002, Dr. McKee diagnosed a sacroiliac joint dysfunction and opined, with a check mark, that the condition was employment related. He noted a history of back pain and opined that twisting, bending etc. made the condition worse. In a December 18, 2002 report, Dr. McKee noted that appellant was injured at work while pulling a cart and that initial treatment of physical therapy and injections were of no help. He advised that she was scheduled for epidural injections, but stated if that did not help she might need a surgical procedure. Dr. McKee reiterated that the initial injury was work related. Return to work notes from him were also provided.

By decision dated May 22, 2003, an Office hearing representative reviewed the written record and affirmed the December 10, 2002 decision. The Office hearing representative noted that, if appellant was claiming that a traumatic injury had occurred in August 2002, she should file a Form CA-1, notice of traumatic injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether an employee actually sustained an injury in the performance of duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.⁴ In order to meet her burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The evidence required to establish

³ *Charles E. Evans*, 48 ECAB 692 (1997).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998)

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease" defined).

causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁸

ANALYSIS

In this case, the factual basis of the claim is not at issue. The Office hearing representative found that appellant's work as a rural carrier involved twisting, turning and bending while casing mail for an average of three hours plus the time spent delivering mail. Therefore, the only issue is whether appellant established that she sustained an injury as a result of her employment duties.

Appellant submitted numerous physician's reports in support of her claim. The vast majority of these reports contain no discussion of the causal relationship, if any, between her diagnosed back conditions and the identified employment factors or contain only a check mark, without further explanation to indicate that such a causal relationship existed. The Board has held that a physician's form report which merely checks the box marked "yes" to the inquiry as to whether the condition for which treatment is rendered is causally related to the history of injury as given, is of diminished probative value as it constitutes a conclusion without the benefit of any medical rationale.⁹ Although Dr. McKee had advised in his December 18, 2002 report, that appellant was injured at work while pulling a cart and had noted in his earlier form reports that twisting and bending made the sacroiliac joint dysfunction worse, the Board finds that he did not provide any rationale to discharge appellant's burden of proving, by the weight of the reliable, substantial and probative evidence that her current back condition is causally related, either directly or through aggravation, precipitation or acceleration, to her employment, as he did not explain his opinion with medical reasoning.¹⁰ An award of compensation may not be based on surmise, conjecture or speculation or a claimant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment factors. Neither the fact that a claimant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by the employment is sufficient to establish causal relationship.¹¹ Therefore, appellant has not submitted sufficient medical evidence to establish her claim.

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Charles E. Evans*, *supra* note 3.

⁹ *Barbara J. Williams*, 40 ECAB 649 (1989).

¹⁰ *Kathleen M. Fava (John F. Malley)*, 49 ECAB 519 (1998); *Beverly J. Duffey*, 48 ECAB 569 (1997); *Lee R. Haywood*, 48 ECAB 145 (1996).

¹¹ *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

CONCLUSION

The Board finds that appellant failed to establish that she sustained a back condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member